

# **RESPONSE TO COMMENTS TIMELY RECEIVED**

**TENTATIVE TIME SCHEDULE ORDER NO. R9-2024-0010**

**AN ORDER REQUIRING DESIGNATED RESPONSIBLE PERMITTEES TO COMPLY  
WITH BACTERIA, PROJECT I-TWENTY BEACHES AND CREEKS TMDL  
REQUIREMENTS PRESCRIBED IN THE REGIONAL MUNICIPAL SEPARATE STORM  
SEWER SYSTEMS PERMIT FOR THE SAN DIEGO REGION**

Released for Comments: December 19, 2023

Comment Due Date: February 17, 2023

February 8, 2024

## Comment Letters Timely Received

Date Received	Commenter(s)
2/08/2023	South Orange County Wastewater Authority
2/16/2023	San Diego Unified Port District
2/16/2023	City of Encinitas
2/16/2023	City of Santee
2/16/2203	City of Del Mar
2/17/2023	City of Carlsbad
2/17/2023	Carlsbad Watershed Management Area Copermittees: Cities of Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, Vista, and the County of San Diego
2/17/2023	San Dieguito River Watershed Management Area Copermittees: Cities of Del Mar, Escondido, Poway, San Diego, Solana Beach and the County of San Diego
2/17/2023	Chollas Creek Municipalities: Cities of San Diego, La Mesa, and Lemon Grove
2/17/2023	Los Peñasquitos Watershed Management Area Copermittees: Cities of Del Mar, Poway, San Diego, and County of San Diego
2/17/2023	Mission Bay Watershed Management Area – City of San Diego
2/17/2023	City of Lemon Grove
2/17/2023	San Luis Rey Watershed Management Area Copermittees: County of San Diego and Cities of Oceanside and Vista
2/17/2023	San Diego River Watershed Management Area Copermittees: County of San Diego and Cities of San Diego, El Cajon, Santee, and La Mesa
2/17/2023	Orange County Permittees: County of Orange, on behalf of the Orange County Flood Control District, and the Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano
2/17/2023	Heal the Bay
2/17/2023	Environmental Groups: Coastal Environmental Rights Foundation (“CERF”), San Diego Coastkeeper (“Coastkeeper”), Surfrider Foundation San Diego County Chapter (“Surfrider San Diego”), Environmental Center of San Diego, and San Diego Audubon Society

## Abbreviations Used

Basin Plan	Water Quality Control Plan for the San Diego Basin
BMPs	Best Management Practices
CFR Title 40	U.S. Code of Federal Regulations; Protection of the Environment
FIB	Fecal Indicator Bacteria
MMP	Mandatory Minimum Penalty
MS4	Municipal Separate Storm Sewer System
Regional MS4 Permit	Order No. R9-2013-0001, 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
RP	Responsible Permittees
TMDL	Total Maximum Daily Load
TSO	Time Schedule Order
WMA	Watershed Management Area
WQBEL	Water Quality Based Effluent Limitation
WQIP	Water Quality Improvement Plan

## Response to Comments

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
A.1	South Orange County Wastewater Authority	Table 6.a, Table 6.b, and Table 7	Included in Table 6a, footnote 6 states that Permittees are not allowed to utilize the HF183 marker when sources are disinfected tertiary recycled water. From a practical implementation, it is difficult to determine one HF183 source from another using current EPA approved methods. <b>It is at this technical juncture that SOCWA respectfully requests updating the language in the tentative TSO, that would allow Permittees to submit compliance data for HF183 that differentiate live versus dead signals using HF183-PMA methods to ascertain health risk at impacted REC-1 waters.</b>	The San Diego Water Board staff revised Tentative TSO R9-2024-0010 which no longer requires HF183 sampling, but rather encourages the use of human indicators, which may include HF183, for source identification investigations and prioritization efforts.

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B.1	San Diego Unified Port District	Table 5	<p><b>The Port requests to be removed as a Responsible Party from the TSO R9-2023-0006.</b> The Port has previously provided the Regional Board documentation that confirms the Port does not own or maintain any MS4 in the Chollas Creek watershed. As such, there are no direct or indirect MS4 connections or discharges into Chollas Creek from the Port’s jurisdiction. Additionally, the Port’s jurisdiction represents less than one percent of the Chollas Creek drainage area, and the Port does not own any portion of Chollas Creek.</p> <p>Documentation verifying that the Port does not own or maintain MS4 in Chollas Creek was submitted in the FY 2019 San Diego Bay Water Quality Improvement Plan (WQIP) Annual Report in Appendix 5, Attachments B and C, as part of the Port’s response to the Regional Board’s FY 2018 San Diego Bay WQIP Annual Report Comment Letter. In addition, the MS4 verification information was resubmitted on December 17, 2020 to address the Regional Board’s December 2020 request for dry weather data for the development of the Tentative TSO R9-2021-0028 (Attachment A). It should further be noted that the Port was not named on Tentative TSO R9-2021-0028.</p> <p>Following consultation with Regional Board staff in December 2019, the Port has pursued alignment with Provision 6.c.(3)(a) of the Municipal Permit, effectively demonstrating that there is no Port owned or operated MS4 into Chollas Creek and as such “there is no direct or indirect discharge from the Responsible Copermittee’s MS4s to the receiving water”, as reported in the San Diego Bay WQIP annual reports.</p>	<p>The San Diego Unified Port District (Port) has been removed from Tentative TSO R9-2024-0010 as requested. San Diego Water Board staff met with Port staff on January 26, 2023, to discuss the Port’s previously submitted supporting documentation from the Fiscal Year 2019 San Diego Bay Water Quality Improvement Plan (WQIP) Annual Report in Appendix 5, Attachments B and C. The supporting documentation was sufficient to demonstrate that the Port does not have any municipal separate storm sewer system (MS4) connections discharging to Chollas Creek. Therefore, the Port has demonstrated compliance with the final dry weather Water Quality Based Effluent Limitations (WQBELs) through Regional MS4 Permit, Attachment E, Specific Provision 6.b.(3)(a). Specific Provision 6.b.(3)(a) grants compliance to Responsible Copermittees who can demonstrate there is no direct or indirect discharge from the Responsible Copermittee’s MS4s to the receiving water.</p>

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
B.2	San Diego Unified Port District	N/A	<p>The findings stated herein, as well as the supporting documentation related to the Port's jurisdiction and lack of MS4 in the Chollas Creek also would support removal of the Port from the Chollas Creek Bacteria, Dissolved Metals, and Diazinon TMDLs watershed.</p> <p><b>Therefore, the Port respectfully requests that this information be factored into any future re-evaluations of the Chollas Creek TMDLs.</b></p>	<p>This comment is not applicable to Tentative TSO R9-2024-0010. Requests for Total Maximum Daily Load (TMDL) updates must be provided during public comment periods for specific TMDL and Basin Plan amendments.</p>

C.1	City of Encinitas, City of Del Mar	N/A	<p>Since 1999, when AB411 water quality data collection began at California’s beaches, Moonlight Beach has never qualified to be listed on the state’s 303(d) listings for REC-1 based on the water quality data...</p> <p>The 2002 303(d) listings identified the Pacific Ocean Shoreline: San Marcos HA at Moonlight Beach segment, the Los Peñasquitos River Mouth segment, and San Dieguito River Mouth segment as impaired for “Bacteria Indicators” based on beach advisory days. Although AB411 water quality data was available for analysis as part of the 2002 303(d) listing process, it does not appear to have been included in the lines of evidence included in the 303(d) process. However, after considering AB411 water quality data, Moonlight Beach, was appropriately delisted on the 2010 303(d) listing for REC-1 and the Los Peñasquitos River Mouth segment and San Dieguito River Mouth segment were appropriately delisted from the 303(d) listings for REC-1 in 2006 and 2010 respectively...</p> <p><b>The delisted water bodies were intended not to have TMDL requirements applied as long as water quality data continued to support that they are meeting water quality standards. The identified intent is implicitly and explicitly illustrated in the following excerpts:</b></p> <p>Final Technical Report (Bacteria TMDL) Section 11.5.1.</p> <p>In some cases, receiving water limitations are already being met, resulting in the delisting of those segments or areas from the 2006 and/or 2008 303(d) Lists. The protection of the REC-1 beneficial use of those delisted segments or areas, however, must also be maintained, and those segments or areas must remain off future iterations of the 303(d) List.</p>	<p>This comment addresses the Regional MS4 Permit, not the TSO. San Diego Water Board staff responded to this comment in its response to comments for the 2013 Regional MS4 Permit Adoption process (see page 248 of Item 8 Supporting Document 6 from April 2013 Board meeting). The San Diego Water Board’s position remains unchanged.</p> <p>The Beaches and Creeks Bacteria TMDLs were incorporated into the Basin Plan and apply to all the water bodies listed in the TMDL. The Basin Plan acknowledges delisted waterbodies and requires the protection of the REC-1 beneficial use of delisted segments or areas to be maintained and to remain off future iterations of the 303(d) List. The language that “delisted beach segments... are not subject to any further action as long as monitoring data continues to support compliance with water quality standards” means that delisted waterbodies are still required to meet water quality standards to ensure the REC-1 beneficial use is maintained. In the case of Moonlight Beach, the receiving water is not currently meeting water quality standards or wasteload allocations at all times, as required by the Regional MS4 Permit. Furthermore, the TMDL waterbodies and TMDL requirements were incorporated into the Regional MS4 Permit to ensure that water quality standards in receiving waters would be restored</p>
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			<p>Final Technical Report (Bacteria TMDL) Appendix V</p> <p>Furthermore, the San Diego Water Board has expended a significant amount of resources to develop these indicator bacteria TMDLs. Removing specific beach segments from these TMDLs at this time would not be a good use of those spent resources, especially if those beaches were to be re-listed in the future. By having these TMDLs in place, the San Diego Water Board is maximizing its limited resources and ensuring that current and future potential bacteria impairments will be addressed.</p> <p>2016 San Diego Basin Plan Bacteria TMDL</p> <p>Specific beach segments from some of the Pacific Ocean shorelines listed in the TMDL have been delisted from the 2008 303(d) list that was approved by the San Diego Board on December 16, 2009, and therefore are not subject to any further action as long as monitoring data continues to support compliance with water quality standards.</p>	<p>and/or to ensure discharges are not causing or contributing to exceedances of water quality standards in receiving waters. Responsible Copermitees are subject to the TMDL-based WQBELs in accordance with the Regional MS4 Permit, which applies the WQBELs regardless of whether the specific waterbody segment or area has been delisted.</p> <p>Listing or delisting decisions are informational and not regulatory. They do not modify the Basin Plan or permits. Even water quality objectives and the TMDLs that implement them are not self-enforcing; rather, dischargers need only comply with permits or Basin Plan prohibitions. (<i>See, Central Sierra Environmental Resource Center v. Stanislaus National Forest</i> (9th Cir. 2022) 30 F.4th 929, 942); <a href="#">Conway v. State Water Resources Control Bd. (2015) 235 Cal.App.4th 671, 679</a>.)</p> <p>Furthermore, listing and de-listing decisions are made using the Listing Policy's binomial distribution. Specific Provision 6.d does not authorize the use of the Listing Policy's binomial distribution to demonstrate permit compliance. That method allows variability (exceedance frequency) of 10% or more, which is inconsistent with the TMDL and the permit requirements. Specific Provision 6.d.(1)(b)(iv) allows "alternative monitoring procedures" to determine compliance, if submitted as part of</p>
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				<p>the WQIP or updates. This provision does not authorize alternative “assessment procedures,” which are covered by Specific Provision 6.d.(1)(c). The Executive Officer has not approved the use of the Listing Policy methodology for permit compliance. The State Water Board does not consider the binomial distribution appropriate for purposes other than developing the 303(d) list. (Functional Equivalent Document, Water Quality Control Policy for Developing California’s Clean Water Act Section 303(d) List (Sept. 2004), p. 155.)</p> <p>Until the San Diego Water Board adopts any necessary amendments to the TMDL and the Regional Permit, the requirements of the TSO are an appropriate exercise of the San Diego Water Board’s prosecutorial discretion. However, staff will recommend removing Moonlight Beach from the TSO if the City withdraws its request for TSO protection.</p>

