

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

Response to Comments Report

Tentative Order No. R9-2015-0100

***An Order Amending Order No. R9-2013-0001, NPDES No. CAS010266,
As Amended by Order No. R9-2015-0001
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***

November 4, 2015

Revised November 10, 2015

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

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San Diego Region**

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Responses to Comments on Tentative Order No. R9-2015-0100

November 4, 2015

Revised November 10, 2015

Introduction

This report contains responses to written comments timely received on Tentative Order No. R9-2015-0100, *An Order Amending Order No. R9-2013-0001, NPDES No. CAS010266, as Amended by Order No. R9-2015-0001, 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* (Tentative Order). The Tentative Order and its attachments were available for public review and comment for 46 days, with the comment period ending on September 14, 2015. Specifically, the San Diego Water Board requested comments on the following three documents:

- Tentative Order No. R9-2015-0100;
- 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 “Regional MS4 Permit” in the following response to comments table refers to both Tentative Order No. R9-2015-0100 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/index.shtml

List of Commenters:

Comments were submitted by the following organizations, public agencies, or individuals (listed alphabetically):

1. City of Dana Point
2. City of Escondido
3. City of Laguna Beach
4. City of Lake Forest
5. City of Menifee
6. City of San Clemente
7. City of San Diego
8. City of San Juan Capistrano
9. City of Santee
10. Construction Industry Coalition on Water Quality (CICWQ)
11. County of San Diego
12. Environmental Groups (San Diego Coastkeeper, Coastal Environmental Rights Foundation, and Surfrider Foundation San Diego Chapter)
13. Orange County Copermittees
14. Riverside County Copermittees
15. San Diego Coastkeeper and Coastal Environmental Rights Foundation
16. San Diego County Copermittees
17. San Diego Unified Port District
18. South Laguna Civic Association
19. Safari Highlands Ranch

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Gnl-1	GENERAL COMMENTS	
	COMMENT: <i>Request to incorporate previous written comments and testimony in the record for this Tentative Order.</i> The Copermittees and other stakeholders requested that previous written comments and testimony be incorporated into the record for this Tentative Order. The comment letters also included copies of the written comments previously submitted during the proceedings to adopt Order No. R9-2013-0001, and the proceedings to adopt Order No. R9-2015-0001 to amend Order No. R9-2013-0001.	Riverside County Copermittees Orange County Copermittees City of Dana Point City of San Diego San Diego Unified Port District South Laguna Civic Association Construction Industry Coalition on Water Quality
	RESPONSE: The San Diego Water Board is incorporating the previous written comments and testimony provided during the proceedings to adopt Order No. R9-2013-0001, and the proceedings to adopt Order No. R9-2015-0001 to amend Order No. R9-2013-0001 into the record for this Tentative Order. The San Diego Water Board reviewed Tentative Order No. R9-2015-0100 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, the January 21, 2015 responses to comments document prepared during the adoption process of Order No. R9-2015-0001, and the oral responses to comments during the workshops and hearings during those proceedings address the previously submitted comments and testimony. The San Diego Water Board is incorporating by this reference as if set forth in full herein its written responses to comments and oral responses to comments raised during the workshops and hearings on Order Nos. R9-2013-0001 and R9-2015-0001 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 Water Board in SWRCB/OCC File A-2254(a)-(p), or in petitions for review of Order No. R9-2015-0001, amending Order No. R9-2013-0001 (SWRCB/OCC File A-2367(a)-(i)), 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 Water Board's petition proceeding. No changes to the Tentative Order or its Attachments were made based on the renewed comments.	

RESPONSES TO COMMENTS RECEIVED ON TENTATIVE ORDER NO. R9-2015-0100

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Gnl-2	GENERAL COMMENTS	Riverside County Copermittees
	COMMENT: <i>Request for clarification of implementation requirements for the Riverside County Copermittees as a result of late entry into the Regional MS4 Permit.</i> The Riverside County Copermittees noted that several provisions of the Regional MS4 Permit, including requirements to submit certification of legal authority, assessment and subsequent Water Quality Improvement Plan revision requirements, and requirements to submit a regional monitoring and assessment report, which either require data gathered under a Water Quality Improvement Plan that has been accepted by the San Diego Water Board, or are due for submittal outside of the Regional MS4 Permit's term. The Riverside County Copermittees wanted clarification that: 1) the certification of legal authority which was submitted by the Riverside County Copermittees under Order No. R9-2010-0016 will remain effective until a new certification is submitted with the first Water Quality Improvement Plan Annual Report (after the current Regional MS4 Permit term has ended), 2) any provisions regarding assessments or requiring data gathered under an accepted Water Quality Improvement Plan will not be due until such time that the necessary data are gathered and the assessments made under time periods described in the Regional MS4 Permit, and 3) the regional monitoring and assessment report for the current Regional MS4 Permit term should be completed utilizing data gathered during the transitional monitoring period, as these will be the only data that will be available at that time.	
	RESPONSE: The San Diego Water Board agrees that: 1) the certification of legal authority which was submitted by the Riverside County Copermittees under Order No. R9-2010-0016 will remain effective until a new certification is submitted with the first Water Quality Improvement Plan Annual Report (after the current Regional MS4 Permit term has ended), 2) any provisions regarding assessments or requiring data gathered under an accepted Water Quality Improvement Plan will not be due until such time that the necessary data are gathered and the assessments made under time periods described in the Regional MS4 Permit, and 3) the regional monitoring and assessment report for the current Regional MS4 Permit term should be completed utilizing data gathered during the transitional monitoring period, as these will be the only data that will be available at that time.	

RESPONSES TO COMMENTS RECEIVED ON TENTATIVE ORDER NO. R9-2015-0100

November 4, 2015 / Revised November 10, 2015

Gnl-3	GENERAL COMMENTS	
	COMMENT: <i>Request to remove the City of Menifee from Water Quality Improvement Plan development and implementation.</i> The Riverside County Copermittees and the City of Menifee requested several modifications to the Regional MS4 Permit that would remove the City of Menifee from the requirement to develop and implement the Water Quality Improvement Plan for the Santa Margarita River Watershed Management Area. The Riverside County Copermittees and the City of Menifee assert that the City of Menifee does not own or operate any MS4 within the Santa Margarita River Watershed Management Area, and provided a map showing the City's jurisdictional boundary and MS4.	Riverside County Copermittees City of Menifee
	RESPONSE: The San Diego Water Board reviewed the information provided by the commenters and disagrees that the City of Menifee does not own or operate any MS4 within the Santa Margarita Watershed Management Area. The maps provided by the commenters show a portion of MS4 along Scott Road within the Santa Margarita Watershed Management Area that is indicated to be owned by the City of Menifee. In addition, the maps provided by the commenters show that there is a residential area within the City of Menifee and within the Santa Margarita River Watershed Management Area with streets, curb, and gutter that drain to MS4 owned by the Riverside County Flood Control and Water Conservation District, which discharges to a tributary of Warm Springs Creek. Warm Springs Creek is an impaired water body in the Santa Margarita River Watershed Management Area and may become subject to the requirements of a TMDL in the future. The streets, curb, and gutter in the residential area are also considered part of the City of Menifee's MS4. The maps provided confirm that it is appropriate for the City of Menifee to be required to participate in the development and implementation of the Water Quality Improvement Plan for the Santa Margarita River Watershed Management Area. No changes were made to the Tentative Order as a result of this comment.	

RESPONSES TO COMMENTS RECEIVED ON TENTATIVE ORDER NO. R9-2015-0100

November 4, 2015 / Revised November 10, 2015

Gnl-4	GENERAL COMMENTS	
	<u>COMMENT:</u> <i>Stakeholder workshops have been effective.</i> The Orange County Copermittees expressed appreciation for the efforts of the San Diego Water Board staff to collaboratively engage the Copermittees and other stakeholders through the use of mediated workshops. The workshop format allowed all viewpoints to be expressed with sufficient time provided for discussion of issues regarding the Regional MS4 Permit.	Orange County Copermittees City of Dana Point City of Laguna Beach
	<u>RESPONSE:</u> The San Diego Water Board agrees that the collaborative approach utilized during the Regional MS4 Permit development and amendment processes has been beneficial for the San Diego Water Board staff to better understand the issues of concern to the stakeholders.	

RESPONSES TO COMMENTS RECEIVED ON TENTATIVE ORDER NO. R9-2015-0100November 4, 2015 / **Revised November 10, 2015**

Gnl-5	GENERAL COMMENTS	
	COMMENT: <i>Requests for the Regional MS4 Permit to acknowledge the potential benefit of developing site specific water quality objectives in concert with development of the Water Quality Improvement Plan.</i> The Cities of Dana Point and Laguna Beach requested that the Regional MS4 Permit and Fact Sheet specifically acknowledge the benefit of developing site specific objectives in concert with the development of the Water Quality Improvement Plans, even if development of the site specific objectives may extend the period to complete development of the Water Quality Improvement Plans.	City of Dana Point City of Laguna Beach
	RESPONSE: The San Diego Water Board acknowledges that developing site specific water quality objectives (site specific objectives) may be appropriate where there are data that are available to support site specific objectives. The San Diego Water Board, however, disagrees that it is appropriate to delay development and implementation of any Water Quality Improvement Plans with an expectation that site specific objectives will be developed. Any action taken by the San Diego Water Board to establish site specific objectives would require amendment of the Basin Plan to incorporate the site specific objectives before they could be implemented in any NPDES permits or waste discharge requirements issued by the San Diego Water Board. The Basin Planning process requires separate proceedings that need to include the public, the San Diego Water Board, the State Water Board, the Office of Administrative Law, and the USEPA. This process will take much longer to complete than developing the Water Quality Improvement Plan. However, the San Diego Water Board encourages the Copermittees to utilize the Water Quality Improvement Plan development process to identify areas within the Watershed Management Area where developing site specific objectives may be appropriate and include special studies to collect data that can be used to support development of site specific objectives.	

RESPONSES TO COMMENTS RECEIVED ON TENTATIVE ORDER NO. R9-2015-0100

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Gnl-6	GENERAL COMMENTS
	COMMENT: <i>Request for clarification that location of a MS4 within the Port's jurisdictional boundaries does not render the Port an owner or operator of the MS4.</i> The San Diego Unified Port District (Port) asserts that just because a MS4 facility falls within its jurisdictional boundaries, which overlap with the Cities of San Diego, National City, Chula Vista, Imperial Beach, and Coronado (Member Cities), that does not mean the Port owns or operates the MS4 facility, and thus the Port would not be responsible for discharges from those MS4 facilities. Therefore, the Port requested revisions to the Tentative Order that clarify this distinction.
	RESPONSE: The San Diego Water Board disagrees that the Tentative Order should be revised to include additional clarification. The Port owns and operates MS4 facilities (streets, curbs and gutters, catch basins, etc.) and lands within the tidelands that either convey or discharge storm water runoff into MS4 facilities owned or operated by Member Cities, or directly to receiving waters. The Port is responsible for complying with permit conditions pertaining to discharges from MS4 facilities and lands the Port owns or operates that discharge into MS4 facilities of Member Cities or directly to receiving waters. The Port must provide the evidence to demonstrate that it does not own or operate MS4 facilities or lands that discharge storm water runoff directly or indirectly into the MS4 facilities owned by the Member Cities. No changes were made to the Tentative Order as a result of this comment.