C.2	City of Encinitas, City of Del Mar	N/A	<p>Since 1999, when water quality data collection began at the beach segments, Moonlight Beach, the Los Peñasquitos River Mouth segment and San Dieguito River Mouth segment have maintained compliance with REC-1 water quality standards. The attached memos discuss 303(d) listing evaluations of the pre-2002, 2002, 2006 and 2010 listings. The memos include water quality analysis that demonstrates the beach segments would not qualify to be listed on the 303(d) listings based on the available water quality data for the years of analysis. Since the time of the memo, the beach segments have maintained compliance with water quality standards and have not qualified for the 303(d) list (SWRCB 2012, 2014/2016, 2018, 2020/2022 303(d) Listings).</p> <p>...As presented in Table 1 and figures (above), the exceedances observed at the beach segments are sporadic and irregular. It is also important to note that the time period analyzed for the TSO contained anomalies. Such exceedances make it inefficient to build an effective and directed program to identify and address bacteria source(s) that may have caused or contributed to an isolated exceedance. In practice, current response action protocols, including upstream investigations (visual monitoring, inspection), and additional water quality monitoring, while necessary and informative, rarely reveal a specific source. The Tentative TSO directives are supportive of addressing waterbody segments that have upward trending or chronic exceedances. They establish costly source identification/tracking protocols and frequent reporting with the intent to produce results of eliminating bacteria sources and exceedances. <b>In the absence of upward trending or chronic exceedances (see figures above), the Cities would be challenged to implement a source identification program that</b></p>	<p>The San Diego Water Board staff revised Tentative TSO R9-2024-0010. Tentative TSO R9-2024-0010 no longer requires TSO Responsible Permittees discharging to a TSO Beach segment and electing to comply with Directive 1 to submit a Microbial Source Identification Work Plan, Microbial Source Abatement Work Plan, or Pollution Prevention Plan. Tentative TSO R9-2024-0010 offers TSO Responsible Permittees discharging to a TSO Beach segment the option to comply with Directive 1 or Directive 2. TSO Responsible Permittees discharging to a TSO Beach segment may choose to comply with Directive 1 which would require the TSO Responsible Permittee to continue to conduct existing TMDL monitoring in the receiving water and no additional monitoring. TSO Responsible Permittees may identify and report in their TSO Compliance Reports (Tentative TSO Directive 7) additional monitoring locations and/or other source identification methods that were implemented during TSO monitoring years to identify sources causing exceedances of the Final Dry Weather WQBELs (as required by Regional MS4 Permit, Attachment E, Specific Provision 6.d.(1)(a)). TSO Responsible Permittees discharging to a TSO Beach must submit a Microbial Source Identification Work Plan, Microbial Source Abatement Work Plan, and Pollution Prevention Plan if they</p>
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			<p><b>would lead to eliminating exceedances with any level of certainty.</b></p> <p><i>Practicality of TSO Directive Implementation</i>  As presented in the tables, the exceedances observed at the beach segments are sporadic and irregular. Such exceedances make it inefficient to build an effective and directed program to identify and address bacteria source(s) that may cause or contribute to such anomalous exceedances. With the exception of nominal exceedances, there are no results near the WQBELs in each indicator bacteria category, and therefore there is no linkage between water quality data and potential source(s). To enable a program, there needs to be a problem to address in the receiving waters so that sources contributing to the problem can be identified and abated. With no sources, there are no programmatic actions to take. The directives as written in the Tentative TSO are supportive of addressing waterbody segments that have upward trending or chronic exceedances. They establish costly source identification/tracking protocols and frequent reporting with the intent of producing results of eliminating bacteria sources and exceedances. In the absence of upward trending or chronic exceedances (see figures below), the Cities would be challenged to implement a source identification program that would lead to eliminating these types of exceedances with any level of certainty.</p>	<p>choose to comply with Directive 2. These provisions are necessary to ensure the TSO provides an option for beach dischargers that meets all requirements of Water Code section 13385, subdivision (j)(3), as requested by TSO Responsible Permittees.</p>

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C.3	City of Encinitas, City of Del Mar	Directive 1, Directive 2, Directive 4, Directive 5, and Directive 6	<p><b>The Cities request that the Tentative TSO be revised to be consistent with Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) for the beach segments delisted from the 303(d) List prior to the adoption of the 2010 Bacteria TMDL. The City requests that the Tentative TSO be modified to include the following changes:</b></p> <ol style="list-style-type: none"> <li>1. Remove the Directive 1 requirements for the City of Encinitas and City of Del Mar.</li> <li>2. Remove the Directive 4 requirements for the City of Encinitas and City of Del Mar.</li> <li>3. Remove any monitoring requirements beyond those already required by the existing MS4 Permit/Bacteria TMDL monitoring requirements.</li> <li>4. Modify Directive 5 to include only the Pollution Prevention Plan elements required by the Water Code. Allow the Watershed Management Area (WMA) Water Quality Improvement Plans (WQIP) or excerpted strategies specific to indicator bacteria from the WQIPs to be submitted to meet the Directive 5 requirements.</li> <li>5. Reduce reporting frequency to once a year and align the due date with the submission of the WQIP annual reports.</li> </ol>	<p>Directive 1 and Directive 4 requirements from Tentative TSO R9-2023-0006 were removed from Tentative TSO R9-2024-0010 for TSO Responsible Permittees discharging to TSO Beach segments, including City of Encinitas and City of Del Mar. Additional monitoring requirements beyond those already required by the Regional MS4 Permit/Bacteria TMDL are not required in TSO R9-2024-0010 unless a TSO Responsible Permittee decides to comply with Directive 2 (Interim Effluent Limitations). The Pollution Prevention Plan (PPP) elements from Directive 5 of Tentative TSO R9-2023-0006 were revised and are now in Directive 6 of Tentative TSO R9-2024-0010. The reporting frequency for TSO Compliance Reports was revised to once a year and now aligns with Water Quality Improvement Plan (WQIP) Annual Report submittals due January 31.</p>
C.4	City of Encinitas, City of Del Mar	N/A	The Cities offers the attached redline strikethrough version of the Tentative TSO that supports the comments above.	The redline strikethrough suggestions were not incorporated into Tentative TSO R9-2024-0010 for the reasons stated in the response to comment C.1 above.

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C.5	City of Encinitas	Table 2 and Table 5	<p>The City continues to be committed to the oversight and monitoring of Moonlight State Beach, the protection of defined beneficial uses, and the efficient use of resources required to do so. While the tentative TSO offers an important tool in marking current and facilitating future compliance with the TMDL, the City maintains the position that Moonlight Beach was inappropriately included in the TMDL as a waterbody that has been delisted for Rec-1 beneficial use impairments since 2010. It is the City’s intention to earnestly work with the RWQCB staff to identify a mutually agreeable compliance framework for Moonlight State Beach through requested changes to the tentative TSO. <b>Alternatively, the City will reserve the right to be removed from Table 2 and Table 5 in the Tentative TSO should agreeable provisions be burdened by existing regulatory orders or other procedural constraints.</b></p>	<p>Per written request from the City of Encinitas, the City of Encinitas remains in Tentative TSO R9-2024-0010 as a TSO Responsible Permittee, identified in Table 3.a and Table 3.b. By letter dated December 21, 2023, the City of Encinitas submitted a request for TSO Inclusion considering proposed changes that would be included in Tentative TSO-R9-2024-0010. Proposed changes were presented to TMDL Responsible Permittees by San Diego Water Board staff in 2023 TSO discussion meetings.</p>
C.6	City of Encinitas	N/A	<p><b>In addition, please note that the City is in support of comments submitted by San Diego Region Copermittees, under separate cover, as follows:</b></p> <ol style="list-style-type: none"> <li>1. The Carlsbad Watershed Management Area Copermittees: Comments and requests related to removal of hydrologically disconnected Copermittees that do not discharge to Moonlight Beach, from the tentative bacteria TSO.</li> <li>2. City of Carlsbad: Comments and requests related to removal of City of Carlsbad from the tentative bacteria TSO due to hydrologic disconnection from/no discharge to Moonlight Beach.</li> </ol>	<p>Comment noted.</p>

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D.1	City of Del Mar	Table 2 and Table 5	<b>If the Regional Water Board does not make the requested changes, the City requests that the Pacific Ocean Shoreline segment at the San Dieguito Lagoon Mouth and Torrey Pines State Beach be removed from Table 2 in the Tentative TSO. Further, the City of Del Mar, and other Responsible Permittees, would be removed from Table 5 in the Tentative TSO.</b>	Per written request from the City of Del Mar, the City of Del Mar remains in Tentative TSO R9-2024-0010 as a TSO Responsible Permittee, identified in Table 3.a and Table 3.b. By letter dated December 19, 2023, the City of Del Mar submitted a request for TSO Inclusion considering proposed changes that would be included in Tentative TSO-R9-2024-0010. Proposed changes were presented to TMDL Responsible Permittees by San Diego Water Board staff in 2023 TSO discussion meetings.

E.1	City of Santee	N/A	<p><b>First, Santee requests that the TSO be revised to include all six methods for demonstrating compliance with final water quality based effluent limitations ("WQBELS") currently in the Permit.</b> Special Provision 6.b.(3) in Attachment E provides six alternative methods for demonstrating compliance with final water quality based effluent limitations. Directives 1 and 2 in the TSO, however, only recognize two of those methods and require compliance with both methods. As a result, the TSO appears to amend the Permit by eliminating the remaining four compliance demonstration methods. It is improper to attempt to amend the Permit through issuance of a TSO. The Water Code section authorizing a TSO specifies that a TSO is intended to provide a time schedule of specific actions to take to correct or prevent a violation of Permit requirements (Water Code § 13300). It does not authorize a TSO to amend those Permit requirements. In particular, since Santee has managed to eliminate flow at most outfalls, the incorporation of the bacterial load reduction compliance method per Special Provision 6.b.(3)(d) will aid Santee towards compliance with the TSO. For example, as the way the TSO is written now, if Santee is able to demonstrate load reductions from its outfalls are greater than or equal to the final effluent limitations, Santee would be in compliance with Special Provision 6.b.(3)(d). However, because the TSO does not recognize this method of compliance, in this example, Santee could nevertheless, fail to comply with the TSO if the receiving water exceeded the limits included in the TSO. The Water Code does not intend to artificially create a situation of non-compliance with the Permit's terms with the TSO. For this reason, Santee requests that the TSO incorporate all six methods of demonstrating compliance with Special Provision 6.b.(3) into the TSO.</p>	<p>Directive 4 in Tentative TSO R9-2024-0010 requires TSO Responsible Permittees to comply with the Final Dry Weather WQBELs using any of the six compliance pathways listed in Regional MS4 Permit, Attachment E, Specific Provision 6.b.(3) no later than September 30, 2028.</p>
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E.2	City of Santee	Directive 4.B.2.a	<p><b>Second, Santee requests that language in the TSO is modified such that Permittees are responsible for identifying and abating sources of bacteria in the San Diego River that enter the River through the MS4.</b> For example, Santee suggests the following edits to Directive 4.B.2.a: "The MSA WPs must summarize results of the source investigation activities conducted and the FIB sources (both anthropogenic and natural) identified under Directive 4.B.1. The MSA WPs must propose corrective actions, strategies, activities, and associated schedules and milestones for each high-risk anthropogenic FIB sources <u>into TSO Responsible Permittees' MS4s</u> identified in Directive 4.B.1.a.5 to achieve the following[ ... ]."</p>	<p>The San Diego Water Board staff revised the Tentative TSO R9-2024-0010 to include the suggested language in Directive 6.G.</p>



E.3	City of Santee	Finding 30	<p><b>Third, Santee would like to respond to comments raised by Board Members during the workshop on the TSO regarding TSO compliance costs.</b> Finding 30 in the TSO determines that the monitoring costs associated with the TSO, "is expected to be minimal to insignificant." For Santee, however, this is not the case. Currently, in accordance with Permit section D.2.b.(2)(b), the City visits five (5) high priority MS4 outfalls with persistent flow twice a year and collects water samples for laboratory analysis where conditions of measurable flow are present (including a field blank and field duplicate), for a total of up to 12 samples sent to a laboratory for analysis, per monitoring year. Analysis includes constituents contributing to the HPWQC, 2014/2016 303(d) List impairments, TMDLs, non-stormwater action levels (NALs), and those listed in Table D-7 of the Permit.</p> <p>As currently written in the TSO, in addition to the monitoring actions described above, Responsible Permittees are to also conduct weekly dry weather outfall discharge monitoring of MS4 outfalls for the entire monitoring year, analyzing for FIB or HF183. Weekly sampling as described in the TSO will task Santee with additional costs associated with laboratory analysis and labor, two separate costs. Table 1 and Table 2 below show estimated yearly costs for laboratory analysis given the low and high estimations put forth by the TSO (\$150-\$200 per sample of FIB, \$50-\$70 per sample of E. coli, and \$200-\$400 per sample of HF183), respectively.</p> <p>Please note that these estimates do not account for yearly inflation or demand for supply. Currently, Santee outsources monitoring, sample collection, and data analysis to a third-party environmental consulting firm whose rates are higher than \$100 per hour (and work in pairs). Table 3 below shows the estimated yearly staffing costs related to the monitoring fieldwork required</p>	<p>Finding 30 in Tentative TSO R9-2024-0010 has been revised with new cost estimates. Where the City of Santee previously estimated an extra \$100,000 to \$150,000 per year would be required to cover the costs of the additional testing incurred by the TSO, San Diego Water Board staff estimate the cost would be about \$30,000 based on sampling <i>E.coli</i> at five outfalls for twenty weeks for each TSO segment the City is a TSO Responsible Permittee. Since the City is a TSO Responsible Permittee in two TSO waterbody segments, the total estimated cost for the City would be about \$60,000.</p>
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			<p>as described in the TSO. Please note that these estimates are rounded-down and do not account for inflation, taxes, data analysis, report writing, and other forms of support which are provided by the consultant at an additional rate.</p> <p>Assuming that five outfalls are to be monitored per week, Santee estimates that an extra \$100,000 to \$150,000 per year will be required to cover the costs of the additional testing incurred by the TSO. Santee does not have any dedicated funding source or the ability to generate additional funding from directly related potential sources to pay for increased monitoring imposed by the Board. For example, revenue generation sources available to other Copermittees such as increased fees for water or sewage are not feasible for Santee, since we do not provide water or sewer services to residents. The additional costs of complying with the monitoring requirements in the TSO threaten to divert already-limited funds from projects designed to reduce bacteria and put those funds instead into measuring a problem already known to exist. We believe it is a better use of limited public funds to use the money that would otherwise be diverted to extensive monitoring and invest it into projects that will directly address bacteria loadings (and monitoring the results of those efforts directly).</p>	

E.4	City of Santee	Table 6.a, 6.b, and 7	<p><b>Fourth, Santee would like to ask the Board to consider revising the FIB limitations in the TSO.</b> This is because interim limitations as listed in the TSO may not be attainable. Santee requests revisions to the numeric limitation or to the allowable exceedance frequency to make the interim limitations more attainable.</p>	<p>Tentative TSO R9-2024-0010 includes revised FIB interim limitations in Table 4, Table 5.a, and Table 5.b. The revised FIB interim limitations in Table 5.b applicable to the City of Santee are based on existing MS4 outfall discharge conditions in Forester Creek and San Diego River. Table 5.b in Tentative TSO R9-2024-0010 includes an allowable <i>E.coli</i> exceedance frequency of 70 percent for Lower San Diego River and 60 percent for Forester Creek. Previously, Tentative TSO R9-2023-0006 included a 70 percent <i>E.coli</i> exceedance frequency for Lower San Diego River and 80 percent for Forester Creek. During development of Tentative TSO R9-2024-0010, San Diego Water Board staff requested TMDL Responsible Permittees to review outfall monitoring results of current monitoring programs and recommend an exceedance frequency for Lower San Diego River and Forester Creek. TMDL Responsible Permittees proposed a 100 percent exceedance frequency be allowed based on the highest percent exceedance observed in the past years of data. A 100 percent exceedance frequency is the same as not including an interim effluent limitation at all and would not satisfy Water Code section 13383, subdivision (j)(3)(C)(iii). San Diego Water Board staff is proposing a 70 percent exceedance frequency for Lower San Diego River and 60</p>
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
				percent for Forester Creek to encourage the TMDL Responsible Permittees to reduce and eliminate sources of bacteria causing exceedances in the MS4s.

F.1	City of Carlsbad, Carlsbad WMA Copermittees	Table 2	<p>The Copermittees are providing this comment letter to request that the San Diego Water Board remove the Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego as Responsible Permittees for Moonlight State Beach in the Tentative TSO. As explained below, Carlsbad, Escondido, San Marcos, and the County of San Diego do not discharge to Moonlight State Beach, and therefore cannot violate the bacteria Water Quality Based Effluent Limits (WQBELs) applicable there. For this reason, the San Diego Water Board cannot make Finding 8 in the Tentative TSO as to Carlsbad, Escondido, San Marcos, and the County of San Diego, and must remove Carlsbad, Escondido, San Marcos, and the County of San Diego.</p> <p><b>Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego Do Not Contribute to the Moonlight State Beach Drainage Area</b></p> <p>The Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego should be removed as Responsible Permittees, as shown in Table 2 of the Tentative TSO for the Pacific Ocean Shoreline at Moonlight State Beach Total Maximum Daily Load (TMDL) for the following factual reasons:</p> <ul style="list-style-type: none"> <li>• As shown in Figure 1 below, Carlsbad, Escondido, San Marcos, and the County of San Diego are hydrologically disconnected from the Moonlight State Beach drainage area, so they cannot cause, nor contribute, to water quality issues within the Moonlight State Beach basin.</li> <li>• Municipal separate storm sewer system (MS4) discharges from the Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego, within the San Marcos Hydrologic Area (HA), drain toward the Batiquitos Lagoon and the Pacific Ocean north of the Moonlight State Beach drainage area, as shown in Figure 1 below. Because these agencies are not hydrologically connected to Moonlight State Beach and their</li> </ul>	<p>The Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego are not TSO Responsible Permittees listed as discharging to the Moonlight State Beach segment in Tentative TSO R9-2024-0010. At the request of San Diego Water Board staff, the City of Carlsbad provided additional supporting documentation on October 4, 2023, to demonstrate the Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego do not directly discharge to the Moonlight State Beach segment. The supporting documentation included detailed figures with topographic contours, and flow direction arrows for drainage areas to the Pacific Ocean Shoreline and Moonlight State Beach segment.</p> <p>The Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego therefore are not causing or contributing to exceedances of Final Receiving Water Limitations at Moonlight State Beach.</p>
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			<p>MS4 does not drain or discharge there, the San Diego Water Board cannot make Finding 8 in the Tentative TSO as to Carlsbad, Escondido, San Marcos, and the County of San Diego. Carlsbad, Escondido, San Marcos, and the County of San Diego do not, and cannot, be found to “discharge bacteria from [its] MS4 into [Moonlight State Beach] in excess of the final dry weather bacteria WQBELs, therefore causing or contributing to FIB exceedances of water quality” and further cannot be found to be “violating or threatening to violate the final dry water bacteria WQBELs in Specific Provision 6 and the receiving water limitation prohibition of Provision A.2.a with respect to bacteria water quality objectives.” Since the San Diego Water Board cannot make this finding as to Carlsbad, Escondido, San Marcos, and the County of San Diego, it must remove Carlsbad, Escondido, San Marcos, and the County of San Diego as Responsible Permittees.</p> <ul style="list-style-type: none"> <li>• The Moonlight State Beach drainage area is comprised of discharges entirely from the City of Encinitas. No other city or county jurisdiction contributes MS4 discharge flow to Moonlight State Beach.</li> <li>• California Water Code sections 13300 and 13385, which provide the legal basis for the Tentative TSO, apply to “dischargers” who are violating or threatening to violate an effluent limitation and require additional time to comply with that effluent limitation. The Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego are not “dischargers” to the Pacific Ocean Shoreline at Moonlight State Beach and cannot, therefore, violate or threaten to violate any effluent limitation there. For this reason, Water Code sections 13300 and 13385 have no application to the Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego as it relates to conditions at Moonlight State Beach.</li> </ul>	
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
F.2	Carlsbad WMA Copermitees	Table 2	<p>Because Carlsbad, Escondido, San Marcos, and the County of San Diego are hydrologically disconnected from Moonlight State Beach, the facts do not support proposed Finding 8 in the Tentative TSO or a similar finding that Carlsbad, Escondido, San Marcos, and the County of San Diego are “dischargers” to Moonlight State Beach for purposes of Water Code sections 1330 and 13385. There is, therefore, not a factual or legal basis to list Carlsbad, Escondido, San Marcos, and the County of San Diego as Responsible Permittees for Moonlight State Beach. <b>As such, Carlsbad, Escondido, San Marcos, and the County of San Diego respectfully request that they are removed as a Responsible Permittees in the TSO for Moonlight State Beach. In addition, the Regional Board should confirm that Carlsbad, Escondido, San Marcos, and the County of San Diego are not and cannot be in violation of the Bacteria TMDL1 and MS4 Permit Attachment ‘E’ for the Carlsbad Watershed San Marcos HA Pacific Ocean Shoreline at Moonlight State Beach.</b></p>	<p>The Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego are not TSO Responsible Permittees listed as discharging to the Moonlight State Beach segment in the Tentative TSO R9-2024-0010.</p> <p>However, the Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego discharge to the Pacific Ocean Shoreline waterbody listed for the Bacteria TMDL and continue to be a TMDL Responsible Permittee per the Specific Provision 6 of Attachment E of the Regional MS4 Permit. Any TMDL Responsible Permittee that fails to comply with the requirements of Specific Provision 6 in Attachment E may find itself in violation of the Bacteria TMDL and the Regional MS4 Permit.</p>
F.3	Carlsbad WMA Copermitees	Table 5	<p><b>Further, the Cities of Carlsbad and San Marcos should be removed as Responsible Permittees, as shown in Table 5 of the Tentative TSO because they are not identified as Responsible Permittees for any other water body other than the Pacific Ocean Shoreline at Moonlight State Beach.</b></p>	<p>The Cities of Carlsbad and San Marcos were removed from the list of TSO Responsible Permittees in Tentative TSO R9-2024-0010.</p>

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
F.4	City of Carlsbad, Carlsbad WMA Copermittees	N/A	<b>For the same reasons listed above, the Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego respectfully request to be removed as Responsible Permittees from the Bacteria TMDL and MS4 Permit Attachment E for the Carlsbad Watershed San Marcos HA Pacific Ocean Shoreline at Moonlight State Beach. This request applies to the upcoming MS4 Permit re-issuance process and potential, future re-opening of the TMDL Basin Plan Amendment.</b>	This comment is not applicable to the Tentative TSO R9-2024-0010. Requests for Regional MS4 Permit updates must be provided during public comment periods for the Regional MS4 Permit reissuance. Requests for TMDL updates must be provided during public comment periods for specific TMDL and Basin Plan amendments.
F.5	Carlsbad WMA Copermittees	N/A	The Copermittees support comments provided under separate comment letter submittals, specifically: 1. The City of Encinitas Tentative Bacteria TSO comment letter: Comments and requests related to REC-1 303(d) delisted water segments and water segments near attainment of final Bacteria TMDL WQBELs. 2. Several San Diego Region Watershed Tentative Bacteria TSO comment letters: a. Improve the attainability of interim limitations b. Options to improve the efficiency of monitoring c. Streamline planning processes d. Align reporting with existing permit requirements	Comment noted.



Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
G.1	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego	Several	<b>Attachment 1 to this letter includes a redline strike out version of the Tentative TSO incorporating comments provided in this letter. Attachment 1 contains additional modifications not fully detailed in the letter below.</b>	See responses to comments G.1 to G.31.

G.2	<p>Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, San Luis Rey WMA Copermittees, Mission Bay WMA – City of San Diego</p>	<p>Directive 1, Directive 2, Directive 4, Directive 5, and Directive 6</p>	<p><b>Specific Requests to modify Tentative TSO to Minimize Requirements in the Tentative TSO for Pacific Ocean Shoreline segments</b></p> <p>The RPs request that the Tentative TSO be revised to ensure that the RPs are only required to perform monitoring efforts consistent with existing monitoring required by the MS4 Permit, to continue demonstrating that the beneficial uses for the Pacific Ocean Shoreline segments are being attained. The RPs request that the Tentative TSO be modified to include the following changes:</p> <p>a) Remove the requirement to comply with Directive 1. Where segments of the Pacific Ocean Shoreline are currently supporting recreational beneficial uses, MS4 outfall monitoring beyond that required by the MS4 Permit is not necessary.</p> <p>b) Remove the requirement to comply with Directive 4. Current and future programs and projects in the watershed are sufficient to ensure that recreational beneficial uses are supported at the shoreline. Additional planning for source investigation and source abatement is not necessary.</p> <p>c) Remove any monitoring requirements beyond those already required by the existing MS4 Permit/Bacteria TMDL monitoring requirements. The monitoring requirements in the MS4 Permit are comprehensive, covering MS4 outfalls and receiving waters during dry weather. These existing monitoring programs are sufficient to demonstrate that beneficial uses continue to be supported.</p> <p>d) Modify Directive 5 to only include the elements required by the Water Code. Specifically, the CWC does not require the identification of operation practices and maintenance frequencies (Tentative TSO Directive 5.E) or a monitoring plan and quality assurance project plan (Tentative TSO Directive 5.F). Allow the WQIP or excerpted strategies specific to bacteria from the WQIP to be</p>	<p>Directive 1 and Directive 4 requirements from Tentative TSO R9-2023-0006 were removed from Tentative TSO R9-2024-0010 for TSO Responsible Permittees discharging to TSO Beach segments. Additional monitoring requirements beyond those already required by the Regional MS4 Permit/Bacteria TMDL are not required in TSO R9-2024-0010, unless a TSO Responsible Permittee decides to comply with Directive 2 (Interim Effluent Limitations). The Pollution Prevention Plan (PPP) elements from Directive 5 of Tentative TSO R9-2023-0006 were revised and are now in Directive 6 of TSO R9-2024-0010. The reporting frequency for TSO Compliance Reports was revised to once a year and now aligns with Water Quality Improvement Plan (WQIP) Annual Report submittals.</p>
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>submitted to meet the Directive 5 requirements consistent with the requirements for a Pollution Prevention Plan, as also noted in requests 5.2 and 5.3.</p> <p>e) Reduce reporting frequency to once a year and align the due date with the submission of the WQIP annual report. For waterbody segments currently supporting recreational beneficial uses and where monitoring data continues to show that the waterbody segment is not impaired, reporting that is aligned with the WQIP annual reports should be sufficient.</p>	