RESPONSES TO COMMENTS RECEIVED ON TENTATIVE ORDER NO. R9-2015-0100

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Gnl-7	GENERAL COMMENTS	
	COMMENT: <i>Compliance with all the discharge prohibitions in the Regional MS4 Permit under all circumstances is likely impossible.</i> The Cities of Dana Point and Laguna Beach asserts that compliance with all the discharge prohibitions in the Regional MS4 Permit under all circumstances is not practicable and likely impossible. The Cities go on to assert that the Cities are in a position of being required to comply with the discharge prohibitions under all circumstances, or are being required to meet a “zero discharge standard,” both of which are impossible to achieve.	City of Dana Point City of Laguna Beach
	RESPONSE: The San Diego Water Board does not disagree with the assertion that the Copermittees are not in compliance with all the discharge prohibitions in the Regional MS4 Permit under all circumstances. The San Diego Water Board disagrees that it is not practicable and likely impossible to comply with all of the discharge prohibitions under all circumstances. The cases cited in support of the commenters’ argument are inapposite and factually distinguishable from Order No. R9-2013-0001 (as amended) and the discharge prohibitions and receiving water limitations provisions therein. To date, the Copermittees have not implemented programs that are capable of complying with all of the discharge prohibitions under all circumstances, but that does not mean it is not practicable nor impossible. The assertion that complying with all the discharge prohibitions in the Regional MS4 Permit under all circumstances is not practicable and impossible cannot be supported without first demonstrating that the Copermittees have implemented all of their programs to effectively prohibit non-storm water discharges to the MS4 and reduce pollutants in storm water discharges to the maximum extent practicable (MEP). Moreover, several audits conducted recently by the San Diego Water Board indicate that the Copermittees may not be adequately implementing their basic jurisdictional runoff management program (JRMP) requirements to reduce pollutants in storm water discharges to the MEP standard. Even if the Copermittees implemented the basic JRMP requirements to the MEP standard, the Copermittees can also implement additional practicable actions or programs to comply with all of the discharge prohibitions in the Regional MS4 Permit.	

RESPONSES TO COMMENTS RECEIVED ON TENTATIVE ORDER NO. R9-2015-0100

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Gnl-8	GENERAL COMMENTS	
	COMMENT: <i>Request for clarification by City of Lake Forest for applicability of the Water Quality Improvement Plan development requirements.</i> The City of Lake Forest requested clarification on its participation in development of the Water Quality Improvement Plan, based on the agreement that discharges from its MS4 in the San Diego Region will be regulated by the Santa Ana Water Board.	City of Lake Forest
	RESPONSE: The San Diego Water Board expects the City of Lake Forest to contribute to development of the Water Quality Improvement Plan and describe the water quality improvement strategies that will be implemented by the City to comply with TMDL requirements. The strategies implemented by the City of Lake Forest are only expected to implement the requirements of the Phase I MS4 Permit issued by the Santa Ana Water Board, except when and where additional strategies (known as optional jurisdictional strategies or Watershed Management Area strategies in the Regional MS4 Permit) may be necessary to achieve TMDL requirements. Likewise, if the Water Quality Improvement Plan includes final numeric goals that are not based on TMDL requirements, the City of Lake Forest is expected to include descriptions of the water quality improvement strategies that the City may implement to contribute toward achieving those final numeric goals.	

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Gnl-8	GENERAL COMMENTS	
	COMMENT: <i>Recommendations for actions that can be implemented to improve water quality.</i> The South Laguna Civic Association provided several recommended actions that may result in improvements to water quality.	South Laguna Civic Association
	RESPONSE: The San Diego Water Board appreciates the recommendations. The recommendations, however, appear to be actions that could be implemented as part of water quality improvement strategies by the Copermittees, and not necessarily appropriate to include into the requirements of the Tentative Order. The recommended actions provided by the commenter can be brought to the attention of the south Orange County Copermittees during the development of the Water Quality Improvement Plan. No changes were made to the Tentative Order as a result of this comment.	

RESPONSES TO COMMENTS RECEIVED ON TENTATIVE ORDER NO. R9-2015-0100

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Gnl-10	GENERAL COMMENTS	
	COMMENT: <i>The Regional MS4 Permit illegally authorizes compliance schedules for CTR-based TMDLs beyond May 18, 2010.</i> The Environmental Groups assert the Tentative Order and the Regional MS4 Permit illegally authorize compliance schedules for TMDLs to achieve compliance with the CTR as required by the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Policy or SIP).	Environmental Groups
	RESPONSE: The San Diego Water Board disagrees that the Tentative Order or the Regional MS4 Permit are in conflict with the SIP. The Tentative Order and Regional MS4 Permit are consistent with the TMDLs and the SIP. The Regional MS4 Permit establishes requirements for the regulation of storm water discharges, and the compliance schedule requirements of the SIP do not apply to storm water discharges. Please refer to footnote 1 on page 3 of the SIP which states, “<i>This Policy does not apply to regulation of storm water discharges. The SWRCB has adopted precedential decisions addressing regulation of municipal storm water discharges in Orders WQ 91-03, 91-04, 96-13, 98-01, 99-05, and 2001-15.</i>”	

RESPONSES TO COMMENTS RECEIVED ON TENTATIVE ORDER NO. R9-2015-0100

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A-1	PROVISION A: PROHIBITIONS AND LIMITATIONS	
	COMMENT: <i>Requests to include language in the prohibitions and limitations of Provision A that is linked to the alternative compliance pathway under Provision B.3.c.</i> The Orange County and San Diego County Copermittees, as well as several individual Copermittees, requested the addition of language to Provision A that explicitly states the implementation of the alternative compliance pathway under Provision B.3.c constitutes compliance with the discharge prohibitions and receiving water limitations in Provision A.	Orange County Copermittees City of Lake Forest City of San Clemente City of San Juan Capistrano San Diego County Copermittees City of Santee County of San Diego
	RESPONSE: The San Diego Water Board disagrees that it is appropriate or necessary to include additional language to Provision A. Provision A is consistent with the precedential language that was issued under State Water Board Order WQ 99-05. State Water Board Order WQ 2015-0075, which supports the inclusion of the alternative compliance pathway under Provision B.3.c, also states that Phase I MS4 permits should continue to use the receiving water limitations provisions as directed by Order WQ 99-05. No changes were made to the Tentative Order as a result of this comment.	

RESPONSES TO COMMENTS RECEIVED ON TENTATIVE ORDER NO. R9-2015-0100

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A1-1	PROVISION A.1: Discharge Prohibitions	
	<u>COMMENT:</u> <i>Request to correct State Water Board Resolution No. 2012-0012 reference in Provision A.1.d to Resolution No. 2012-0031.</i> The City of San Diego requested that the reference to State Water Board Resolution No. 2012-0012 in Provision A.1.d be changed to Resolution No. 2012-0031.	City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board agrees that the correction is appropriate. The reference to “State Water Board Resolution No. 2012-0012” under Provision A.1.d has been revised to “State Water Board Resolution No. 2012-0012, <u>as amended by State Water Board Resolution No. 2012-0031.</u>”	

RESPONSES TO COMMENTS RECEIVED ON TENTATIVE ORDER NO. R9-2015-0100

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A2-1	PROVISION A.2: Receiving Water Limitations	
	<u>COMMENT:</u> <i>Request for removal of receiving water limitations language from Regional MS4 Permit.</i> The County of San Diego requested that the San Diego Water Board use its discretion to remove the requirements to comply with receiving water limitations in Provision A.2 of the Regional MS4 Permit.	County of San Diego
	<u>RESPONSE:</u> The San Diego Water Board disagrees that it is appropriate to remove the requirements to comply with receiving water limitations in Provision A.2 of the Regional MS4 Permit. The receiving water limitations are consistent with precedential State Water Board Orders WQ 99-05 and WQ 2015-0075. No changes were made to the Tentative Order as a result of this comment.	

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B-1	PROVISION B: WATER QUALITY IMPROVEMENT PLANS	
	COMMENT: <i>Request to revise the language in Provision B.1 to specify the Water Quality Improvement Plans are to address discharges from the MS4.</i> The City of San Diego requested Provision B.1 be revised to state that the Copermittees must develop a Water Quality Improvement Plan <u>for their MS4 discharges</u> within each of the Watershed Management Areas in Table B-1.	City of San Diego
	RESPONSE: The San Diego Water Board disagrees that the Water Quality Improvement Plans should be specific to just addressing discharges from the MS4. The Regional MS4 Permit is for the regulation of the Copermittees' MS4 discharges, but the Water Quality Improvement Plan is a planning document that requires the Copermittees to evaluate and identify all water quality conditions of concern within a Watershed Management Area. The Copermittees then determine what conditions of concern are the priorities that should be addressed by their individual jurisdictional strategies and/or through watershed-wide strategies. The Water Quality Improvement Plan development process provides the Copermittees flexibility in determining how to address priority issues through establishment of goals that directly improve receiving water quality impacted by MS4 discharges, instead of only limiting goals to MS4 discharges. No changes were made to the Tentative Order as a result of this comment.	

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B2-1	PROVISION B.2: Priority Water Quality Conditions	
	COMMENT: <i>Request for revisions to the requirements for identifying priority water quality conditions under Provision B.2.</i> The South Laguna Civic Association provided proposed revisions to the requirements for identifying priority water quality conditions under Provision B.2. The proposed revisions appeared to include mapping of areas, incorporating areas of concern specific to south Orange County, and identifying issues that may be a concern specific to south Orange County.	South Laguna Civic Association
	RESPONSE: The San Diego Water Board reviewed the requested revisions to the requirements for identifying priority water quality conditions under Provision B.2. The San Diego Water Board did not identify any proposed revisions that were appropriate or necessary. The information requested to be included as part of the proposed revisions is information that should be brought to the attention of the south Orange County Copermittees during the development of the Water Quality Improvement Plan. No changes were made to the Tentative Order as a result of this comment.	

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B3c-1 PROVISION B.3.c: Prohibitions and Limitations Compliance Option		
	COMMENT: <i>Support for the inclusion of the receiving water limitations alternative compliance pathway in the Regional MS4 Permit.</i> The Riverside County, Orange County, and San Diego County Copermittees, as well as several individual Copermittees submitted comments that support the inclusion of the receiving water limitations alternative compliance pathway proposed to be incorporated into the Regional MS4 Permit as Provision B.3.c.	Riverside County Copermittees Orange County Copermittees City of Lake Forest City of San Clemente City of San Juan Capistrano City of San Diego City of Santee County of San Diego
	RESPONSE: The San Diego Water Board appreciates the support to include the receiving water limitations alternative compliance pathway into the Regional MS4 Permit.	