G.3	<p>Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Mission Bay WMA – City of San Diego, San Luis Rey WMA Copermittees</p>	N/A	<p><b>Attainment of the Bacteria TMDL Geometric Mean Final Receiving Water Limitations during Dry Weather</b></p> <p>Recently collected receiving water data over the past two monitoring years (October 1, 2020 – September 30, 2022), demonstrates that the programs implemented to address the Permit and TMDL provisions, have been effective. This conclusion is supported by the Regional Water Board’s own analysis of the data and in the corrected analysis performed by the Copermittees. The data collected under the TMDL Compliance Monitoring Program (performed by the Copermittees), and Assembly Bill 411 by the County of San Diego’s Beach Watch Program were evaluated against the Final Receiving Water Limitations for dry weather as written in the Permit<sup>2</sup> and shown in Table 1.</p> <p>Results of the Regional Water Board’s analysis of the data are summarized in Table 2. Most importantly, the analysis demonstrates that there were no exceedances of the Final Receiving Water Limitations using the geometric mean (GM). According to the Bacteria TMDL, the only numeric targets that apply during dry weather are the GM targets. Further, the TMDL calculations and allocations are based on the GM water quality objectives, as described on page 7-63 of the Basin Plan and shown in Table 7-38.</p> <p>"For dry weather conditions, because dry weather runoff is not generated from storm flows, is not uniformly linked to every land use, and is more uniform than stormflow, with lower flows, lower loads, and slower transport, making die-off and/or amplification processes more important, the geometric mean WQOs were appropriate for use as dry weather numeric targets, dry weather TMDL calculations were based on REC-1 geometric mean WQOs."</p>	<p>This comment relates to the Regional MS4 Permit, not the proposed TSO. The numeric targets of the Bacteria TMDL were translated into the Regional MS4 Permit and the Permittees are required to comply with the requirements of the Regional MS4 Permit. (See response to Comment C.1.) As noted in Regional MS4 Permit, Attachment E, Specific Provision 6, Table 6.2a during dry weather days, the single sample maximum and 30-day geometric mean receiving water limitations are required to be achieved.</p> <p>The Permittees claim the only numeric targets that apply during dry weather are the geometric mean targets according to the Bacteria TMDL. However, the Numeric Targets section of the Bacteria TMDL in the Basin Plan (page 7-93) states that “the TMDL calculations are based on either the single sample maximum WQO (for wet weather) or 30-day geometric mean WQOs (for dry weather), but both the single sample maximum and 30-day geometric mean numeric WQOs and allowable exceedance frequencies must be met in the receiving waters.” Page 7-106 of the Bacteria TMDL in the Basin Plan also states “Compliance with Dry Weather TMDLs: At the end of the dry weather TMDL compliance schedule, the bacteria densities in the receiving waters for all dry weather days must be less than or</p>
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			<p>The TMDL is also clear that compliance can be demonstrated through meeting the numeric targets and that the Permit is intended to include receiving water limitations based on the numeric targets.</p> <p>"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 the receiving waters." (page 7-97)</p> <p>"If the receiving water limitations (based on the numeric targets) are met in the receiving waters, the assumption will be that the MS4s have met their WLAs." (page 7-97)</p> <p>"Compliance with the TMDLs, WLAs, and LAs will be assessed primarily by comparing receiving water indicator bacteria results from the monitoring locations outlined above with receiving water limitations expressed in terms of the appropriate numeric REC-1 WQOs and allowable exceedance frequencies of the appropriate numeric REC-1 WQOs. The appropriate numeric WQOs and allowable exceedance frequencies are dependent upon the type of receiving water (i.e., beach or creek) and weather conditions (i.e., dry weather or wet weather), as shown in Tables 7-48 and 7-49." (page 7-105)</p> <p><b>Clearly, the intent of the TMDL was for compliance to be demonstrated during dry weather using only the GM.</b> Table 7-48 from the TMDL matches Table 1 above, with the exception that it does not include footnote b that requires compliance with both the GM and the SSM during dry weather. The MS4 Permit Fact Sheet does not include any rationale for the addition of the footnote in the MS4 Permit.</p> <p>It is possible that the footnote in the MS4 Permit was based on the statement on Basin Plan page 7-106 that "...the bacteria densities must be consistent with the single sample maximum REC-1</p>	<p>equal to the 30day geometric mean REC-1 WQOs 100 percent of the time (i.e., dry weather days in a 30-day period shall not exceed the 30-day geometric mean REC-1 WQOs more than 0 percent of the time). In addition, the bacteria densities must be consistent with the single sample maximum REC-1 WQOs in the Ocean Plan for beaches, and the Basin Plan for creeks."</p>
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			<p>WQOs in the Ocean Plan for beaches, and the Basin Plan for creeks.” In contrast to the sentence immediately before this sentence in the Basin Plan, which notes a numeric, 0% allowable exceedance frequency for GM standards, no numeric exceedance frequency is provided in this statement about SSMs, and the footnote in the MS4 Permit also uses the more general “must be consistent with” language instead of specifying a numeric SSM exceedance frequency. The subsequent more detailed discussion of final compliance determination on Basin Plan page 7-107 also only references the GM standard and does not mention a comparison to SSM standards: “If at the end of the dry weather TMDL compliance schedule the receiving waters exceed the 30-day geometric mean REC-1 WQOs more than 0 percent of the time, the municipal Phase I MS4s are responsible for demonstrating their discharges into the receiving waters are not causing the exceedances, or they will be considered out of compliance.” In this context, even if the Water Board ultimately concludes that a comparison to SSM standards should be part of the final compliance evaluation, it does not follow that a 0% exceedance applies to SSM data. The TMDL, as incorporated into the Basin Plan and the Permit language in Attachment E, does not specify an exceedance percentage for the SSM, but they do mention consistency with the Ocean Plan standard. The current Ocean Plan allows a 10% exceedance of the SSM, and it would be reasonable to apply that same exceedance percentage to SSM data in the Tentative TSO per the TMDL if the RPs’ argument that dry weather compliance should only be evaluated based on the GM is not accepted. Using that 10% exceedance standard, the San Dieguito Pacific Ocean Segment is compliant (see Tables 2 and 3 below). The RPs request Regional Water Board staff</p>	
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			clarify and/or amend the MS4 Permit to reflect the discussion above...	
G.4	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees	Table 2 and Table 5	<p><b>Alternatively, remove the Los Peñasquitos and the San Dieguito Pacific Ocean Shorelines from the Tentative TSO</b></p> <p>Alternative to Request 1.1, the RPs request that the Los Peñasquitos Pacific Ocean Shoreline segment and the San Dieguito Pacific Ocean Shoreline segment be removed from the Tentative TSO if the requested modifications to the Tentative TSO requirements listed above in Request 1.1 are not made. This change would apply to Table 2 and Table 5 of the Tentative TSO. In Table 2, this would include the removal of the Pacific Ocean Shoreline Waterbody at Torrey Pines State Beach at Del Mar in the Los Peñasquitos WMA and the removal of the Pacific Ocean Shoreline Waterbody at the San Dieguito Lagoon Mouth in the San Dieguito WMA. In Table 5, this would include the removal of some TSO Responsible Permittees in the Los Peñasquitos WMA and San Dieguito WMA.</p>	<p>Per written requests from the Cities of Del Mar (December 20, 2023), Poway (December 18, 2023), San Diego (December 7, 2023), Escondido (December 7, 2023), Solana Beach (December 19, 2023), and County of San Diego (December 11, 2023), the Los Peñasquitos WMA Copermittees and the San Dieguito River WMA Copermittees remain in Tentative TSO R9-2024-0010 as TSO Responsible Permittees, identified in Table 3.a and Table 3.b. The Los Peñasquitos WMA Copermittees and San Dieguito River WMA Copermittees individually submitted a letter requesting TSO Inclusion considering proposed changes that would be included in Tentative TSO-R9-2024-0010. Proposed changes were presented to TMDL Responsible Permittees by San Diego Water Board staff in 2023 TSO discussion meetings.</p>

G.5	<p>Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees</p>	Directive 1 and Directive 2	<p><b>Provide the Option to Meet Directive 1 or 2, Not Require Compliance with Both</b></p> <p>The RPs appreciate that the Tentative TSO incorporates additional compliance pathways for meeting interim water quality limits compared to the original time schedule order issued for this matter (Order No. R9-2021-0028). However, the Tentative TSO requirement that the RPs meet interim limits described in Directive 1 (MS4 effluent) and Directive 2 (receiving waters) is inconsistent with and more stringent than the MS4 Permit’s compliance pathways described in Attachment E of the MS4 Permit.</p> <p>The MS4 Permit’s TMDL-based Provision E.6.b.3 includes the following six compliance pathways:</p> <ol style="list-style-type: none"> <li>1. No direct or indirect MS4s discharges to the receiving water, OR</li> <li>2. No exceedances in receiving water downstream of MS4s, OR</li> <li>3. No exceedances in MS4 outfalls, OR</li> <li>4. Pollutant load to and from MS4 not exceeding final effluent limitations, OR</li> <li>5. Natural Source Exclusion + Pollutant loads from MS4s not causing exceedances, OR</li> <li>6. Submission and implementation of WQIP</li> </ol> <p>Under this TMDL Provision, the RPs may demonstrate compliance with final water quality limits using either MS4 discharge-related pathways or receiving water quality-related pathways. Considered in the context of the six distinct compliance pathways laid out in the MS4 Permit’s TMDL-based provisions, Directive 1 and Directive 2 must be considered independent compliance pathways and cannot be reasonably combined as interim limitations in order to secure the protections the Tentative TSO provides. Such an outcome may not be technically or factually feasible and is therefore unreasonable per Water Code section 13000. For example, if compliance is being secured by the RPs through the “no direct or</p>	San Diego Water Board staff revised Tentative TSO R9-2024-0010. TSO Responsible Permittees discharging to TSO Beach segments have the option to comply with either Directive 1 or Directive 2.
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			<p>indirect discharge” approach, how could exceedances in the receiving waters implicate non-compliance for the RPs, because the RPs have no influence on receiving water quality. In addition, Water Code Section 13385 only requires interim “effluent limitations for the pollutant or pollutants of concern” when the time schedule order exceeds one year in length; nowhere does that section mandate that the Tentative TSO include receiving water limits as is implied in Finding 23 of the Tentative TSO. Mandating that the RPs comply with both discharge and receiving water interim limitations reaches beyond the scope of authority for the Tentative TSO and attempts to impose unauthorized new requirements.</p> <p>Including the requirement to comply with both Directive 1 and Directive 2 is also inconsistent with the responsibilities of the RPs under the MS4 Permit. Because receiving water quality may be affected by sources of pollution other than discharges from the RPs’ MS4s, it is unreasonable that the RPs could be deemed out of compliance with the Tentative TSO if MS4 discharge requirements (Directive 1) are met but receiving water interim limitations are not (Directive 2). At the very least, Directive 2 could be amended to more clearly state that responsible permittees not “cause or contribute” to exceedances of interim receiving water limitations as was done in TSO No. R4-2015-0108 and TSO R4-2014-0142 governing fecal indicator bacteria (FIB) in MS4s for responsible permittees in the Los Angeles Region (Region 4) so as to tie the interim limitation to the specific permit term.</p> <p>For the reasons outlined above, the RPs request that the interim limitations be modified to provide an option to comply with either Directive 1 OR Directive 2.</p> <p>Requested Modifications:</p>	
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>Modify the Tentative TSO to revise the following language to Directive 1:            TSO Responsible Permittees must demonstrate compliance with the Interim Effluent Limitations through the method described in Directive 1.A, or Directive 1.B, <u>or Directive 2</u> below.</p> <p>Modify the Tentative TSO to revise the following language to Directive 2:            The TSO Responsible Permittees must demonstrate compliance with <del>discharges from their MS4s do not cause or contribute to gastrointestinal illness rates greater than 36 per 1,000 water contact recreators by one or more of the following</del> <u>interim receiving water limitations as described in Directive 2A, 2B, or 2C or by meeting interim effluent limitations as described in Directives 1A or 1B.</u></p>	

G.6	<p>Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees</p>	<p>Footnote 5 in Table 6.a, Footnote 2 in Table 6.b, Directive 2.A.1.a, and Footnote 4 in Table 7</p>	<p><b>Reassess interim limitation compliance evaluation methods with respect to dry monitoring visits</b></p> <p>The RPs will continue to implement programs that target and eliminate illicit discharges to its MS4. These programs have been amplified in recent years with more intensive approaches to investigate and eliminate sources of bacteria. Often times, the end result of these investigations is the elimination of flow from the MS4 outfall during dry weather conditions indicating compliance has been achieved. In some cases, the elimination of flow also results in no water in the receiving waters. In both cases, the dry conditions indicate compliance with the Permit.</p> <p>The Tentative TSO does not allow monitoring events where no flow is observed to be included in the assessment of compliance with Directive 1 or Directive 2. The footnotes in Directive 1, Table 6a and 6b state that "[t]he single sample maximum exceedance frequency must be calculated by dividing the number of dry weather samples that exceed the single sample maximum effluent limitations in the Table by the total number of dry weather samples collected during the monitoring year (October 1 to September 30 of the following year)." Directive 2.A.1.a more explicitly states that when no flow is present at a receiving water monitoring location the "result must not be included in the assessment for GM or SSM". This approach is inconsistent with the goal of the Permit to reduce or eliminate sources of dry weather flows. If the control measures implemented by the RPs result in a lack of flow in receiving waters, the proposed calculation method would in effect penalize the RPs for their actions by not counting the lack of flow as a compliant sample.</p>	<p>As part of TMDL compliance assessment discussions, San Diego Water Board staff has advised TMDL Responsible Permittees not to count no flow observations in receiving water assessments. Permittees in Chollas Creek and Tecolote Creek have reported bacteria exceedance frequencies in the receiving water with the assumption there is zero bacteria based on no flow observations in past TMDL Compliance Reports. In the findings of Attachment 1 to the Clarification of Requirements for Bacteria TMDL Compliance Assessments letter (Updated November 7, 2023), San Diego Water Board staff stated a zero percent exceedance frequency should not be reported if no water samples are analyzed for bacteria. In sum, it is not acceptable to assume the receiving water meets receiving water limitations on days where there is no discharge. San Diego Water Board staff revised Tentative TSO R9-2024-0010 to include a compliance pathway under Directive 2 that would allow the use of visual outfall observations of no flow. Directive 2.b allows TSO Responsible Permittees to demonstrate they are meeting the Interim Outfall Effluent Flow Limitations in Table 5.c based on visual outfall observations of no flow.</p>
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>To address this concern, the RPs request that the Tentative TSO be modified to designate monitoring events with observations of no flow as compliant with the interim receiving water limitations.</p> <p>Requested Modifications:            Modify Footnote 5 in Table 6a and Footnote 2 in Table 6b as follows:            The single sample maximum exceedance frequency must be calculated by dividing the number of dry weather samples that exceed the single sample maximum effluent limitations in the Table by the total number of dry weather <del>samples collected</del> <u>monitoring observations conducted</u> during the monitoring year (<del>October</del> <u>May 1</u> to September 30 <u>of the following year</u>).</p> <p>Modify Directive 2.A.1.a as follows:            Report “not sampled (NS), <u>dry</u>” if the compliance station and the creek or stream bed within 200 meters from the station is dry or ponded. <del>This result must not be included in the assessment for GM or SSM.</del></p> <p>Modify Footnote 4 in Table 7 as follows:            The single sample maximum exceedance frequency must be calculated by dividing the number of dry weather samples that exceed the single sample maximum effluent limitations in the Table by the total number of dry weather <del>samples collected</del> <u>monitoring observations conducted</u> during the monitoring year (<del>October</del> <u>May 1</u> to September 30 <u>of the following year</u>).</p>	

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
G.7	<p>Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees</p>	Directive 1 and Directive 2	<p><b>Limit the Evaluation of Compliance with Interim Limitations to the Dry Season</b> In recent conversations with Regional Water Board staff, staff indicated that it may be appropriate to evaluate compliance with the interim limitations during the summer dry season only. This is aligned with the Regional Water Board’s Practical Vision and with the Key Beneficial Uses, Key Areas guidance as the majority of REC-1 beneficial uses occurs during the dry season. The approach allows the RPs to focus resources on implementation of source investigations and abatement rather than extensive year-round monitoring and would limit the complexity of monitoring during the winter dry season (due to storm events). The RPs support this concept and are willing to work with Regional Water Board staff to determine the most appropriate monitoring frequency to demonstrate compliance during the summer dry season.</p>	San Diego Water Board staff revised Tentative TSO R9-2024-0010 to only require compliance with Directive 1 Interim Bacteria Receiving Water Limitations for TSO Beaches or Directive 2 Interim Bacteria Outfall Effluent Limitations for TSO Beaches and TSO Creeks during the dry season (May 1 to September 30).

<p>G.8</p>	<p>Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees</p>	<p>Footnote 4 in Table 7</p>	<p><b>Modify the Approach to Calculating the Geometric Mean</b></p> <p>The geometric mean (GM) calculation is intended to provide an indication of the “steady state” of the waterbody and is an appropriate metric to demonstrate that beneficial uses are supported. The RPs support the use of the GM as an interim receiving water limitation. However, the data and methods used to calculate the GM can have great impacts on the level of protection related to REC-1 use in the receiving water. Directive 2 requires the use of a rolling 6-week GM along with the specified levels of allowable exceedance frequency (see Table 7). In consultation with Jeff Soller, Principal Scientist of Soller Environmental, LLC, our understanding is that the method is inconsistent with the specified level of health protection and effectively makes the level of health protection much more stringent than intended. The RPs recommend the calculation of a static, seasonal GM to better align with the desired level of protection. A static, seasonal GM calculation would incorporate a larger set of data and would be more representative of the waterbody condition and the ability to support beneficial uses. It is understood that this approach would effectively eliminate the allowable exceedance frequency of 10%. If the receiving water compliance evaluation is limited to the summer dry season as requested above, this would provide for one GM calculation per year. If data is collected year-round, a second GM could be calculated for the winter dry season as well.</p> <p>Requested Modifications: Modify Footnote 4 in Table 7 as follows: The waterbody GM <del>in any six-week interval</del> must be calculated on a seasonal basis (i.e., summer dry season) using the receiving water data collected as required under Directive 2 <del>weekly on a rolling basis and must not be exceeded more</del></p>	<p>San Diego Water Board staff revised Tentative TSO R9-2024-0010 to remove the interim geometric mean receiving water limitation, and the interim geometric mean outfall effluent limitation. The geometric mean calculation previously required by Tentative TSO R9-2023-0006 was based on the 2019 Ocean Plan method for calculating a six-week geometric mean and was directly tied to the level of health protection required in the 2019 Ocean Plan (e.g. 32 per 1,000 water contact recreators). In contrast, the Bacteria TMDL method for calculating a 30-day geometric mean is directly tied to a level of health protection of 36 per 1,000 water contact recreators. The Permittees request for one seasonal geometric mean would be inconsistent with the Bacteria TMDL intended level of health protection, as well as the current statewide bacteria objectives and EPA’s Recreational Water Quality Criteria (2012), all of which are based on rolling 30-day or 6-week geometric means. Tentative TSO R9-2024-0010 does not include a geometric mean interim bacteria receiving water limitation or geometric mean interim bacteria outfall effluent limitation because it focuses on compliance with single sample maximums and the allowable exceedance frequencies during the 20 weeks of the dry season.</p>
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p><del>than 10 percent of the time. The resulting static GM value must incorporate all of the receiving water d. The geometric mean exceedance frequency must be calculated by dividing the number of geometric means that exceed the geometric mean receiving water limitations in the Table by the total number of geometric means calculated from dry weather samples collected during the monitoring year (October 1 to September 30 of the following year).</del></p>	
G.9	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities	Tables 6.a, 6.b, and 7	<p><b>Modify the Allowable Exceedance Frequency to a Number of Allowable Exceedances</b>  Other bacteria TSOs in the state [e.g., TSO No. R4-2015-0108 and TSO R4-2014-0142] typically specify a number of allowable exceedances rather than basing the limits on frequency (percent exceedances). The RPs support this approach to ensure that the interim limits are attainable. The challenge with the percent exceedances as proposed is in locations where there are limited data collected in the specified time period. For example, an exceedance frequency of 10% could be exceeded by one sample if there are only 10 samples collected in the assessment period, however if the number of allowable exceedances is one, then the evaluation would demonstrate compliance.</p>	Tentative TSO R9-2024-0010 was not revised to include a number of allowable samples. For consistency, Tentative TSO R9-2024-0010 includes percent exceedances similar to the Bacteria TMDL requirements in Regional MS4 Permit, Attachment E, Specific Provision 6.b.(2).

<p>G.10</p>	<p>Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees</p>	<p>Tables 6.a, 6.b, and 7</p>	<p><b>Modify the HF183 Thresholds</b></p> <p>In general, the RPs support the requirement to investigate and abate human waste sources of bacteria as the primary action necessary to attain the final Bacteria TMDL. As a result, the RPs see the value in the use of HF183 or an alternative marker in the TSO as proposed to support this implementation approach as there are benefits to focusing on human health risk.</p> <p>The approach is supported by recent updates to the REC-1 water criteria. The USEPA released updated Recreational Water Quality Criteria<sup>3</sup> (USEPA 2012 Criteria) in 2012 (after adoption of the Bacteria TMDL) that uses a risk-based approach by evaluating epidemiologic studies to establish two risk levels – both of which are deemed protective of human health – as opposed to a water-quality based approach that was originally used. Additionally, the State Water Board amended the FIB Water Quality Objectives (WQOs) for water contact recreational beneficial use (REC-1) in the Ocean Plan and Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan (ISWEBE Plan) in 2018. The new bacteria WQOs acknowledge the importance of a risk-based approach and include enterococci as the indicator for pathogens in ocean and brackish water and E.coli for inland surface water with the levels of these bacterial indicators corresponding to public health risk GI illness rates.</p> <p>In July 2018, the Regional Water Board acknowledged the importance of risk-based approaches in its 2014 Triennial Review Report. The report identifies needed updates and revisions to the regulatory programs, standards, and implementation approaches currently in place to address bacterial contamination. The report determined that efforts to improve recreational water quality should focus specifically on addressing human fecal sources and livestock</p>	<p>Tentative TSO R9-2024-0010 does not require the use of the human marker HF183 and does not establish interim limitations for HF183. Instead, Tentative TSO R9-2024-0010 encourages the use of human source indicators, such as HF183, for source investigation and tracking.</p>
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			<p>sources of bacteria, which are known to pose more risk to recreators than other bacteria sources such as domestic animals or wildlife. The report also concluded that more monitoring and assessment are necessary to identify the specific sources of human fecal waste entering local water bodies. Further, the Regional Water Board report recommended an update of compliance determinations to allow for use of alternative compliance pathways using human-specific fecal indicators in conjunction with existing Basin Plan indicators.</p> <p>While the RPs support the inclusion of the HF183 interim limitations, we would like to note a few aspects of the proposed values included in Directives 1 and 2 that result in conservative assumptions for their use as interim limitations.</p> <ol style="list-style-type: none"> <li>1. The proposed HF183 thresholds are based on a higher percentile (55th) than the median value that Boehm and Soller noted was protective of human health. This makes the values more conservative.</li> <li>2. The proposed HF183 thresholds assume an unknown age of the sewage. While this may be a reasonable assumption for receiving waters, it is likely conservative for outfalls. A range of 0 to 3 days is much more realistic for outfalls. At 0.5 ft per second, which is likely below typical velocities for low flows in storm drains, water would travel more than 24 miles in three days, which is much longer than the typical length of storm sewer systems (typically less than 1 mile in length).</li> <li>3. The single sample maximum values were developed using a standard deviation of FIB data from a reference beach. This standard deviation is likely conservative when applied to HF183 data.</li> </ol> <p>The impact of the conservative assumptions was not fully quantified in the information provided and higher concentrations may still be protective of human health based on the findings in Boehm and</p>	
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>Soller, 20204. The RPs would like to further discuss these conservative assumptions and evaluate whether they align with the use of the HF183 thresholds as interim limitations. The RPs look forward to working with the Regional Water Board staff to further a risk-based approach to addressing bacteria exceedances and evaluating the appropriate use of HF183 as a tool in that approach.</p>	

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
G.11	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees	Directive 2	<p><b>Modify the Requirement to Meet an Illness Rate as an Interim Receiving Water Limitation</b></p> <p>The first sentence of Directive 2 indicates that MS4s discharges “must not cause or contribute to gastrointestinal illness rates of greater than 36 per 1,000 water contact recreators in corresponding TSO waterbodies.” It is not appropriate to hold the RPs to this threshold as an interim limitation because it is equivalent to the final limitations set forth in the Permit, with which the RPs cannot currently comply. Any interim receiving water limitations included in the Tentative TSO should be attainable and not create alternative expressions of the existing Permit limitations.</p> <p>The proposed methods of complying with this interim limitation include allowable exceedance frequencies. Therefore, the RPs request that the Directive 2 language be modified to reference the allowable exceedance frequencies.</p> <p>Requested Modifications:            Directive 2. Interim Receiving Water Limitations. Discharges from MS4s owned and operated by a TSO Responsible Permittee must not cause or contribute to gastrointestinal illness rates greater than 36 per 1,000 water contact recreators in corresponding TSO waterbodies <u>at a frequency higher than the allowable frequency shown in Table 7.</u></p>	San Diego Water Board staff revised Tentative TSO R9-2024-0010 to clarify that TSO Responsible Permittees must meet the interim receiving water limitations, not a given illness rate.

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
G.12	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees	Directive 1.A	<p><b>Allow Continuous Flow Monitoring to be Used to Demonstrate No Discharge</b></p> <p>Directive 1.A requires weekly outfall monitoring or weekly conveyance system monitoring to demonstrate that effluent discharge is eliminated. The RPs have installed continuous flow monitoring equipment at many of the outfalls in the watershed. This flow instrumentation provides reliable data on flow conditions that can be used to evaluate the presence or absence of flow, as well as to quantify the flow. Therefore, demonstration of no discharge can be reasonably demonstrated through continuous flow monitoring and should be allowed in place of weekly outfall monitoring where appropriate.</p>	<p>San Diego Water Board staff revised Tentative TSO R9-2024-0010 to include visual flow monitoring. TSO Responsible Permittees may demonstrate compliance with Directive 2.B Interim Bacteria Flow Discharge Limitations. Continuous flow monitoring may be proposed as part of the TSO Monitoring Plan required by Directive 3.</p>

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
G.13	<p>Los Peñasquitos WMA  Copermittees, San Dieguito River WMA  Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA  Copermittees, Orange County Permittees</p>	Directive 2.A	<p><b>Clarify that either HF183 or fecal indicator bacteria (FIB) can be used to evaluate interim compliance</b>  Directive 2.A explicitly indicates that responsible permittees may use either FIB or HF 183 standards to demonstrate compliance with interim receiving water limitations. As it is currently written, analyte requirements for Directive 1 are ambiguous as to whether interim effluent limitations must be met for both FIB and HF 183 in order to demonstrate compliance. Regional Water Board staff have indicated that the intent of Directive 1 is to allow responsible permittees to select which analyte group they wish to utilize to demonstrate compliance, so long as all responsible permittees discharging to a TSO waterbody select the same standard. Language in the Tentative TSO should be updated to be consistent with the intent of Regional Water Board staff.</p>	<p>Tentative TSO R9-2024-0010 does not require the use of the human marker HF183 and does not establish interim limitations for HF183. Instead, Tentative TSO R9-2024-0010 encourages the use of human source indicators, such as HF183, for source investigation and tracking.</p>

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G.14	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees	Directive 1	<p><b>Clarify when the interim limitations apply</b>            Directive 1 contains ambiguous language that makes it unclear that compliance with most of the interim limitations must be demonstrated by September 30, 2026. However, Directive 2 is clear that compliance with the interim limitations must be demonstrated by September 30, 2026. The Tentative TSO should be modified to provide consistency between the two interim limitation directives.</p>	San Diego Water Board staff revised Tentative TSO R9-2024-0010 to clarify compliance with Directive 1 and Directive 2. Compliance with the Tentative TSO R9-2024-0010 is required each year. Final compliance with Tentative TSO R9-2024-0010 is required by September 30, 2028.