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B3c-2	PROVISION B.3.c: Prohibitions and Limitations Compliance Option	
	COMMENT: <i>Requests for revisions to the requirement for developing and incorporating annual milestones into the schedules for the alternative compliance pathway.</i> The Riverside County, Orange County, and San Diego County Copermittees, as well as several individual Copermittees requested revisions to the requirement to develop and incorporate annual milestones into the schedules for the alternative compliance pathway under Provision B.3.c. The Copermittees assert that annual milestones are burdensome, unworkable, and not meaningful. The Copermittees requested that milestones be limited to one or two milestones per permit term.	Riverside County Copermittees Orange County Copermittees City of Lake Forest City of San Clemente City of San Juan Capistrano San Diego County Copermittees City of San Diego City of Santee
	RESPONSE: The San Diego Water Board considered the proposed revisions and rationale provided and determined that revisions to the requirement for developing and incorporating annual milestones are appropriate. However, the San Diego Water Board does not agree that milestones should be limited to just one or two per permit term. The development and incorporation of annual milestones into the alternative compliance pathway is necessary for a Copermittee to be able to demonstrate to the San Diego Water Board and the public that there is a commitment to implementing a credible, rigorous, ambitious, and transparent plan to improve the quality of its MS4 discharges and/or receiving waters within its jurisdiction. The San Diego Water Board agrees, however, that annual milestones may become less meaningful after 5 or 10 years. Therefore, Provision B.3.c.(1)(a)(vii) and footnote 9 have been revised as follows: <u>Provision B.3.c.(1)(a)(vii)</u> For each final numeric goal developed pursuant to Provisions B.3.a and B.3.c.(1)(a)(i)-(v), at least one annual milestones⁹ and the dates for its <u>their</u> achievement must be included within each <u>of the next five (5)</u> Water Quality Improvement Plan Annual Report reporting periods, <u>or until the final numeric goal is achieved.</u> <u>Annual milestones and the dates for their achievement for the 5 Water Quality Improvement Plan Annual Report reporting periods of the next permit term, or until the final numeric goal is achieved, must be provided as part of the Report of Waste Discharge required pursuant to Provision F.5.</u> <u>Footnote 9</u> Annual milestones for each final numeric goal must build upon previous milestones and lead to be clearly <u>and directly linked to, or demonstrate progress is being made toward,</u> the achievement of the final numeric	

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B3c-2 PROVISION B.3.c: Prohibitions and Limitations Compliance Option		
	goal. The annual milestones may consist of water quality improvement strategy implementation phases, interim numeric goals, and other acceptable metrics. <u>The annual milestones may address multiple numeric goals and/or multiple water bodies, as applicable and appropriate.</u>	

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B3c-3	PROVISION B.3.c: Prohibitions and Limitations Compliance Option	
	COMMENT: <i>Requests for revisions to provide additional clarifying language for when a Copermittee is deemed in compliance with receiving water limitations.</i> The Riverside County Copermittees requested revisions to the alternative compliance pathway requirements under Provision B.3.c.(2) and the iterative process requirements under Provision A.4 to clarify when a Copermittee is deemed in compliance with receiving water limitations, especially relative to other Copermittees if updates are needed. The Environmental Groups requested revisions to Provision B.3.c.(2) to strictly require achievement of annual milestones and remove the potential for updates as a clearer way of determining when a Copermittee is no longer deemed in compliance.	Riverside County Copermittees Environmental Groups
	RESPONSE: The San Diego Water Board disagrees that revisions to Provision B.3.c.(2) are necessary to clarify when a Copermittee is deemed in compliance. The requirements under Provision B.3.c.(2) are clear criteria that the San Diego Water Board will use to determine if a Copermittee can be deemed in compliance with Provisions A.1.a, A.1.c, A.1.d, A.2, and A.3.b. The commenters did, however, identify a scenario during the period of time a Copermittee has submitted “acceptable rationale and recommends appropriate modifications” and the San Diego Water Board accepts the rationale and recommended modifications where it may not be clear if a Copermittee is or is not in compliance. The intent was to continue deeming the Copermittee in compliance with Provisions A.1.a, A.1.c, A.1.d, A.2, and A.3.b during this period of time. To clarify this intent, the following has been added to the last paragraph of the discussion of Provision B.3.c on page F-62 in the Fact Sheet: <u>The Copermittee continues to be deemed in compliance with the requirements of Provisions A.1.a, A.1.c, A.1.d, A.2, and A.3.b during the time the San Diego Water Board reviews the rationale and recommended modifications to the interim numeric goals, and/or water quality improvement strategies, and/or schedules. If and when the San Diego Water Board determines that it does not accept the rationale or recommendations, the Copermittee will be notified they are no longer deemed in compliance with Provisions A.1.a, A.1.c, A.1.d, A.2, and A.3.b.</u>	

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B3c-4	PROVISION B.3.c: Prohibitions and Limitations Compliance Option	
	COMMENT: <i>Requests to include compliance with receiving water limitations during the Water Quality Improvement Plan planning and development process.</i> The Riverside County and Orange County Copermittees, several Orange County cities, as well as the County of San Diego requested that the requirements under Provision B.3.c be revised to include compliance with the prohibitions and limitations of Provision A during the development of the Water Quality Improvement Plans. Several of the comments also assert that including compliance during development of the Water Quality Improvement Plan is consistent with State Water Board Order WQ 2015-0075.	Riverside County Copermittees Orange County Copermittees City of Dana Point City of Laguna Beach City of Lake Forest City of San Clemente City of San Juan Capistrano County of San Diego
	RESPONSE: The San Diego Water Board disagrees that it is appropriate to deem a Copermittee in compliance with any of the prohibitions and limitations under Provision A before a Water Quality Improvement Plan has been submitted and accepted by the San Diego Water Board. The San Diego Water Board also disagrees that State Water Board Order WQ 2015-0075 communicates that the State Water Board expects or requires in any way that Regional Water Boards allow for compliance with receiving water limitations during development of watershed management plans. The San Diego Water Board is concerned that allowing for compliance during the development of the Water Quality Improvement Plan would remove the motivation or incentive for Copermittees to develop a credible, rigorous, ambitious, and transparent plan. Before the San Diego Water Board can make a determination that a Copermittee has a credible, rigorous, ambitious, and transparent plan that can demonstrate discharges from a Copermittee's MS4 will not cause or contribute to exceedances of water quality standards in receiving waters, or that receiving waters will be protected from MS4 discharges, the San Diego Water Board must first have an opportunity to review the proposed plan. In response to the assertion that State Water Board Order WQ 2015-0075 encourages or mandates alternative compliance pathways to include compliance during development of the Water Quality Improvement Plan, the commenters failed to provide a clear citation of this direction. There is nothing within the State Water Board Order that explicitly requires the inclusion of an alternative compliance pathway in Phase I MS4 Permit, let alone compliance during development of the plan for alternative compliance. State Water Board Order WQ 2015-0075 only requires the San Diego Water Board to <u>consider</u> inclusion of an alternative compliance pathway, and include findings in the permit if the San Diego Water Board chooses not to include the alternative compliance pathway. In this case, the San Diego Water Board has chosen to incorporate an alternative compliance	

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B3c-4 PROVISION B.3.c: Prohibitions and Limitations Compliance Option
pathway, but without compliance during the development of the Water Quality Improvement Plan. Furthermore, the San Diego Water Board notes that USEPA has provided written comments to the Los Angeles Water Board (click here and here for links to letters), the Santa Ana Water Board (click here for link to letter), and the State Water Board click here for link to letter) that support the San Diego Water Board's approach to alternative compliance with receiving water limitations, specifically supporting the San Diego Water Board's decision not to include compliance during the development period for the Water Quality Improvement Plan. Based on this expressed support from USEPA, and the other reasons cited above, the San Diego Water Board is not allowing for a Copermittee to be deemed in compliance with the prohibitions and limitations under Provision A during the development of the Water Quality Improvement Plans. No changes were made to the Tentative Order as a result of this comment.

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B3c-5	PROVISION B.3.c: Prohibitions and Limitations Compliance Option	
	COMMENT: <i>Request to include receiving water limitations for ASBS under Provision A.2.b as part of alternative compliance pathway.</i> The City of San Diego requested that the alternative compliance pathway be revised to also include compliance with the ASBS receiving water limitations required under Provision A.2.b.	City of San Diego
	RESPONSE: The San Diego Water Board considered the request to include the receiving water limitations for ASBS under Provision A.2.b as part of the alternative compliance pathway under Provision B.3.c and agree it is appropriate. References to “Provisions A.1.a, A.1.c, A.1.d, A.2.a, and A.3.b” under Provision B.3.c have been revised to “Provisions A.1.a, A.1.c, A.1.d, A.2.a, and A.3.b.”	

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B3c-6	PROVISION B.3.c: Prohibitions and Limitations Compliance Option	
	COMMENT: <i>Requests for revisions to alternative compliance pathway numeric goal requirements proposed under Provision B.3.c.(1)(a)(iii).</i> The City of San Diego requested a revision to combine Provisions B.3.c.(1)(a)(iii) and B.3.c.(1)(a)(iv) to reduce confusion regarding whether the categories of numeric goals are mandatory or optional. The County of San Diego requested additional language to be added to Provision B.3.c.(1)(a)(iii) to limit the numeric goals for MS4 discharges only to pollutants or conditions where MS4 discharges are causing or contributing to the impairment.	City of San Diego County of San Diego
	RESPONSE: The San Diego Water Board disagrees that the revisions requested are appropriate or necessary. The City of San Diego's requested revision does not provide more clarity, and actually reduces the available options for numeric goals. Provisions B.3.c.(1)(a)(iii) and B.3.c.(1)(a)(iv) allow a Copermittee to choose interim and final numeric goals applicable to the Copermittee's MS4 outfalls, OR interim and final numeric goals applicable to the receiving waters, OR a combination of both. The City's proposed revisions would only allow a Copermittee to choose interim and final numeric goals applicable to the Copermittee's MS4 outfalls, OR interim and final numeric goals applicable to the receiving waters, but NOT a combination of both. The San Diego Water Board disagrees that the County's proposed revision is necessary because if a Copermittee's MS4 discharges do not contain pollutants that are causing or contributing to an impairment listed on the Clean Water Act Section 303(d) List of Water Quality Impaired Segments, the Copermittee should not have difficulty developing and including final numeric goals that can demonstrate their discharges are not causing or contributing to the impairment. The Copermittee will also have to collect data to demonstrate that the final numeric goals have been achieved and continue to be achieved. The data collected, assessed, and reported will demonstrate that the Copermittee is not causing or contributing to the impairment listed on the Clean Water Action Section 303(d) List. No changes were made to the Tentative Order as a result of this comment.	

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B3c-7	PROVISION B.3.c: Prohibitions and Limitations Compliance Option	
	COMMENT: <i>The alternative compliance pathway would result in safe harbor protection and should be removed from the Regional MS4 Permit.</i> The Environmental Groups assert that providing the alternative compliance pathway provides the Copermittees with safe harbor protection, and requested the alternative compliance pathway be removed from the Regional MS4 Permit.	Environmental Groups
	RESPONSE: The San Diego Water Board does not agree that the alternative compliance pathway provides the Copermittees with safe harbor protection that “simply mimics the failed iterative approach.” Compliance with the alternative compliance pathway means, for compliance determination purposes, that the San Diego Water Board would deem a Copermittee that has fulfilled the requirements of the alternative compliance pathway as in compliance with the receiving water limitations. As long as the Copermittee is in compliance with the requirements under Provision B.3.c, the San Diego Water Board can consider the Copermittee in compliance with the prohibitions and limitations. Complying with the requirements of Provision B.3.c, however, will require a significant commitment, level of effort, and resources from any Copermittee that chooses to implement it. Any Copermittee that can comply with the requirements of Provision B.3.c will also be demonstrating a well defined and transparent commitment to improve water quality. Please also see responses s to comments Gnl-10 and B3c-8. No changes were made to the Tentative Order as a result of this comment.	