G.15	<p>Los Peñasquitos WMA  Copermittees, San Dieguito River WMA  Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA  Copermittees, Orange County Permittees</p>	Directive 1.A and Directive 2.A.1	<p><b>Clarify how to demonstrate compliance through the no discharge pathway</b></p> <p>Directive 1 of the Tentative TSO describes two possible compliance pathways for the RPs to meet interim effluent limitations. The first of these, Directive 1.A, requires the RPS to demonstrate that during dry weather the MS4 outfall or conveyance system is dry and that the receiving water segment between the MS4 discharge point(s) and the corresponding Tentative TSO water body is also continually dry. The RPs should be allowed to demonstrate no discharge from their MS4 system to Tentative TSO receiving waters via no direct or indirect discharges, and not be required to demonstrate both. There can be sources of flow to creeks under dry weather conditions other than MS4 discharges, including intrusion of shallow groundwater, over which the RPs have no control. If outfalls are dry, flow in the creek does not indicate that flow from the MS4 has not been eliminated. Similarly, if there is flow from an outfall but it dries up in a tributary receiving water before reaching the Tentative TSO water body segment, then that should demonstrate the MS4 is not contributing flow to the Tentative TSO water body.</p> <p>In a similar sense, Directive 2.A.1 states that observed dry conditions in the receiving water must not be included in the compliance assessment for the GM and SSM. While dry conditions in the receiving water do not indicate that all discharges from the MS4 have been eliminated, it would indicate that any MS4 discharges that are occurring are not affecting water quality in the receiving water.</p> <p>Regional Water Board staff have confirmed that the intent of Directive 1.A is to allow for demonstration of compliance via either elimination of direct or indirect MS4 discharges to TSO water bodies. The concept is also applicable to Directive 2. As such, the RPs request that the Regional</p>	See response to comment G.12.
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			Water Board update the language of the Tentative TSO to reflect the stated intent of Regional Water Board Staff.	



G.16	<p>Los Peñasquitos WMA  Copermittees, San Dieguito River WMA  Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA  Copermittees, Orange County Permittees</p>	Tables 6.a, 6.b, and 7	<p><b>Remove the requirement that HF183 not be used when recycled water is present and allow the RPs to evaluate whether the use is appropriate for a given watershed that might have recycled water</b></p> <p>Tables 6.a, 6.b, and 7, which describe interim effluent and receiving water limitations in the Tentative TSO, all include a footnote that indicates HF 183 may not be used to demonstrate compliance where the sources of HF183 are disinfected recycled water or disinfected treated water. The justification provided for this exclusion is that common HF 183 analytical methods do not distinguish between live and inactive cells, so the circumstance may result in false positives. While the RPs acknowledge that common HF183 analytical methods may result in false positives, it is not clear why this would mean that HF183 cannot be used to demonstrate compliance. If the RPs elect to use HF183 even though we acknowledge that disinfected recycled water or treated water may result in false positives, and our monitoring data demonstrates that HF183 nonetheless meets the standards in the Tentative TSO, there should not be any scientific reason to conclude that the data does not demonstrate compliance. In other words, if the sum of copies from live and dead cells is below a standard set for live cells, then the number of copies from live cells only is also below the standard and the RPs should be considered compliant. Because the Tentative TSO allows for use of either FIB or HF183 to meet interim limitations, the RPs believe it should be left to individual responsible permittees to determine whether HF183 is appropriate for their MS4 and receiving waters.</p> <p>Requested Modifications:  Modify Directive 1 as follows:  Directive 1. Interim Bacteria Effluent Limitations.  <del>On and after the effective date of this TSO,</del></p>	See response to comment G.13.
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>Discharges in dry weather from a TSO Responsible Permittee's MS4 outfalls to each corresponding TSO waterbody segment and associated tributaries thereto (TSO watersheds), collectively must not exceed the interim effluent <u>bacteria</u> limitations for each corresponding TMDL waterbody type by September 30, 2026, or the deadlines specified in Table 6.a and Table 6.b below. TSO Responsible Permittees must demonstrate compliance with the Interim Effluent Limitations for HF183 or FIB through the method described in Directive 1.A, or Directive 1.B, or with <u>Interim Receiving Water Limitations for HF183 or FIB as described in Directive 2</u> below.</p> <p>Modify the first row of Table 6a as follows:  [Table not included here]</p> <p>Delete that language that prevents the use of HF183 in waterbodies with recycled water sources from Table 6a, footnote 6, Table 6b, footnote 3 and delete footnote 2 to Table 7.</p>	

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
G.17	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees	Directive 1 and Directive 2	<p><b>Revise Monitoring Requirements to be consistent with Request #2.1 (Provide the Option to Meet Directive 1 or 2, Not Require Compliance with Both)</b></p> <p>If the Tentative TSO is revised to allow the RPs to demonstrate compliance via either MS4 effluent monitoring or receiving water monitoring, the RPs should have the option of implementing the monitoring required by the Tentative TSO for only the type of monitoring upon which the RPs are relying for compliance. For example, if the RPs are pursuing compliance with Receiving Water Limitations through Directive 2, then the RPs would implement the receiving water monitoring requirements of Directive 2 but not the additional MS4 outfall monitoring required by Directive 1.</p>	San Diego Water Board staff revised Tentative TSO R9-2024-0010 to require compliance and monitoring with either Directive 1 or Directive 2 for TSO Responsible Permittees discharging to TSO Beach segments.

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
G.18	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees	Finding 23	<p><b>Modify the Monitoring Language in Directive 1 and Directive 2 to require monitoring to occur at existing TMDL monitoring locations</b></p> <p>TMDL compliance monitoring locations for beach segments are typically consistent with historic AB411 locations and with the baseline data utilized to develop the TMDL. These locations provide long term datasets that sufficiently represent waterbody conditions to assess compliance with NPDES permits and TMDLs as well as long-term trend analyses. Utilizing the existing locations avoids the need to develop a new monitoring plan and allows monitoring to begin immediately.</p> <p>Recommended Modifications:            Modify Finding 23 as follows:            This TSO also <u>allows for</u> <del>requires</del> modifying monitoring station locations to support more accurate receiving water condition assessment needed to determine compliance with final WQBELs for FIB.</p>	San Diego Water Board staff revised Finding 22 in Tentative TSO R9-2024-0010.

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G.19	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees	Directive 1.B	<p><b>Modify the Monitoring Language in Directive 1 Regarding Number and Location of MS4 Outfalls and Monitoring Frequency to Reflect Site Specific Conditions</b></p> <p>Directive 1 Item 1.B as written in the tentative TSO requires demonstration of compliance with interim effluent limitations based on “one or more outfalls... using a scientifically and statistically sound methodology to choose the number and locations of outfalls needed to collect data that are representative of all the Responsible Permittee’s MS4 discharges to the TSO waterbody in question”. The RPs request that this language be clarified to only require demonstration of compliance at outfalls discharging directly to the TMDL-named waterbody and at a maximum of five (5) outfalls. The RPs also request that the weekly requirement be removed to provide flexibility in capturing site-specific conditions (e.g., seasonal receiving water exceedances or follow up monitoring specifically related to observed exceedances).</p>	San Diego Water Board staff revised Tentative TSO R9-2024-0010 to require monitoring of outfalls with potential to discharge to TMDL segments. For compliance with Directive 2.A, a minimum of five outfalls per TSO Responsible Permittee are required to be monitored. A minimum of five outfalls was selected to encourage TSO Responsible Permittees to conduct additional monitoring at outfalls that discharge to TSO waterbodies as part of their source identification and tracking efforts. The weekly monitoring requirement remains and does not restrict the TSO Responsible Permittees from collecting additional samples to capture site-specific conditions.

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G.20	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees	Directive 1 and Directive 2	<p><b>Modify the Monitoring Frequency in Directive 1 and Directive 2</b></p> <p>Existing TMDL monitoring programs collect, or attempt to collect, approximately 40 dry weather samples per monitoring year. These data, per the TMDL requirements, are sufficient to characterize bacteria concentrations in the receiving water and evaluate compliance with the TMDL. The Tentative TSO specifies at least 34 samples annually; however, sampling frequencies do not align with existing TMDL monitoring programs. The RPs recommend sampling frequencies align with existing TMDL monitoring programs to efficiently and effectively allocate resources leverage overlap of the two programs.</p>	San Diego Water Board staff revised Tentative TSO R9-2024-0010 to only require monitoring during the 20 weeks of the dry season.

G.21	<p>Los Peñasquitos WMA  Copermittees, San Dieguito River WMA  Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA  Copermittees, Orange County Permittees</p>	<p>Directive 4.B.1.a</p>	<p><b>Develop a Streamlined Source Investigation Workplan due 4 months from TSO Adoption</b>  As the Tentative TSO is currently written, the RPs are required to produce an extensive Microbial Source Identification Work Plan (MSIWP) within only a few months of the anticipated TSO adoption date. While some of the enumerated requirements overlap with existing WQIP activities, MSIWP has additional requirements that may not be appropriate for every outfall and TSO waterbody or may not further the RPs’ efforts to achieve final compliance with Permit limits. The RPs propose that MSIWP requirements be reduced and focus on summarizing current knowledge developed through WQIP activities and solidifying next steps. To ensure timely consolidation of existing source identification data, activities, and strategies and to lay a roadmap for future efforts, the RPs suggest that they submit a thorough, but more flexible MSIWP within four months of TSO adoption. Shifting the due date from the currently proposed July 31, 2023, to a due date that will be determined relative to TSO adoption ensures that the RPs will not be penalized for any procedural delays but will none the less act quickly to gather the necessary information.  Requested Modifications:  Revise Directive 4.B.1.a to the following:  4.B.1.a Microbial Source Identification Work Plan. <u>Four months following TSO adoption, the TSO Responsible Permittees for the TSO waterbodies in San Juan Creek, Aliso, Creek, the lower San Diego River, Forester Creek, Tecolote Creek and Chollas Creek shall submit to the San Diego Water Board a Microbial Source Identification Work Plan (MISWP) that includes a summary of the source identification strategies, activities, and their associated schedules including milestones throughout the source investigation. Schedules must include but not be limited to, dates for any</u></p>	<p>San Diego Water Board staff revised the due date for the Microbial Source Identification Work Plan (MSIWP) required in Tentative TSO R9-2024-0010. The MSIWP required in Directive 5.A.1 is due July 12, 2024 (four months after TSO adoption). Requested modifications to minimize the MSIWP requirements were not incorporated. Instead detailed requirements remain outlined in Directive 5.A.1 and the information allows San Diego Water Board staff to understand the specific source identification efforts TSO Responsible Permittees will take to identify sources of bacteria.</p>
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<u>desktop analysis or estimation of potential source contributions, prioritization criteria for investigative activities, field surveys, and outfall and receiving water sampling, and data analysis. The MISWP will include a summary of the potential high risk FIB sources (in Excel and/or GIS), including but not be limited to, locations and conditions of sewer mains and private laterals, septic systems, transient populations, and as applicable, animal feeding operations in the TSO watersheds.</u>	



G.22	<p>Los Peñasquitos WMA  Copermittees, San Dieguito River WMA  Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA  Copermittees, Orange County Permittees</p>	<p>Directive 4.B.2.a and Directive 5</p>	<p><b>Combine the Microbial Source Abatement Workplan with the Pollution Prevention Plan and move submission to no later than 24 months after the TSO adoption</b></p> <p>There is significant overlap between the Microbial Source Abatement Work Plan (MSAWP) described in Directive 4 and the Pollution Prevention Plan (PPP) described in Directive 5. Since the PPP requires descriptions of abatement programs and activities, the RPs suggest folding the MSAWP into the PPP. In turn, the PPP due date would be moved up from January 31, 2027, to 24 months after TSO adoption. This will increase the efficiency of document preparation, regulatory review, and communication with the public. Because the PPP is intended to describe the RPs’ plan for implementation under the Tentative TSO, it should be completed earlier to ensure clarity and mutual understanding of the proposed actions to be implemented. In addition, the requirement to submit operations and maintenance plans (Directive 5.e) should be removed from the PPP requirements. In addition, we request that the RPs be permitted to submit the WQIP or excerpted strategies specific to bacteria from the WQIP to meet the Directive 5 requirements.</p> <p>Requested Modifications:  Revise Directive 4.B.2.a and Directive 5 as follows:  4.B.2.a. <del>Pollution Prevention Plan Microbial Source Abatement Work Plans</del>. The TSO Responsible Permittees must individually or jointly submit <del>Microbial Source Abatement Work Plans (MSAWPs)</del> Pollution Prevention Plans (PPPs) for their corresponding TSO watersheds to the San Diego Water Board no later than <u>24 months following the TSO adoption</u>. <del>A MSAWP previously approved by the San Diego Water Board will be deemed to comply with this Directive if the MSAWP meets the requirements in this Directive.</del> TSO Responsible</p>	<p>San Diego Water Board staff revised the due date for the Microbial Source Abatement Work Plan. The Microbial Source Abatement Work Plan (Directive 5.B.1) is now required to be submitted along with the Pollution Prevention Plan (PPP) (Directive 6.G) no later than January 31, 2026 (twenty-two months after TSO adoption). The requirements of the Microbial Source Abatement Work Plan in Directive 5.B.1 and the requirements of the PPP in Directive 6 were slightly revised. TSO Responsible Permittees may include WQIP excerpted strategies specific to bacteria in the PPP, but a specific PPP submittal is required.</p>
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			<p>Permittees relying on a previously approved MSAWP must so notify the San Diego Water Board by July 31, 2025. The MSAWPs must summarize results of the source investigation activities conducted and the FIB sources (both anthropogenic and natural) identified under Directive 4.B.1. The MSAWPs must propose corrective actions, strategies, activities, and associated schedules and milestones for each high-risk anthropogenic FIB source identified in Directive 4.B.1.a.5 to achieve the following:</p> <ol style="list-style-type: none"> <li>1. Abate the human waste sources into TSO Responsible Permittee's MS4s;</li> <li>2. Abate the non-human anthropogenic sources to ensure that, at a minimum, un-permitted dry-weather flow is not discharged from any livestock or animal feeding operations into MS4 systems or receiving waters; and</li> <li>3. Comply with the Interim Effluent Limitations in Directive 1, Interim Receiving Water Limitations in Directive 2, and Final WQBELs in Directive 3 for MS4 discharges and TSO waterbodies.</li> </ol> <p>Directive 5. Pollution Prevention Plan. The TSO Responsible Permittees for all TSO waterbodies must, pursuant to California Water Code section 13385, subdivision (j)(3)(D) and section 13263.3, subdivisions (d)(1)(D) and (d)(2) and no later than January 31, 2027, submit a Pollution Prevention Plan (PPP), either individually or collectively, for human fecal waste indicators and bacteria with a time schedule for implementation. Pursuant to California Water Code section 13263.3, subdivision (d)(2), the PPP must include, without limitation, all information listed below: [...]</p> <p>Following the update Directive 4.B.2.a language introducing the PPP, enumerate the PPP requirements.</p> <p>Add Directive 4.B.2.a.X as follows to incorporate key components of the MSAWP into the PPP:</p>	
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p><u>4.B.2.a.X The TSO Responsible Permittees must also summarize results of the source investigation activities conducted and the FIB sources (both anthropogenic and natural) identified under Directive 4.B.1 and must propose corrective actions, strategies, activities, and associated schedules and milestones for identified high-risk anthropogenic FIB sources identified in Directive 4.B.1.a. to achieve the following:</u></p> <ol style="list-style-type: none"> <li><u>1. Abate the human waste sources into TSO Responsible Permittee’s MS4s;</u></li> <li><u>2. Abate the non-human anthropogenic sources to ensure that, at a minimum, un-permitted dry-weather flow is not discharged from any livestock or animal feeding operations into MS4 systems or receiving waters.</u></li> </ol>	