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B3c-8	PROVISION B.3.c: Prohibitions and Limitations Compliance Option	
	COMMENT: <i>The alternative compliance pathway is inconsistent with the State Water Board's Order.</i> The Environmental Groups assert that the alternative compliance pathway in the Tentative Order is inconsistent with State Water Board Order WQ 2015-0075. The Environmental Groups assert that the alternative compliance pathway proposed in the Tentative Order is inconsistent because a) it does not contain specific guidance or protocols for a "well defined" and "transparent" analysis, b) it does not require a "finite" period of time to achieve receiving water limitations, and c) it does not include requirements for multi-benefit or storm water resource projects.	Environmental Groups
	RESPONSE: The San Diego Water Board disagrees that the alternative compliance pathway proposed in the Tentative Order is inconsistent with the State Water Board Order. The alternative compliance pathway in the Tentative Order is consistent with the State Water Board Order for the following reasons: a) In response to the assertion that the alternative compliance pathway in the Tentative Order does not include specific guidance or protocols for a "well defined" and "transparent analysis, the approach of the alternative compliance pathway in the Tentative Order is actually more "well defined" and "transparent" than the example provided by the commenter. The commenter provides permit language from the Los Angeles MS4 Permit as an example of specific guidance and protocols for a reasonable assurance analysis. While there is more description as to what components the reasonable assurance analysis must include, fundamentally the analysis is based on a computer model consisting of equations with assumptions which utilize data that are entered into and processed by a computer. Many of the variables in the equations will be based on assumptions, and members of the public may not know or understand how those variables may impact the results. The Los Angeles MS4 Permit does not include provisions that allows for or requires public participation or review of the model, its assumptions, and inputs. In contrast, the alternative compliance pathway in the Tentative Order does require an analysis with "clearly stated assumptions" which must go through a public participation process that allows the public to review and provide comments on the analysis methodology and the assumptions included in the analysis. The main difference in the approaches is that the Copermittee has more flexibility with how to do the analysis, and as long as there is understanding and support from the public and the San Diego Water Board. The Copermittee is not just limited to one or two "acceptable" models, but also is not precluded from the use of those models. The Tentative Order alternative compliance pathway is a truly transparent process for the public and provides for the public to participate in how the analysis is defined. Based on these	

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	considerations, the analysis requirement is “well defined” and “transparent” consistent with the State Water Board Order. b) In response to the assertion that the alternative compliance pathway in the Tentative Order does not require a “finite” period of time to achieve compliance with receiving water limitations, the alternative compliance pathway requires a Copermittee to provide a schedule for when receiving water limitations are expected to be achieved. Any schedule with an expected end date is “finite.” However, “finite” should not mean there is not room for making adjustments to the schedule if conditions warrant it. Absent the alternative compliance pathway, no assessments would necessarily be conducted to determine if or when receiving water limitations have been fully achieved. The San Diego Water Board prefers a permit that will provide support, incentive, and motivation for the Copermittees to achieve compliance with receiving water limitations within a foreseeable future rather than a permit that only has the threat of enforcement in the present and the foreseeable future. However, while the alternative compliance pathway removes the immediate threat of enforcement for violations of receiving water limitations, it also includes additional requirements that can be used to hold the Copermittee more accountable for implementing strategies to achieve compliance with receiving water limitations. In the end, the San Diego Water Board believes that the alternative compliance pathway provides a path to compliance with receiving water limitations that is “finite” compared to the “iterative process” that was previously required, consistent with the State Water Board Order. c) In response to the assertion that the alternative compliance pathway in the Tentative Order does not include requirements for multi-benefit or storm water resource projects, the San Diego Water Board acknowledges there is no text in Provision B.3.c that includes the term “multi-benefit.” However, the Tentative Order does include several provisions that encourage multi-benefit and regional storm water resource projects without using the term “multi-benefit.” The commenter should first review Provisions B.3.b.(1)(b) and B.3.b.(2). While these provisions are not specifically mentioned under Provision B.3.c, they are required to be included in the Water Quality Improvement Plan, which is where the alternative compliance pathway requirements of Provision B.3.c must be included. Provision B.3.b.(1)(b) requires each Copermittee to identify strategies to retrofit areas of existing development and rehabilitate conditions of channels or habitats within its jurisdiction, which are considered multi-benefit strategies. Provision B.3.b.(2) also requires the Copermittees in the Watershed Management Area to identify strategies to retrofit areas of existing development and rehabilitate conditions of	

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	channels or habitats that are regional or multi-jurisdictional. Tied to Provisions B.3.b.(1)(b) and B.3.b.(2) are also the jurisdictional runoff management program (JRMP) requirements under Provisions E.3.c.(3) and E.5.e. Provision E.5.e requires each Copermittee to identify areas of existing development within its jurisdiction for retrofit and rehabilitation projects, and to identify strategies to facilitate implementation of those projects. Provision E.3.c.(3) provides each Copermittee the option to allow development projects to implement candidate projects identified as part of the optional Watershed Management Area Analysis allowed pursuant to Provision B.3.b.(4), also included in the Water Quality Improvement Plan. The candidate projects include several types of multi-benefit and storm water resource type projects, including but not limited to stream or riparian area rehabilitation, retrofitting existing infrastructure to incorporate storm water retention or treatment, regional BMPs, groundwater recharge projects, water supply augmentation, and land purchases to preserve floodplain functions. Therefore, while the alternative compliance pathway requirements under Provision B.3.c do not include the term “multi-benefit” in the text, the Tentative Order includes several provisions that require or encourage the implementation of multi-benefit and storm water resource projects consistent with the State Water Board Order.	

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B3c-9	PROVISION B.3.c: Prohibitions and Limitations Compliance Option	
	COMMENT: <i>The Tentative Order violates anti-backsliding requirements and the rationale provided does not support an anti-backsliding exception.</i> The Environmental Groups assert that the Tentative Order violates the anti-backsliding provisions of the Clean Water Act and its implementing regulations because the San Diego Water Board's findings related to the alternative compliance pathway fail to support the use of anti-backsliding exceptions.	Environmental Groups
	RESPONSE: The San Diego Water Board disagrees that the Tentative Order violates anti-backsliding provisions of the Clean Water Act and the federal regulations. The Clean Water Act generally prohibits the relaxation of effluent limitations in a reissued permit. However, as discussed in the Fact Sheet, it remains unresolved whether anti-backsliding provisions are applicable to the incorporation of an alternative compliance pathway into a regional MS4 permit. (please see page F-32 of the Fact Sheet; <i>please also see</i> State Board Order WQ 2015-0075 at pp 18-21, stating “it is unnecessary, however, to resolve the ultimate applicability of the regulatory anti-backsliding provisions”). Even if the anti-backsliding provisions do apply, the alternative pathway provisions fit squarely within an exception. There are numerous exceptions to the Clean Water Act’s backsliding provisions based on new information. See, e.g., 33 U.S.C. § 1342(o)(2)(B)(i), 40 C.F.R. § 122.44(l)(i)(B)(1). Additionally, Under 40 C.F.R. section 122.44(l), anti-backsliding provision do not apply if the circumstances on which the previous permit was based have materially and substantially changed since the time the previous permit was issued and would constitute cause for permit modification or revocation or reissuance under 40 C.F.R. section 122.62. Section 122.62 in turn states that new information not available at the time the previous permit was issued is cause for modification. 40 C.F.R. § 122.62(a)(2). Furthermore, the San Diego Water Board disagrees with the assertion that the new information from the lessons learned and experiences of the Los Angeles Water Board are somehow “unique” to the Los Angeles Region. To the extent that the permitting history in Los Angeles may be considered “unique” in any way, it is still consistent with the San Diego Water Board’s experience with storm water permitting over the last decade. The transition to a Regional MS4 Permit in the Fifth Term Permit was driven, in part, by a growing recognition that a watershed management approach required regional action. In the Regional MS4 permit, the San Diego Water Board seeks to provide a consistent set of permit requirements for all of the Copermittees and to promote the efficiencies gained from collective action in jurisdictional runoff management.	

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B3c-9	PROVISION B.3.c: Prohibitions and Limitations Compliance Option	
	The San Diego Water Board structured the Regional MS4 Permit to incorporate new information because there has been a statewide paradigm shift with respect to stormwater management. In June 2015, the State Water Board issued a precedential water quality order, Order WQ 2015-0075. This Order directed all of the Regional Water Boards to consider the Los Angeles Water Board's alternative compliance path to receiving water limits in all Phase I MS4 permits going forward (State Water Board Order WQ 2015-0075 at p 51). Moreover, the State Water Board made it clear that all regional water boards had been informed by the lessons learned in Los Angeles, stating "[f]urther, we [the State Water Board] find that all regional water boards are informed by the information gained in the Los Angeles Region, so that any regional water board that adopts an alternative compliance path in a subsequent Phase I permit would not be in violation of anti-backsliding requirements, regardless of the particular storm water permitting history of that region." Id. at p. 22 fn. 74. Thus, while the State Water Board Order relies heavily on the information and evidence related to the Los Angeles County MS4 Permit and its version of an alternative compliance pathway, the information and evidence are also applicable to and are expected to be utilized in the San Diego Region if an alternative compliance pathway is incorporated into the San Diego Regional MS4 Permit. For all of the reasons stated above, the alternative compliance path provisions do not violate federal anti-backsliding provisions. To clarify, however, the discussion on Anti-Backsliding Requirements on page F-32 in the Fact Sheet has been revised as follows: CWA sections 402(o) and 303(d)(4) and federal regulations at 40 CFR 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations or conditions may be relaxed. While this Order allows implementation of an alternative compliance pathway option in Provision B.3.c to constitute compliance with receiving water limitations under certain circumstances, the availability of that alternative and the corresponding availability of additional time to come into compliance with receiving water limitations does not violate the antibacksliding provisions. The receiving water limitations provisions of this Order are imposed under section 402(p)(3)(B) of the Clean Water Act rather than based on best professional judgment, or based on section 301(b)(1)(C) or sections 303(d) or (e), and are accordingly not subject to the anti-backsliding requirements of section 402(o). Although the non-applicability is less clear with respect to the regulatory anti-backsliding provisions in 40 CFR 122.44(l), the regulatory history suggests that USEPA's intent was to establish the anti-backsliding regulations with respect to evolving technology standards for traditional point sources. (See, e.g., 44 Fed.Reg. 32854, 32864 (Jun. 7, 1979)). It	

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is unnecessary, however, to resolve the ultimate applicability of the regulatory anti-backsliding provisions, because the alternative compliance pathway option in Provision B.3.c qualifies for an exception to backsliding as based on new information. The alternative compliance pathway option in Provision B.3.c of this Order was informed by new information available to the Board from experience and knowledge gained through <u>storm water permitting at the Regional Water Boards in the last ten years. There has been a statewide paradigm shift in storm water management. State Water Board Order WQ 2015-0075 directed all of the Regional Water Boards to consider the Los Angeles Water Board's alternative compliance path to receiving water limitations in all Phase I MS4 permits going forward (State Water Board Order WQ 2015-0075 at page 51) It, and the Los Angeles Water Board's process of developing over 30 watershed-based TMDLs and implementing several TMDLs since the adoption of the previous permits. In particular, the Los Angeles Water Board recognized the significance of allowing time to plan, design, fund, operate and maintain watershed-based BMPs necessary to attain water quality improvements and additionally recognized the potential for municipal storm water to benefit water supply. Similarly, the San Diego Water Board's experience developing and implementing the Fourth Term MS4 Permits and TMDLs that apply on a regionwide scale (i.e. TMDLs for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region) has resulted in a similar recognition of the need for a watershed-based approach that allows time to plan, design, fund, operate and maintain BMPs to address impaired waters that have been impacted by MS4 discharges.</u> Thus, even if the receiving water limitations are subject to anti-backsliding requirements, they were revised based on new information that would support an exception to the anti-backsliding provisions. (33 U.S.C. § 1342(o)(2)(B)(i); 40 C.F.R. § 122.44(l)(1); 40 C.F.R. §122.44(l)(2)(i)(B)(1)).