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
G.23	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees	Directive 5.e	<p><b>Reduce PPP requirements to better align with the Water Code</b></p> <p>The RPs request that the requirement to submit operations and maintenance plans (Directive 5.e) be removed from the PPP requirements. If the Regional Water Board staff would like to discuss or see the operations and maintenance plans for structural BMPs that have been installed to address the final limitations in the MS4 permit, the RPs are willing to discuss the best mechanism for providing that information. If this is viewed as a necessary requirement for the Tentative TSO, the RPs request that language is included regarding the information that should be provided in the reporting requirements for the Tentative TSO, rather than in the PPP, and limit the required reporting to structural BMPs that were implemented to meet the provisions in the Permit. The RPs also request the ability to use plans developed as part of the WQIP or excerpted strategies specific to bacteria from the WQIP to be submitted to meet the Directive 5.</p>	San Diego Water Board staff revised the language requiring operations and maintenance plans in Tentative TSO R9-2024-0010 Directive 6.F. However, the requirement remains under the PPP section because the San Diego Water Board needs to know that structural BMPs relied upon to abate sources of FIB are properly operated and maintained to function as designed and operation of those BMPs are reliable overtime to continue controlling FIB pollutants necessary to achieve Bacteria Final Dry Weather Water Quality Based Effluent Limits in accordance with the compliance schedule. TSO Responsible Permittees may include existing plans developed in WQIPs or excerpted strategies from WQIPs specific to bacteria in the PPP.

G.24	<p>Los Peñasquitos WMA  Copermittees, San Dieguito River WMA  Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA  Copermittees, Orange County Permittees</p>	N/A	<p><b>Include Provision Regarding Waterbodies Attaining Final Limits Prior to final TSO date</b>  Some RPs will be able to demonstrate compliance with the Permit’s underlying limitations during the life of the Tentative TSO, rendering the Tentative TSO unnecessary for those waterbodies. The Tentative TSO should provide the opportunity for RPs to terminate the Tentative TSO at any time once Permit compliance can be demonstrated, which would be consistent with the Water Code section 13385 requirement that the schedule needed to comply be “as short as possible.” The RPs request that a new Directive be added to address termination of coverage under the Tentative TSO. The new Directive could also clarify that RPs that are able to demonstrate compliance through Directive 1.A or Directive 2.A.2 (no discharge pathways) are in compliance with Provision E.6.b.3 of the Permit and can be removed from the Tentative TSO.  Requested Modifications:  Revise to include a new Directive to the end of the Tentative TSO. The proposed language is as follows:  Directive X. Early Termination/Rescission of TSO  1. Should the data discussed in Finding 6 above establish that any Responsible Permittee is compliant with the MS4 Permit on or before April 4, 2021, consistent with the MS4 permit’s compliance determination requirements as outlined in Special Provision 6(b)(3), then that Responsible Permittee can seek termination or rescission of the TSO as to the particular receiving water(s) addressed via this TSO. Termination or rescission shall not be unreasonably withheld by the Regional Water Board and the Responsible Permittee shall not be responsible for compliance with the provisions of this TSO.  2. Should any Responsible Permittee be compliant with the MS4 Permit on or after April 4,</p>	San Diego Water Board staff added Finding 24 to Tentative TSO R9-2024-0010.
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>2021, consistent with the MS4 permit's compliance determination requirements as outlined in Special Provision 6(b)(3), then that Responsible Permittee can seek termination or rescission of the TSO as to the receiving water(s) addressed via this TSO. Termination or rescission shall not be unreasonably withheld by the Regional Water Board and the Responsible Permittee shall not be responsible for compliance with the remaining provisions of this TSO.</p> <p>The first provision will address those Responsible Permittees that attain compliance on or before April 4, 2021 (the final TMDL compliance date), and the second provision addresses Responsible Permittees who can demonstrate compliance during the life of the TSO.</p>	

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
G.25	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees	Table 8	<p><b>Modify schedule to reflect review periods</b></p> <p>The proposed submittal schedule in Table 8 of the Tentative TSO should be modified such that dates of submittals are reflective of the above comments and plan development and review periods. All dates should be expressed relative to the Tentative TSO adoption date (e.g., four months from TSO effective date, one year from TSO effective date), incorporate milestones for approval of workplans, and have completion dates for the work linked to the approval date of the workplan (e.g., six months after workplan approval). In addition, the updated submittal schedule reflects a reduced reporting frequency of once per year and due dates that align with WQIP annual report submission.</p> <p>Requested Modifications: Revise Table 8. Semiannual Compliance Report Submittal Schedule as follows: [Table not included]</p>	San Diego Water Board staff revised Table 6 in Tentative TSO R9-2024-0010. Table 6 includes revised due dates for TSO required elements that are relative to the Tentative TSO adoption date and require annual submittal of TSO Compliance Reports that align with WQIP annual report submittal dates.

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
G.26	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees	N/A	<b>Extend final compliance deadline to five years after TSO Adoption Date</b> TSO adoption is anticipated to take place in May 2023, as such the RPs request the final compliance deadline be extended to May 2028 or later (depending on the adoption date) to provide a full five years of TSO coverage and more time to generate monitoring data. In addition, it appears final compliance is required starting in October 2026. While results do not need to be reported until January 2028, since the reporting is based on data for the October 2026 through September 2027 monitoring year, and 0% exceedance is required, that effectively means no exceedances are allowed beginning October 2026. The RPs request that the deadline for meeting final TMDL requirements be moved to the end of the TSO period, so a full five years is given to meet the standards.	San Diego Water Board staff revised the Tentative TSO compliance date to align with the last dry season sampling date available during the TSO timeframe. Demonstration of compliance with the TSO and the Final Bacteria Dry Weather WQBELs in the Regional MS4 Permit is required by September 30, 2028, since that is the last day of the dry season and the last day of sample collection before the Final TSO Compliance Report is due on January 31, 2029.
G.27	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees	Directive 1 and Directive 2	<b>Revisions to Directives 1 and 2 regarding compliance calculations</b> Please clarify that compliance assessments of monitoring data will only be performed on data sets that comprise an entire monitoring year.	San Diego Water Board staff revised Directive 1 and Directive 2 in Tentative TSO R9-2024-0010 to clarify monitoring data compliance assessments must be performed on data sets collected during the dry season of each monitoring year.



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G.28	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees	Directive 3	<b>Revision to Directive 3</b> Suggested revision for clarity: "...in accordance with Regional MS4 Permit Attachment E Provision 6.b, including future amendments thereof..."	Tentative TSO R9-2024-0010 includes the suggested language from this comment in Directive 4.
G.29	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees	Directive 4.B.2.a.3	<b>Revision to Directive 4</b> Suggested revision for clarity in Directive 4.B.2.a.3: Revise language to reflect the TMDL requirements accurately. The TMDL does not require Copermittees to meet both MS4 discharge and receiving water standards to achieve final compliance.	San Diego Water Board staff revised Directive 6.G.4 in Tentative TSO R9-2024-0010.

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G.30	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees	Directive 2.A.1, Directive 2.A.1.a, and Directive B.2.a.3	<p><b>Address Typographical Errors</b></p> <p>The following typographical errors should be addressed to improve Tentative TSO clarity:</p> <ul style="list-style-type: none"> <li>• Directive 2.A.1 (p. 22): it appears that “complied” should be “compiled”</li> <li>• Directive 2.A.1a (p.22): it appears that the reference to “Specific Provision 6” may have been intended to refer to “Directive 6” instead</li> <li>• Directive B.2.a.3 (p.25): “...including but not be limited to...”</li> </ul>	The suggested edits were included in Tentative TSO R9-2024-0010.
G.31	Los Peñasquitos WMA Copermittees, San Dieguito River WMA Copermittees, Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees	Part I and Part II	<p><b>Update Findings to Reflect other Proposed Changes</b></p> <p>Findings should be modified to maintain consistency with other proposed changes as described above in the comment letter.</p>	Tentative TSO R9-2024-0010 includes revised findings consistent with proposed changes made to the directives.

H.1	Chollas Creek Municipalities	Directives 1 and 2	<p><b>Include a Load Reduction Compliance Pathway in the TSO</b></p> <p>Specific Provision 6.b.(3)(d) of Attachment E of the MS4 Permit provides a Bacteria TMDL compliance pathway based on reducing bacteria loading from MS4s. Since loading is the product of concentration and volume, this pathway addresses circumstances where Copermittees achieve significant reductions in the volume of water discharged from their MS4s. Copermittees that eliminate virtually all, but not 100%, of the dry weather flow from their MS4s would not be able to demonstrate compliance via the no discharge compliance pathway in the TSO (eliminating direct or indirect discharges), and they also might not meet concentration-based compliance standards. A load reduction compliance pathway provides a mechanism for Copermittees in this circumstance to comply with the TSO, which is appropriate because the TMDL also provides a load reduction compliance pathway.</p> <p>The load reduction pathway is particularly important for watersheds like Chollas Creek, where dry weather flow has mostly been eliminated in the watershed, but small dry weather discharges are occasionally observed.</p> <p>As discussed in the FY 21-22 San Diego Bay Watershed Management Area WQIP Annual Report, based on feedback from San Diego Water Board staff following the submittal of the 2020–2021 annual report, the Copermittees evaluated other pathways that could potentially be pursued, given that dry weather flow is rarely observed in Chollas Creek and taking into account the San Diego Water Board’s concerns about the appropriateness of using the data described above to demonstrate compliance with the receiving water compliance pathway. Based on that evaluation, and the fact that continuous flow meters in Chollas Creek provide a high-quality data set to evaluate total dry weather discharge,</p>	<p>Tentative TSO R9-2024-0010 does not include a load reduction compliance pathway for interim compliance because including one would require TSO Responsible Permittees to conduct additional monitoring of flow, Enterococcus, Fecal Coliform, and Total Coliform at MS4 outfalls. This additional monitoring is needed for TSO Responsible Permittees to be able to assess monitored loads compared to the Bacteria TMDL wasteload allocations for all three fecal indicator bacteria. Instead, Tentative TSO R9-2024-0010 offers TSO Responsible Permittees the option to conduct less monitoring to focus on specific fecal indicator bacteria applicable to Ocean Waters (i.e. Enterococcus and Fecal Coliform) and Inland Creeks (i.e. <i>E.coli</i>). These indicators will ensure bacterial conditions in the receiving waters remain the same or improve (but do not worsen) during the term of the TSO. Directive 4 of Tentative TSO R9-2024-0010 allows TSO Responsible Permittees to use the “load reduction pathway” from Regional MS4 Permit, Attachment E, Specific Provision E.6.b.(3)(d) to demonstrate compliance with the Final Dry Weather WQBELs.</p>
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>the Chollas Creek Copermittees elected to pursue the MS4 percent pollutant load reduction pathway. The 2021–2022 monitoring year dry weather loads are over 99 percent lower than the baseline TMDL loads, which meets the TMDL dry weather percent load reduction goal.</p> <p>Requested Modifications: Modify the Tentative TSO to add a load reduction compliance pathway as an alternative to demonstrating compliance via complying with the numeric limits specified in Directives 1 and 2. Suggested revisions to the Tentative TSO are provided below.</p> <p><u>1.C. Comply with Interim Load Reduction Requirements: Demonstrate that load reductions from MS4 discharges are greater than or equal to the waterbody specific Percent Load Reductions in Table XX.</u></p> <p><u>2.A.3. Comply with Interim Load Reduction Requirements: Demonstrate that loads reductions in receiving waters are greater than or equal to the waterbody specific Percent Load Reductions included in Table XX.</u></p> <p><u>Table XX. Interim Load Reduction Requirements [Insert Table 6.6 from Attachment E of the MS4 Permit]</u></p>	