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B3c-10	PROVISION B.3.c: Prohibitions and Limitations Compliance Option	
	COMMENT: <i>The Tentative Order violates anti-degradation requirements and the anti-degradation findings are unsupported by evidence.</i> The Environmental Groups assert that the Tentative Order violates anti-degradation requirements and there is no evidence to support the anti-degradation findings. The Environmental Groups generally assert that anti-degradation findings from State Water Board Order WQ 2015-0075 are not applicable to the Tentative Order and the findings in the Tentative Order are unsupported by evidence.	Environmental Groups
	RESPONSE: Consistent with the direction of the State Water Board Order WQ 2015-0075 adopted in June 2015, the San Diego Water Board considered the inclusion of an alternative compliance pathway into the Regional MS4 Permit. With the inclusion of this new permit component, the federal and state antidegradation policies were considered in light of the evidence in the record and information about the nature of municipal storm water discharges, evolving municipal storm water permits and the State Water Board's precedential order. The Regional MS4 Permit and Fact Sheet were revised to be consistent with all of these considerations. The San Diego Water Board disagrees that the antidegradation findings in the Tentative Order are inadequate and unsupported by evidence in the record. The San Diego Water Board considered relevant information unique to the San Diego Region such as its own storm water permitting history and TMDL adoption and implementation through municipal storm water permits. The San Diego Water Board has adopted seven TMDL Basin Plan amendments that cover at least 30 waterbody-pollutant combinations, similar to the Los Angeles Region. The implementation of these 7 TMDLs through the Regional MS4 Permit is essential for achieving water quality standards in the region. Moreover, the State Water Board's discussion of appropriate antidegradation considerations for the Los Angeles MS4 Permit is equally applicable in the context of the San Diego Water Board's Tentative Order that incorporates an alternative compliance pathway. In its consideration of antidegradation, the State Water Board acknowledges that the Los Angeles MS4 permit "improves on past practices that have been inadequate to protect water quality, and includes a monitoring and assessment program that will identify any changes in water quality. [fn.] In general, under the Los Angeles MS4 Order, we expect to see a trajectory away from any past degradation, even if there may be some continued short-term degradation." (Order WQ 2015-0075, p. 26.) Likewise, the Regional MS4 Permit now requires Copermittees to design watershed based monitoring and assessment programs that promote and track progress towards meeting the relevant water quality objectives. As such, were the State Water Board considering the Tentative Order, it likely would reach the same conclusion about the San Diego Regional MS4 Permit.	

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B3c-10 PROVISION B.3.c: Prohibitions and Limitations Compliance Option
The commenters incorrectly assert that the San Diego Water Board is required, but has failed, to follow procedures and requirements set forth in a USEPA document titled “<i>Interim Economic Guidance for Water Quality Standards Workbook</i>” (March 1995) (Workbook). USEPA’s Workbook provides guidance that states may choose, but are not required, to follow. Although the Workbook does provide some information that states <i>may</i> use to consider whether degradation of high-quality waters is warranted from an economic impacts perspective, the guidance was not crafted to be used in the context of permitting of MS4 discharges. (See USEPA Workbook, cover memo, pp. 1-2 and Workbook, p. 1-1.) Instead, the San Diego Water Board has considered available guidance provided by the State Water Board in the Administrative Procedures Update (APU) 90-004 in conjunction with, among other things, available evidence about the quality of the receiving waters for discharges of storm water in finding that the Tentative Order complies with federal and state anti-degradation policies¹. The antidegradation findings in the Tentative Order, like those adopted in the State Water Board Order for the final Los Angeles MS4 Permit, are supported by substantial evidence in the record for the Regional MS4 Permit. In the stormwater context, a generalized antidegradation analysis is appropriate. As the State Water Board acknowledges, guidance provided in the APU 90-004 “may be construed to exempt [a regional water board] from conducting an extensive pollutant by pollutant analysis for each water body in the region” where, as here, there is insufficient data available to carry out a complete antidegradation analysis for each water body-pollutant combination.” (See Order WQ 2015-0075, p. 25.) The State Water Board notes the APU-90-004 “contemplates the appropriate antidegradation analysis for a discrete discharge or facility. It has limited value when considering anti-degradation in the context of storm water discharges from diffuse sources, conveyed through multiple outfalls, with multiple pollutants impacting multiple water bodies within a municipality, or in this case, a region, especially given that reliable data on the baseline water quality from 1968 is not available.” (Id., p. 27; see also id., p. 27, n. 90 [“We note that USEPA did not conduct a detailed antidegradation analysis in issuing NPDES Permit No. DC00000221 for MS4 discharges to the District of Columbia, presumably for similar reasons. The court in <i>Asociacion de Gente Unida</i> also relied on APU 90-004 in part in rejecting an antidegradation analysis conducted by the Central Valley Regional Water Quality Control Board for discharges of pollutants to groundwater from dairy facilities region-wide, but the court’s objection was to the regional water board’s reliance on an illusory prohibition of discharge to groundwater in finding that no antidegradation analysis

¹ See, e.g., 1996, 1998, 2002, 2006, 2010 Clean Water Action section 303(d) Lists for the San Diego Region, and monitoring reports from the San Diego County, Orange County, and Riverside County Copermittees since the First Term MS4 Permits issued in 1990.

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	was required, not to the sufficiency of any generalized antidegradation analysis the Board might have conducted in lieu of its reliance on the prohibition. (210 Cal.App.4th at pp. 1271-1273.]” Despite the commenters’ assertions, the San Diego Water Board provides a clear statement of the basis for finding that the Tentative Order is consistent with the federal and state antidegradation policies. No revisions to the Tentative Order were made in response to these comments.	

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B5-1	PROVISION B.5: Iterative Approach and Adaptive Management Process	
	COMMENT: <i>Request for clarification of timing and conditions for alternative compliance pathway analysis updates.</i> The San Diego County Copermittees and the County of San Diego requested the addition of a provision under the Iterative Approach and Adaptive Management Process requirements of Provision B.5 to clarify the timing and conditions for when the analysis required for the alternative compliance pathway under Provision B.3.c.(1)(b) has to be updated.	San Diego County Copermittees County of San Diego
	RESPONSE: The San Diego Water Board has considered the requested additional language and determined that adding clarifying language is appropriate. The following text has been added as Provision B.5.d: <u>d. ADAPTATION OF PROHIBITIONS AND LIMITATIONS COMPLIANCE OPTION</u> <u>If a Copermittee has implemented the Prohibitions and Limitations Compliance Option allowed to be included in the Water Quality Improvement Plan pursuant to Provision B.3.c, the Copermittee must re-evaluate and adapt the numeric goals, water quality improvement strategies, schedules, and annual milestones required under Provision B.3.c.(1) when significant new information becomes available, or with the Report of Waste Discharge required pursuant to Provision F.5. Significant changes in the numeric goals, water quality improvement strategies, schedules, or annual milestones requires an update to the analysis required under Provision B.3.c.(2).</u>	

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D4a-1	PROVISION D.4.a: Receiving Waters Assessments	
	COMMENT: <i>Recommended revisions to transitional assessment requirements under Provision D.4.a.(1)(a).</i> The Riverside County Copermittees noted that Provision D.4.a.(1)(a) prescribes that assessments required to be made under Provision D.4.a.(2) must be included in each Copermittees' transitional monitoring and assessment reports; however, Provision D.4.a.(2)(e) requires determination of whether strategies identified in the Copermittees' Water Quality Improvement Plan are progressing towards achieving interim and final numeric goals described in the Water Quality Improvement Plan. The Riverside County Copermittees provided their understanding that transitional monitoring and assessment applies to the time period when the Copermittees' Water Quality Improvement Plan is being developed, and therefore assessments made during this time period cannot provide information on the progress of the Water Quality Improvement Plan. Based on their observations, the Riverside County Copermittees recommended revisions to Provision D.4.a.(1)(a).	Riverside County Copermittees
	RESPONSE: The San Diego Water Board disagrees that the revisions to Provision D.4.a.(1)(a) are necessary. It is true that the transitional monitoring and assessment applies to the time period when the Water Quality Improvement Plan is being developed. The commenters can fulfill the assessment requirement of Provision D.4.a.(2)(e) by either stating that they cannot make a determination until the Water Quality Improvement Plan is accepted and implemented, or assess the strategies that are currently being implemented at the time of the assessment and are expected to be included in the Water Quality Improvement Plan. The San Diego Water Board expects the assessments reported during the transitional period to serve as a baseline for improvements in water quality as the Water Quality Improvement Plans are implemented over time. No changes were made to the Tentative Order as a result of this comment.	

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E2-1	PROVISION E.2: Illicit Discharge Detection and Elimination	
	COMMENT: <i>Requests for revisions to clarify implementation of the illicit discharge and detection program under Provision E.2 is compliance with the requirement to effectively prohibit non-storm water discharges to the MS4.</i> The Orange County Copermittees, as well as the Cities of Dana Point and Laguna Beach, requested revisions to Provision E.2 to explicitly state that implementation of the illicit discharge detection and elimination requirements under Provision E.2 constitutes compliance with effective prohibition of non-storm water discharges to the MS4 required under Provision A.1.b.	Orange County Copermittees City of Dana Point City of Laguna Beach
	RESPONSE: The San Diego Water disagrees that revisions to Provision E.2 are necessary. Provision A.1.b explicitly states that Copermittees are required to effectively prohibit non-storm water discharges to the MS4 “through the implementation of Provision E.2.” The Copermittees are already expected to demonstrate compliance with Provision A.1.b through the implementation of Provision E.2. If a Copermittee has not adequately implemented Provision E.2, then the Copermittee is not only, not in compliance with the requirements of Provision E.2, but by default will also not be in compliance with Provision A.1.b. The San Diego Water Board, however, recognizes that additional clarification may be helpful in understanding that implementing the requirements of Provision E.2 is how the San Diego Water Board will assess a Copermittee’s compliance with the requirement to effectively prohibit non-storm water discharges to the MS4 under Provision A.1.b. Therefore, the San Diego Water Board has revised the opening paragraph of the discussion for Provision E.2 in the Fact Sheet (page F-81) to the following: Provision E.2.(Illicit Discharge Detection and Elimination) requires each Copermittee to implement an illicit discharge detection and elimination program to effectively prohibit non-storm water discharges to the MS4 by actively detecting and eliminating illicit discharges and disposal into its MS4. <u>If the San Diego Water Board finds that a Copermittee is fully implementing the requirements of Provision E.2, then the Copermittee is deemed in compliance with the effective prohibition of non-storm water discharges to the MS4 required under Provision A.1.b.</u>	

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E2-2	PROVISION E.2: Illicit Discharge Detection and Elimination	
	COMMENT: <i>Request for clarification of discharges of potable water sources under Provision E.2.a.(3)(f).</i> The Cities of Dana Point and Laguna Beach requested a clarification of the definition of “discharges from potable water sources” under Provision E.2.a.(3)(f). It is not clear to the Cities whether “potable discharges” are intended to include runoff derived from turf or ornamental plant irrigation.	City of Dana Point City of Laguna Beach
	RESPONSE: Discharges from potable water sources are sources of water that have been treated to drinking water standards and discharged to the MS4. Discharges of potable water that are applied to turf or ornamental plant irrigation before running off to the MS4 are not qualified as discharges of potable water under Provision E.2.a.(3)(f).	

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E3b1-1 PROVISION E.3.b.(1): Definition of Priority Development Project		
	<u>COMMENT:</u> <i>Request for revisions to the definition of Priority Development Projects under Provision E.3.b.(1).</i> The City of San Diego requested revisions to combine Provisions E.3.b.(1)(c) and E.3.b.(1)(e) under the provisions defining Priority Development Projects.	City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board disagrees that combining sub-sections (c) and (e) of Provision E.3.b.(1) is appropriate. Sub-section (c) has a minimum square footage trigger for both new development projects and redevelopment projects. In contrast, subsection (e) has a minimum square footage trigger for redevelopment projects only; new development projects consisting of automotive repair shops and retail gasoline outlets are considered Priority Development Projects regardless of size.	

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E3b3-1 PROVISION E.3.b.(3): Priority Development Project Exemptions		
	<u>COMMENT:</u> <i>Request for Priority Development Project exemption for “self-remediating” projects.</i> The Orange County Copermittees requested that the list of Priority Development Project Exemptions under Provision E.3.b.(3) be revised to include projects that are effectively self-remediating (i.e. all rainfall is retained) including, but not limited to, reservoirs and swimming pools.	Orange County Copermittees
	<u>RESPONSE:</u> The San Diego Water Board disagrees that the requested change is necessary. If all rainfall is retained on a project, then the project has met the design standard, and an exemption is not needed. No changes were made to the Tentative Order as a result of this comment.	

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E3c1-1	PROVISION E.3.c.(1): Storm Water Pollutant Control BMP Requirements	
	COMMENT: <i>Request for revisions to clarify the biofiltration storm water pollutant control BMP performance criteria.</i> The County of San Diego requested a revision to Provision E.3.c.(1)(a)(i)[b] to clarify the intent and applicability of the biofiltration BMP design criteria.	County of San Diego
	RESPONSE: The San Diego Water Board disagrees that the proposed change is necessary. The wording describing the design requirements adequately describe the intent and applicability of the biofiltration BMP design criteria. Any proposed change incorporated during the adoption proceedings of the Tentative Order could be interpreted as a change in the requirement, when in fact there is no change. No changes were made to the Tentative Order as a result of this comment.	

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E3c1-2	PROVISION E.3.c.(1): Storm Water Pollutant Control BMP Requirements	
	COMMENT: <i>The San Diego Water Board is requiring increasingly stringent on-site storm water retention without evidence that the 2010 Southwest Riverside MS4 Permit requirements are not working.</i> CICWQ asserts that the Tentative Order has more stringent on-site storm water retention requirements than the 2010 Southwest Riverside County MS4 Permit (Order No. R9-2010-0016) requirements without any evidence that the requirements of Order No. R9-2010-0016 are not working to protect water quality and maintain beneficial uses.	Construction Industry Coalition on Water Quality (CICWQ)
	RESPONSE: The San Diego Water Board disagrees with the assertion that the Tentative Order has more stringent on-site storm water retention requirements over and above the requirements of Order No. R9-2010-0016. The purpose of the on-site retention requirement in both the Tentative Order and Order No. R9-2010-0016 is to retain on-site 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. R9-2010-0016, 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 maximum extent practicable (MEP) standard recognized by the San Diego Water Board and is consistent with the Fourth Term MS4 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 Nos. R4-2010-0108 and R4-2012-0175 (Ventura County and Los Angeles County MS4 Permits, respectively). Additionally, the storm water pollutant control and hydromodification management BMP requirements in the Tentative Order are more flexible than in Order No. R9-2010-0016 by providing an optional Alternative Compliance Program under Provision E.3.c.(3) of the Regional MS4 Permit. The Alternative Compliance Program, if developed by a Copermittee, would allow Priority Development Projects to fully comply with storm water pollutant control and hydromodification management BMP requirements either on-site, offsite, or a combination of both, if doing so would provide greater water quality benefit to the watershed.	

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E3c2-1	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements	
	COMMENT: Request for revisions to requirements to manage critical coarse sediment yield areas. CICWQ asserts that the Tentative Order requirements for Priority Development Projects to “avoid critical sediment yield areas” are unnecessarily restrictive. The County of San Diego requested that the requirement to manage critical coarse sediment yield areas be moved from the hydromodification management BMP performance standard requirements under Provision E.3.c.(2)(b) to Provision E.3.d as part of the BMP Design Manual update to be addressed regionally.	County of San Diego Construction Industry Coalition on Water Quality (CICWQ)
	RESPONSE: The San Diego Water Board disagrees that the requirements to avoid critical sediment yield areas are unnecessarily restrictive or that they should be moved from under Provision E.3.c.(2)(b) to Provision E.3.d. 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 (<i>Assessing the Health of Southern California Streams, Stormwater Monitoring Coalition</i>, 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. <i>Storm Water Strategies for Arid and Semi-Arid Watersheds</i>, (Article 66). The Practice of Watershed Protection). Such changes in runoff have significant impacts on channel morphology, and given the current state of science the San Diego Water Board has included these requirements to reduce these potential impacts to receiving waters that may be caused by development projects. Placement of impervious surfaces as a result of urbanization is largely responsible for erosional impacts to 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	

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E3c2-1 PROVISION E.3.c.(2): Hydromodification Management BMP Requirements
Copermittees, or implement measures to allow coarse sediment to be discharged to receiving waters, such that there is no net impact to the receiving water. Such measures are designed to protect receiving waters and avoid impacts experienced as a result of past land development practices. The San Diego Water Board recognizes that implementation of new requirements is challenging, and is supportive of the Copermittees' efforts to develop guidance for land developers in meeting this requirement. Until this guidance is widely available, Copermittees and land developers should recognize that strict avoidance of critical sediment yield areas is not mandated and that compliance may be achieved by other methods, provided that the stream experiences "no net impact." No changes were made to the Tentative Order as a result of this comment.

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E3c2-2	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements	
	COMMENT: <i>Request for interim timeframe exemptions for hydromodification management BMP requirements to be granted outright without any additional study or consideration.</i> CICWQ asserts that the Tentative Order is eliminating exemptions for hydromodification control, even when stormwater runoff is conveyed in the MS4 system to significantly hardened or engineered channels. CICWQ requested that the San Diego Water Board revise the Tentative Order to make the interim timeframe exemptions under Provision E.3.c.(2)(e) part of the exemptions under Provision E.3.c.(2)(d) without any additional study or consideration.	Construction Industry Coalition on Water Quality (CICWQ)
	RESPONSE: The San Diego Water Board disagrees that the interim timeframe exemptions for hydromodification management BMP requirements should be granted outright without any additional study or consideration. The commenter correctly deduced 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. 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 on-site 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 can become accepted as applicable for a Watershed Management Area. The Tentative Order allows for the Copermittees to recommend 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 of existing development in the watershed suitable for 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	

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E3c2-2 PROVISION E.3.c.(2): Hydromodification Management BMP Requirements		
	timeframe 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. No changes were made to the Tentative Order as a result of this comment.	

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E3c2-3	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements	
	COMMENT: <u>The requirement in the Regional MS4 Permit for Priority Development Projects to avoid coarse sediment yield areas results in a potential "taking" of private property.</u> Safari Highlands Ranch asserts that the requirement under Provision E.3.c.(2)(b) of the Regional MS4 Permit for Priority Development Projects to avoid critical coarse sediment yield areas known to the Copermittees or identified by the optional Watershed Management Area Analysis will result in a "taking" of the total land value of private property that is located in areas identified as critical coarse sediment yield areas.	Safari Highlands Ranch
	RESPONSE: <u>The San Diego Water Board disagrees with the assertion that the requirements under Provision E.3.c.(2)(b) results in a "taking" of private property if the development project is located in area identified by the Copermittees as a critical coarse sediment area.</u> <u>Provision E.3.c.(2)(b) does not require the Copermittees to prohibit a development project from going forward if it cannot avoid critical coarse sediment yield areas. Provision E.2.c.(2)(b) states that Priority Development Projects are required to avoid critical sediment yield areas OR implement measures that allow critical coarse sediment to be discharged to receiving water, such that there is no net impact to the receiving waters.</u> <u>Provision E.3.c.(2)(b) provides the Copermittees the ability to allow Priority Development Projects to implement measures other than avoiding coarse sediment yield areas to achieve no net impact to the receiving waters. The Copermittees allows this is through the requirements in their BMP Design Manuals. The San Diego Water Board has reviewed the San Diego County Copermittees' Final Model BMP Design Manual (click here for link), dated June 2015, and found that it allows for a development project proponent to "propose project-specific onsite measures to ensure that critical coarse sediment can be discharged to receiving waters, such that there is no net impact to the receiving water" (see section 6.2.4.2 of Model BMP Design Manual). The Final Model BMP Design Manual does not require avoidance of critical coarse sediment areas as the only option for Priority Development Projects and is in compliance with Provision E.3.c.(2)(b) of the Regional MS4 Permit.</u> <u>Please also see response to comment E3c2-1.</u> <u>No changes were made to the Tentative Order as a result of this comment.</u>	

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E3d-1	PROVISION E.3.d: BMP Design Manual Update	
	COMMENT: <i>Request for additional time for San Diego County Copermittees to update and implement their BMP Design Manuals.</i> The San Diego County Copermittees and the County of San Diego requested revisions to Provision E.3.d which would grant Copermittees up to 180 days to incorporate corrections to the definition of Priority Development Projects under Provision E.3.b.(1) and begin implementing their BMP Design Manuals.	San Diego County Copermittees County of San Diego
	RESPONSE: The San Diego Water Board disagrees that more time is needed to update and implement the BMP Design Manuals. In a letter dated May 29, 2015, the San Diego Water Board forewarned the San Diego County Copermittees that changes to the Priority Development Project categories were necessary in order to clearly reflect the intended definitions. At that time, the San Diego Water Board provided the language that is now proposed in the Tentative Order. The Copermittees have had ample opportunity to initiate and complete their local adoption processes in order to meet the BMP Design Manual implementation date. For this reason, more time is not necessary and a delay in BMP Design Manual implementation is not warranted. However, the San Diego Water Board will use Provision F.2.b.(4) to grant the Copermittees an extra 90 days beyond the original BMP Design Manual implementation date of December 24, 2015 to complete the update and begin implementation of the BMP Design Manual. Please also see response to comment F2b-1.	

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E3d-2	PROVISION E.3.d: BMP Design Manual Update	
	COMMENT: <i>Request for revisions to clarify the effective date of the BMP Design Manual is the same as the implementation date.</i> The San Diego County Copermittees, the City of San Diego, and the County of San Diego requested revisions to Provision E.3.d to include language that clarifies the effective date of the BMP Design Manual is the same as when the BMP Design Manual begins implementation.	San Diego County Copermittees City of San Diego County of San Diego
	RESPONSE: The San Diego Water Board agrees that the proposed modification would clarify the San Diego Water Board's intention. Provision E.3.d has been modified as follows: a. Each Copermittee must update its BMP Design Manual pursuant to Provision F.2.b. Until the Copermittee has updated its BMP Design Manual pursuant to Provision F.2.b.(1), the Copermittee must continue implementing its current BMP Design Manual. The Copermittee must implement the updated BMP Design Manual within 180 days following completion of the update pursuant to Provision F.2.b.(1), unless directed otherwise by the San Diego Water Board Executive Officer. <u>The date the BMP Design Manual is implemented is the "effective date" of the BMP Design Manual.</u>	

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E3e1-1	PROVISION E.3.e.(1): Structural BMP Approval and Verification Process	
	COMMENT: <i>Requests for revisions to the proposed language to define projects with prior lawful approval under Provision E.3.e.(1)(a).</i> The City of San Diego requested a revision to the proposed language to define projects with prior lawful approval to also include projects that have received development approvals. San Diego Coastkeeper and Coastal Environmental Rights Foundation requested revisions that would allow a Priority Development Project to proceed under previous land development requirements only if the Copermittee demonstrates that, among other required conditions, construction activities on the Priority Development Project commenced prior to the effective date of the new BMP Design Manual and that all approvals and permits necessary to complete the implementation of the initially approved design also be obtained prior to the effective date of the new BMP Design Manual.	City of San Diego San Diego Coastkeeper and Coastal Environmental Rights Foundation
	RESPONSE: The San Diego Water Board disagrees that any changes are needed to the proposed language in Provision E.3.e.(1)(a). Specifically, reliance on issuance of a development approval alone is not consistent with the San Diego Water Board's goal of requiring most new Priority Development Projects to be subject to the requirements in the new BMP Design Manual unless limited conditions are met. Nor is it consistent with the <i>Avco</i> line of cases, which requires commencement of construction and substantial reliance on the permit as the determining factors for grandfathering projects under previous development requirements. Reliance on issuance of a development approval alone may also result in many fewer Priority Development Projects implementing projects based on the new BMP Design Manual required in Order No. R9-2013-0001 as amended. With regard to the Environmental Groups' comment, the San Diego Water Board believes it is appropriate for the Copermittees to have the ability to allow a Priority Development Project meeting all other required conditions in Provision E.3.e.(1)(a) to proceed under previous land use development requirements if the Copermittee demonstrates that construction activities have commenced before, or within 180 days after, the effective date of the new BMP Design Manual. The Board believes it is appropriate to include a grace period of 180 days after the effective date of the BMP Design Manual in order to provide certainty of requirements for projects in process, and allow for scheduling of construction activities under optimal conditions, such as outside of nesting season, or during the dry season, when impacts from storm water runoff are minimized. And, as long as development projects complete construction of all phases in substantial conformity with the approved design, which includes storm water pollutant control and hydromodification management BMPs approved by the	

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E3e1-1 PROVISION E.3.e.(1): Structural BMP Approval and Verification Process
municipality, it is appropriate that prior lawful approval (the ability to proceed with development in accordance with the previous land use development requirements) remain valid during issuance of subsequent permits that may be necessary to complete the project within 5 years after the effective date of the new BMP Design Manual. Five years is an appropriate and reasonable period of time for those projects meeting all other conditions to be completed. No changes were made to the Tentative Order as a result of these comments.

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E4-1	PROVISION E.4: Construction Management	
	<u>COMMENT:</u> <i>Request for revisions to construction management program inventory and tracking requirements.</i> The City of San Diego requested that Provisions E.4.b and E.4.d.(3) be combined because both sections contain information that needs to be collected, inventoried, and tracked.	City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board considered the requested revision and determined that it was not necessary. The Copermittees can implement an inventory and tracking system that may be utilized to manage the data that are collected and needed to fulfill the requirements of both Provision E.4.b and E.4.d.(3). No changes were made to the Tentative Order as a result of this comment.	

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E5c-1	PROVISION E.5.c: Existing Development Inspections	
	COMMENT: <i>Request to include an optional third-party certification program into the existing development inspection provisions.</i> Section F.3.b.(4)(c) of Order No. R9-2010-0016 allowed the Riverside County Copermittees the option to propose a third-party certification program for commercial and industrial inspection programs, subject to San Diego Water Board Executive Officer acceptance. The Riverside County Copermittees noted that a similar provision does not exist in the Tentative Order, and requested inclusion of this option in the Regional MS4 Permit.	Riverside County Copermittees
	RESPONSE: At this time the San Diego Water Board does not support the inclusion of a third-party certification program as part of the existing development inspection provisions. The San Diego Water Board has conducted audits of several Copermittees' existing development and post construction BMP inspection programs in the San Diego Region that utilize self certifications or third-party certifications to verify the proper operation and maintenance of post construction BMPs. These audits have found such programs have not adequately confirmed that BMPs are being properly operated and maintained so they are effective at removing pollutants in storm water discharges from commercial and industrial sites to the MEP. However, the Regional MS4 Permit provides the Copermittees significant flexibility in the implementation of their existing development inspection programs, and does not preclude the use of third-party certification programs during years where inspections are not necessarily required. If the Copermittees can develop a third-party certification program that can demonstrate such a program can be implemented in a way that will ensure BMPs are being properly operated and maintained so they are effective at removing pollutants in storm water discharges from commercial and industrial sites to the MEP, the San Diego Water Board may reconsider including such an option into the Regional MS4 Permit during the renewal process anticipated to begin in early 2018. No changes were made to the Tentative Order as a result of this comment.	

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F2b-1	PROVISION F.2.b: BMP Design Manual Updates	
	COMMENT: <i>Request for revisions to clarify the effective date of the BMP Design Manual.</i> The San Diego County Copermittees, the City of San Diego, and the County of San Diego requested revisions to Provision F.2.b.(4) to include language that clarifies the effective date of the BMP Design Manual if an update to the BMP Design Manual is required.	San Diego County Copermittees City of San Diego County of San Diego
	RESPONSE: The San Diego Water Board agrees that the proposed modification to the text in Provision F.2.b.(4) would clarify that the BMP Design Manual effective date is no later than 90 days after the San Diego Water Board adopts amendments to Provisions E.3.a-d. Provision F.2.b.(4) will be modified as follows: (4) If the San Diego Water Board amends Provisions E.3.a-d during the permit term but after the Copermittee has completed the update pursuant to Provision F.2.b.(1), the Copermittee must revise its BMP Design Manual to incorporate the amended Provision E.3.a-d requirements as soon as possible but not later than 90 days after the date the San Diego Water Board adopts the amendments to Provisions E.3.a-d, unless otherwise directed by the San Diego Water Board Executive Officer. <u>Under these circumstances, the effective date of the BMP Design Manual is not later than 90 days after the date the San Diego Water Board adopts the amendments to Provisions E.3.a-d, unless otherwise directed by the San Diego Water Board Executive Officer.</u>	

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AttC-1	ATTACHMENT C: Acronyms, Abbreviations, and Definitions	
	COMMENT: <i>Request for revisions to definition of Construction Activities.</i> The City of Escondido requested revisions to the definition of Construction Activities in Attachment C to the Regional MS4 Permit. The commenter requested the removal of the term “phase” from the definition because the term introduces artificial phases during a construction project that cannot be readily tracked.	City of Escondido
	RESPONSE: The San Diego Water Board agrees that the revisions are appropriate. The definition of Construction Activities in Attachment C has been revised as follows: Construction Activities – Actions implemented during construction of development or redevelopment projects during the Preliminary <u>Tasks</u> Phase (including rough grading and/or disking, clearing and grubbing operations, or any soil disturbance prior to mass grading), Grading or Land Development Phase (including topography and slope reconfiguration, alluvium removals, canyon cleanouts, rock undercuts, keyway excavations, land form grading, and stockpiling of select material for capping operations), Streets and Utility <u>Installation</u> Phase (including excavation and street paving, lot grading, curbs, gutters and sidewalks, public utilities, public water facilities including fire hydrants, public sanitary sewer systems, storm sewer systems and/or other drainage improvements), or Vertical Construction Phase (including the build out of structures from foundations to roofing, including rough landscaping).	

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AttC-2	ATTACHMENT C: Acronyms, Abbreviations, and Definitions	
	COMMENT: <i>Request for revisions to definition of Redevelopment.</i> The City of San Diego requested revisions to the definition of Redevelopment in Attachment C to the Regional MS4 Permit to improve the clarity of the definition.	City of San Diego
	RESPONSE: The San Diego Water Board agrees that revisions would provide additional clarity in the definition of Redevelopment. The definition of Redevelopment in Attachment C has been revised as follows: Redevelopment – The creation and/or replacement of impervious surface on an already developed site. Examples include the expansion of a building footprint, road widening, the addition to or replacement of a structure, and creation or addition of impervious surfaces. Replacement of impervious surfaces includes any activity that is not part of a routine maintenance activity where impervious material(s) are removed, exposing underlying soil during construction. Redevelopment does not include <u>routine maintenance activities, such as</u> trenching and resurfacing associated with utility work; <u>pavement grinding</u>; resurfacing existing roadways; new sidewalks construction, pedestrian ramps, or bike lanes on existing roads; and routine replacement of damaged pavement, such as pothole repair.	

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AttE-1 ATTACHMENT E: Specific Provisions for Total Maximum Daily Loads		
	COMMENT: <i>Request for revisions to TMDL requirements in Attachment E to the Regional MS4 Permit to allow independent jurisdictional compliance with TMDLs.</i> The City of San Diego requested revisions to the TMDL requirements in Attachment E to the Regional MS4 Permit that would allow independent jurisdictional compliance instead of requiring all the Copermittees named as responsible to comply with the TMDL requirements.	City of San Diego
	RESPONSE: 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 determination pathways available to each Copermittee to achieve compliance. The final compliance determination pathways are presented in Attachment E Specific (TMDL) Provisions 1.b.(3), 2.b.(3), 3.b.(3), 4.b.(3), 5.b.(3), 6.b.(3), and 7.b.(3). There are several compliance determination pathways that allow a Copermittee to demonstrate independent jurisdictional compliance with water quality based effluent limitations (WQBELs). No changes were made to the Tentative Order as a result of this comment.	

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AttE6-1 ATTACHMENT E.6: Beaches and Creeks Bacteria TMDLs		
	COMMENT: <i>Requests for revisions to clarify that water bodies de-listed from the 303(d) List are not subject to the Beaches and Creeks TMDL requirements.</i> The Orange County Copermittees requested revisions to the Beaches and Creeks Bacteria TMDLs requirements in Attachment E to state that specific water bodies or beach segments included in Table 6.0 that have been delisted from the 2008 Clean Water Act Section 303(d) List of Water Quality Impaired Segments are not subject to any further action as long as monitoring data continues to support compliance with water quality standards.	Orange County Copermittees
	RESPONSE: The San Diego Water Board disagrees that any revisions are necessary or appropriate. The Orange County Copermittees correctly state that the water bodies listed in Table 6.0 must be in compliance with the final TMDL compliance requirements (and WQBELs). If a water body or beach segment has been de-listed, then the MS4 discharge WQBELs and/or receiving water WQBELs should already be achieved, but the BMP WQBELs and the monitoring and assessment requirements are still required to be implemented to maintain the achievement of the MS4 discharge WQBELs and/or receiving water WQBELs in the de-listed water body or beach segment. No changes were made to the Tentative Order as a result of this comment.	

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AttE6-2	ATTACHMENT E.6: Beaches and Creeks Bacteria TMDLs	
	COMMENT: <i>Request for revisions to compliance dates for the Beaches and Creeks Bacteria TMDLs.</i> The San Diego County Copermittees, the City of San Diego, and the County of San Diego requested that the compliance dates proposed to be added to Tables 6.1 and 6.4 be removed. The commenters assert that the compliance dates proposed to be added are inconsistent with the requirements of the Beaches and Creeks Bacteria TMDLs. The commenters also assert that the Beaches and Creeks Bacteria TMDLs do not require the development of a Bacteria Load Reduction Plan (BLRP) or Comprehensive Load Reduction Plan (CLRP) for segments of beaches or creeks de-listed from the Clean Water Act Section 303(d) List of Water Quality Limited Segments.	San Diego County Copermittees City of San Diego County of San Diego
	RESPONSE: The San Diego Water Board disagrees that the addition of the compliance dates is inconsistent with the Beaches and Creeks Bacteria TMDLs requirements. The San Diego Water Board also disagrees that segments of beaches or creeks de-listed from the Clean Water Act Section 303(d) List of Water Quality Limited Segments are not required to develop a BLRP or CLRP. The compliance date for the Beaches and Creeks Bacteria TMDLs is specified on page 7-107 of the Basin Plan as follows: <i>“Full implementation of the TMDLs for indicator bacteria shall be completed as soon as possible, but no later than 10 years from the effective date for both the dry weather and wet weather TMDLs, unless an alternative compliance schedule is approved as part of a Comprehensive Load Reduction Plan, as described in the following section. The effective date of these TMDLs is April 4, 2011.</i> <i>The San Diego Water Board will require the Phase I MS4s to submit Bacteria Load Reduction Plan (BLRPs) outlining the proposed BMP program that will be capable of achieving the necessary load reduction required to attain the bacteria TMDLs in the receiving water, acceptable to the Regional Board within 18 months after the effective date of these TMDLs....”</i> Tables 7-53 and 7-54 on page 7-108 in Chapter 7 of the Basin Plan present the compliance schedules that apply if the Copermittees develop a BLRP. Page 7-109 of the Basin Plan describes the potential for the Copermittees to develop CLRPs. If the Copermittees choose to develop a CLRP, the compliance date and schedule for the Beaches and Creeks Bacteria TMDLs is specified on page 7-109 of the Basin Plan in Table 7-55 and as follows:	

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“....the dischargers may develop and submit a CLRP for all constituents of concern in lieu of the BLRP, and to propose an appropriately tailored alternative compliance schedule. Proposed alternative compliance schedules tailored under this provision may not extend beyond 10 years for the dry weather bacteria TMDLs and 20 years for the wet weather bacteria TMDLs from the effective date”

Tables 6.1 and 6.4 were revised in the Tentative Order to be consistent with the compliance schedules of Tables 7-53, 7-54, and 7-55 of the Beaches and Creeks Bacteria TMDLs in the Basin Plan. Therefore, the addition of the compliance dates proposed to be added to Tables 6.1 and 6.4 are consistent with the requirements of the Beaches and Creeks Bacteria TMDLs.

As for the assertion that the Beaches and Creeks Bacteria TMDLs do not require BLRPs or CLRPs for segments of beaches or creeks de-listed from the Clean Water Act Section 303(d) List of Water Quality Limited Segments, the commenters appear to be citing text from the TMDL Compliance Schedule section instead of the TMDL Implementation Plan section of the Beaches and Creeks Bacteria TMDLs. It is true that on page 7-107 of the Basin Plan, includes a statement that:

“For watersheds in Table 7-52 where there are no longer any impairments listed on the 2008 303(d) List, the Phase I MS4s and Caltrans are not required to submit a BLRP or CLRP within 18 months of the effective date of the TMDLs.”

However, this statement is under the TMDL Compliance Schedule requirements and was only included to indicate that the San Diego Water Board would not require a BLRP or CLRP to be submitted within 18 months of the effective date. It was not intended to mean that a BLRP or CLRP would never be required. If the commenters look under the TMDL Implementation Plan requirements for Phase I MS4s, which begins on page 7-85 of the Basin Plan, there is no statement that a BLRP or CLRP will not be required for “watersheds ... where there are no longer any impairments listed on the 2008 303(d) List.” The TMDL Implementation Plan for Phase I MS4 does, however, state the following on page 7-86 of the Basin Plan:

“The WQBELs will likely consist of receiving water limitations (based on the numeric targets) and require the implementation of a BMP program to achieve the TMDLs in receiving waters. The Phase I MS4s will be required to submit Bacteria Load Reduction Plans (BLRPs) or Comprehensive Load Reduction Plans (CLRPs) outlining a proposed BMP program capable of achieving the necessary load reductions required to attain the TMDLs in receiving waters, acceptable to the San Diego Water, within 18 months after the effective date of these TMDLs. The San Diego Water Board will require the BLRPs or CLRPs to be developed on a watershed or region wide scale. The BLRPs or CLRPs should be developed and

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incorporated as part of the Watershed Runoff Management Programs required under the Phase I MS4 NPDES requirements....”

The TMDL Implementation Plan requirements clearly state the BLRPs or CLRPs are required and do not have any exceptions. The TMDL Compliance Schedule requirements do allow an exception from submitting a BLRP or CLRP within 18 months of the effective date, but do not state that a BLRP or CLRP will never be required. Specific Provision 6.b.(2)(c)(i) is consistent with the TMDL Implementation Plan requirements in the Basin Plan by requiring a CLRP to be on a watershed scale and incorporated into the Water Quality Improvement Plans (i.e. Watershed Runoff Management Program), which includes a BMP implementation program capable of achieving the necessary load reductions required to attain the TMDLs in receiving waters for all the applicable Watershed Management Areas in Table 6.0. Table 6.0 lists all the beaches and areas included in the Beaches and Creeks Bacteria TMDLs from the Basin Plan. Please also see the response to comment AttE6-1.

However, the San Diego Water Board recognizes that Specific Provision 6.b.(2)(c)(i) only allows for the Copermittees to incorporate CLRPs into the Water Quality Improvement Plans. Therefore, to be consistent with the Beaches and Creeks Bacteria TMDLs, which allows for BLRPs to be developed and submitted, Specific Provision 6.b.(2)(c)(i) has been revised as follows:

- (i) The Water Quality Improvement Plans for the applicable Watershed Management Areas in Table 6.0 must incorporate the Bacteria Load Reduction Plans (BLRPs) or Comprehensive Load Reduction Plans (CLRPs) required to be developed pursuant to Resolution No. R9-2010-0001.

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AttE6-3	ATTACHMENT E.6: Beaches and Creeks Bacteria TMDLs	
	COMMENT: <i>Request for revisions to clarify that compliance with receiving water limitations in the Beaches and Creek Bacteria TMDLs will be assessed at the compliance points identified in the TMDL Monitoring Plan.</i> The County of San Diego requested revisions to the Beaches and Creeks Bacteria TMDLs requirements to specify that compliance with receiving water limitations can be determined at the compliance points identified in the TMDL Monitoring Plans that are included in the Water Quality Improvement Plans.	County of San Diego
	RESPONSE: The San Diego Water Board disagrees that the revision is necessary. The Beaches and Creeks Bacteria TMDLs interim and final compliance determination requirements includes a pathway that allows the Copermittees to demonstrate that there are no exceedances of the final (or interim) receiving water limitations in the receiving water “<i>at, or downstream of the Responsible Copermittee’s MS4 outfalls.</i>” The Specific Monitoring and Assessment Requirements of the Beaches and Creeks Bacteria TMDLs specifies the locations where monitoring is required to determine compliance. For beaches, the required monitoring locations are “<i>at, or downstream of the Responsible Copermittee’s MS4 outfalls.</i>” For creeks, the monitoring locations are required to be at or near the mouth and one or more locations upstream of the mouth, both of which should be “<i>at, or downstream of the Responsible Copermittee’s MS4 outfalls.</i>” If the receiving waters are not exceeding the final (or interim) receiving water limitations expressed as exceedance frequencies at the required receiving water monitoring locations, then the Copermittees have demonstrated compliance with the receiving water WQBELs “<i>at, or downstream of the Responsible Copermittee’s MS4 outfalls.</i>” If, however, there are exceedances at a receiving water monitoring location, then the upstream Copermittees will need to demonstrate compliance with another compliance determination pathway. No changes were made to the Tentative Order as a result of this comment.	

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AttE7-1 ATTACHMENT E.7: Los Penasquitos Lagoon Sediment TMDL		
	COMMENT: Request for revisions to incorporate a land use-based compliance pathway into the Los Penasquitos Lagoon Sediment TMDL. The County of San Diego requested revisions to the Total Maximum Daily Load for Sediment in Los Penasquitos Lagoon (Los Penasquitos Sediment TMDL) in Attachment E to incorporate a land use-based compliance pathway.	County of San Diego
	RESPONSE: The San Diego Water Board disagrees that changes are needed to accommodate a land use-based compliance pathway for the Los Penasquitos Lagoon Sediment TMDL. The commenter states that if the land use has not changed significantly from the 1970s baseline, the timeframe at which water quality standards in the lagoon were met, then the sediment loads from the Copermittee's MS4s are expected to be approximately the same as the baseline levels and within the amount allowed in the wasteload allocation. The San Diego Water Board agrees that under this scenario in which land use has not changed significantly, the sediment levels would be approximately the same as baseline levels. If this is confirmed through water quality monitoring, then the Copermittee has likely met its portion of the final effluent limit described in Provision 7.b.(2)(b) and has achieved compliance. For this reason, changes to the TMDL compliance pathways are not needed or warranted. No changes were made to the Tentative Order as a result of this comment.	