H.2	Chollas Creek Municipalities	Finding 7	<p><b>Revise the Discussion of the Load Reduction Compliance Pathway in Tentative TSO Finding 7</b></p> <p>Tentative TSO Finding 7 states, in part, “The Aliso Creek and San Juan Creek Responsible Permittees elected to comply with Specific Provision 6 through the pollutant load reduction pathway (Specific Provision 6.b.(3)(d)). Review of the supporting documentation submitted in the 2020-2021 South Orange County WQIP Annual Report showed that the bacteria load reductions were calculated based on receiving water monitoring data and not outfall monitoring data as required by Specific Provision 6.b.(3)(d).” Specific Provision 6.b.(3)(d), however, does not include any language that specifies what type of data can or cannot be used to demonstrate compliance via this pathway. While the compliance pathway is for MS4 load reductions, in certain circumstances MS4 load reductions can be reasonably estimated using receiving water data.</p> <p>Section 9.3.2 of the Bacteria TMDL Technical Report<sup>2</sup> states that “During dry weather, flow, and hence bacteria loads, are generated by urban runoff, which is not a product of a reference system...Although TMDLs must also include LAs for each nonpoint source, LAs were not developed for controllable sources for dry weather conditions. This is because land uses associated with nonpoint sources are not expected to discharge bacteria to receiving waters during dry weather conditions.” The load reduction targets in Table 6.3 of MS4 Permit Attachment E are taken from Bacteria TMDL Technical Report Tables 9-4a, 9-4b, and 9-4c, which assume that 100% of the existing load overall watershed loads modeled in the creeks is from the MS4: all of the existing load and allowable load in TSO receiving water bodies are assigned to MS4s, for example, if 100 percent of the flow in the receiving water is assumed to be from MS4 discharges.</p>	<p>Finding 7 in Tentative TSO R9-2024-0010 was modified to reflect that the Copermittees assessed compliance <u>without considering outfall data</u>, as required by Specific Provisions 6.b.(2)(b)(ii) and 6.b.(3)(d). Finding 7 simply identifies that the supporting documentation submitted in the 2020-2021 South Orange County WQIP Annual Report showed bacteria load reductions which were calculated based on receiving water monitoring data and not outfall monitoring data. Regional MS4 Permit. Attachment E. Specific Provision 6.b.(2)(b)(ii) establishes the load reduction requirements as effluent limitations from the Copermittees’ MS4s, and 6.b.3(d) allows compliance with the Final Dry Weather WQBELs to be demonstrated with “pollutant load reductions for discharges from the Responsible Copermittees’ MS4 outfalls.” Regional MS4 Permit, Attachment E, Specific Provision 6.b.3(d) clearly requires outfall assessments to be considered. These provisions, while consistent with the assumptions and requirements of the TMDL, require Copermittees using this compliance path to provide data demonstrating they are in fact achieving the required load reductions. Reliance on assumptions in the TMDL supporting documentation in lieu of data showing the current condition of receiving waters is not adequate to demonstrate permit compliance. TMDL Responsible Permittees may</p>
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>Bacteria TMDL Technical Report Appendix K clearly states that the dry weather modeling used to calculate existing and allowable loads, and in turn required load reductions, was modeling of the receiving water. Further, as described in Sections K.3 through K.5 of the same appendix, the model was calibrated and validated using receiving water data. Because the Bacteria TMDL Technical Report analysis used to generate the required MS4 bacteria load reductions was based on receiving water modeling and receiving water data, Copermittees should also be allowed to use receiving water data to assess and demonstrate compliance with the load reduction pathway.</p> <p>The broad statement in Tentative TSO Finding 7 that receiving water monitoring data cannot be used to demonstrate compliance with the load reduction compliance pathway in Specific Provision 6.b.(3)(d) and that only outfall monitoring can be used is not supported by the language of Specific Provision 6.b.(3)(d), conflicts with the approach used to calculate the MS4 load reduction targets in the TMDL, and should be removed from the Tentative TSO.</p> <p>Requested Modifications: Revise Finding 7 to remove the broad statement that receiving water monitoring cannot be used to demonstration compliance with a load reduction pathway.</p>	<p>demonstrate compliance with Regional MS4 Permit Attachment E Specific Provision 6.b.3(d) using a combination of outfall monitoring data and receiving water monitoring data. In addition, receiving water data may serve as outfall data in appropriate cases, such as when the receiving water is comprised of 100% effluent.</p>

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
H.3	Chollas Creek Municipalities	Directive 2.A.1	<p><b>Revise Directive 2 to Require Monitoring at a Specific Frequency rather than Requiring Numbers of Samples Collected and Provide Analytical Flexibility for Creeks</b></p> <p>The North and South Fork monitoring sites in Chollas Creek are almost always dry. The wording of Directive 2.A.1 requires specific numbers of samples to be collected and analyzed. Because the monitoring sites in Chollas Creek are frequently dry, the Chollas Creek Municipalities could not collect the required number of samples and therefore would not be able to comply with this requirement. We request revising the language in Directive 2.A.1 to refer to number of monitoring site visits rather than samples collected.</p> <p>In addition, the wording of Directive 2.A.1.b requires analysis of both HF183 and FIB at creek segments. The Chollas Creek Municipalities request the language be revised to allow analyses for either FIB or HF183, consistent with beach segment requirements.</p> <p>Requested Modifications: Suggested edits to the Tentative TSO are provided in Attachment 1.</p>	<p>This comment is referring to Directive 2.A.1 from Tentative TSO R9-2023-0006. Tentative TSO R9-2024-0010 does not require TSO Responsible Permittees discharging to TSO Creeks to monitor receiving waters.</p>

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
H.4	Chollas Creek Municipalities, Mission Bay WMA – City of San Diego	Directive 4.A	<p><b>Remove Directive 4.A (Watershed Survey)</b></p> <p>Tentative TSO Directive 4.A requires a study to evaluate the flow regime in Chollas Creek and Tecolote Creek, referred to as the watershed survey. The portion of Chollas Creek to which the TMDL applies, the lower 1.2 miles, is a fairly short segment that has already been studied extensively. The Chollas Creek Municipalities have already collected a large amount of data regarding the dry weather flow regime in this portion of Chollas Creek, such as maintaining continuous flow meters at sites in the North and South Forks of the creek for multiple entire monitoring years. Accordingly, it is not necessary to complete significant additional field work to classify the flow regime within the portion of Chollas Creek subject to the Bacteria TMDL.</p> <p>If the Water Board requires additional detail on the flow regime within the TMDL segment of Chollas Creek, the Chollas Creek Municipalities would be open to including a summary of this information in a future annual TMDL monitoring report upon request from Water Board staff.</p> <p>Requested Modifications: The Chollas Creek Municipalities request that the requirement for a watershed survey to be completed in Chollas Creek (Directive 4.A) is removed from the TSO given the extensive data collection already completed. See Attachment 1 for suggested modifications.</p>	<p>Directive 4.A from Tentative TSO R9-2023-0006 was removed and is not required in Tentative TSO R9-2024-0010. San Diego Water Board staff met with City of San Diego staff on December 7, 2023, to discuss the need for a watershed survey in Tecolote Creek and Chollas Creek. City of San Diego staff presented the extensive data the City has collected in Chollas Creek and Tecolote Creek to measure flow conditions of the receiving water. San Diego Water Board staff determined the data collection efforts already completed by the City were sufficient to remove the requirement from Tentative TSO-R9-2024-0010.</p>



Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
H.5	Chollas Creek Municipalities	Directive 1.A	<p><b>Revise Directive 1.A to Allow Use of Additional Data Collection Methods</b></p> <p>Revise language to allow for demonstrating compliance via other, equally effective methods, such as, as an alternative to weekly observations. Also allow for monitoring frequency to be reduced after a location has been shown to be dry for a prolonged period.</p> <p>Requested Modifications: Suggested edits to Directive 1.A are provided in Attachment 1.</p>	<p>San Diego Water Board staff included the option for TSO Responsible Permittees to use continuous flow monitoring devices in Directive 2.B of Tentative TSO R9-2024-0010. TSO Responsible Permittees may propose reducing monitoring frequencies in TSO Monitoring Plans as part of Directive 3 or in TSO Compliance Reports required in Directive 7.</p> <p>TSO Responsible Permittees may also demonstrate compliance of the Final Dry Weather WQBELs with the “No Discharge” pathway of Regional MS4 Permit, Attachment E, Specific Provision 6.b.3(a) through alternative approaches including the use of continuous flow monitoring or camera systems.</p>

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
H.6	Chollas Creek Municipalities	Table 5	<p><b>Remove the County of San Diego and the San Diego Unified Port District as TSO responsible parties for Chollas Creek</b></p> <p>The County of San Diego was named as a responsible party in the original Bacteria TMDL because at that time the County had a small amount of jurisdictional area in the Chollas Creek Watershed. Since then, the unincorporated area within the Chollas Creek Watershed has been incorporated into the City of San Diego, and the County of San Diego no longer has any jurisdictional area in the Chollas Creek Watershed. More details are provided in Appendix 5 of the 2016-2017 San Diego Bay Water Quality Improvement Plan Annual Report. Because the County does not have any jurisdictional area that drains to Chollas Creek, and therefore does not discharge to Chollas Creek, the County requests not to be named as a responsible party for Chollas Creek in the TSO.</p> <p>In addition, please remove the San Diego Unified Port District (Port) from the table of responsible parties. On January 26, 2023, the Port met with Regional Board staff to discuss their unique position of not owning or maintaining any MS4 within the Chollas Creek watershed as it relates to TSO R9-2023-0006. The Port will be submitting a separate comment letter and supporting documentation providing justification as to why it should not be included in the TSO.</p> <p>Requested Modifications: Remove the County of San Diego and the Port from the list of responsible parties for Chollas Creek in the Tentative TSO.</p>	Tentative TSO R9-2024-0010 does not include the County of San Diego or the Port of San Diego as TSO Responsible Permittees for the Chollas Creek TSO segment in Table 3.c. Also see response to comment B.1.

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
H.7	Chollas Creek Municipalities, Mission Bay WMA – City of San Diego	Table 7	<p><b>Clarify Receiving Water Thresholds Applicable to Chollas Creek, Tecolote Creek and other Creeks Named in the TSO</b></p> <p>There are discrepancies between the salinity requirements incorporated from the Statewide Objectives and the differentiation between beaches and creeks consistent with the TMDL requirements in MS4 Permit Attachment E.6.</p> <p>Requested Modifications: Please revise Table 7 to further clarify that <i>E. coli</i> objectives apply to all creeks named as such in the TMDL regardless of salinity.</p>	<p>Tentative TSO R9-2024-0010 does not require TSO Responsible Permittees discharging to TSO Creeks to monitor for <i>E. coli</i> in the receiving water.</p> <p><i>E. coli</i> outfall monitoring is required for discharges to TSO Creeks. The interim effluent limitation for <i>E. coli</i> applies to all TSO Creeks, including those where the salinity is greater than 1 ppt more than 5 percent of the time.</p>

H.8	Chollas Creek Municipalities, Mission Bay WMA – City of San Diego	Directive 1.A	<p><b>Clarify that MS4 Outfall Monitoring (Directive 1) Is not Required when the Receiving Water Downstream of the Outfall Is Dry</b></p> <p>The TMDL segment of Chollas Creek is frequently dry. Based on the wording in Directives 1 and 2, it appears that MS4 outfall monitoring under Directive 1 is not required when the downstream receiving water is dry. For example, Directive 1.A states that “To show all indirect dry weather discharges have been eliminated, the Responsible Permittee must demonstrate that the receiving water segment between the MS4 discharge point(s) and the corresponding TSO waterbody listed in Table 2 is continually dry in dry weather.” This statement implies that the absence of flow in the receiving waters is sufficient to demonstrate that effluent discharges have been eliminated. For example, if the North Fork Chollas Creek monitoring site, which is located at the upstream end of the North Fork portion of the TMDL segment of Chollas Creek, is dry, any MS4 outfall monitoring sites located upstream of the South Fork site would not need to be monitored. This is because the receiving water being dry demonstrates that there are no indirect discharges from upstream MS4s at that time.</p> <p>Requested Modifications: The Permittees request that the Tentative TSO clearly states that when a downstream receiving water site is dry, MS4 outfall monitoring is not required at sites upstream of that receiving water site.</p>	<p>Directive 1.A from Tentative TSO R9-2023-0006 was removed from Tentative TSO R9-2024-0010 and revised to require TSO Responsible Permittees to reduce effluent discharge instead of eliminating effluent discharges. Tentative TSO R9-2024-0010 requires TSO Responsible Permittees discharging to TSO Creeks to conduct outfall monitoring to demonstrate compliance with TSO directives. Chollas Creek Municipalities and the City of San Diego have provided flow status observations of Chollas Creek and Tecolote Creek during receiving water sampling days in past WQIP Annual Reports, but have not provided supporting documentation to demonstrate discharges from their MS4 outfalls do not reach the TMDL receiving water segments during non-sampling days. Therefore, monitoring at outfalls upstream of TMDL receiving water segments is necessary to confirm there are no direct or indirect MS4 discharges during dry weather.</p> <p>Alternatively, Permittees may pursue compliance with the “No Discharge” pathway from Regional MS4 Permit Attachment E Specific Provision 6.b.(3)(a) by providing supporting documentation and demonstrating there are no direct or indirect MS4 discharges to the TMDL receiving waters during dry weather.</p>
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<p>H.9</p>	<p>Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees</p>	<p>Table 6.a, Table 6.b, Table 7</p>	<p><b>Modify the Interim Limitations for Chollas Creek, Tecolote Creek, the Lower San Diego River and Forester Creek to be Attainable</b></p> <p>The MS4 outfalls and receiving waters in Chollas Creek, Tecolote Creek, the Lower San Diego River and Forester Creek are not able to meet the proposed interim limitations in the Tentative TSO. The modifications proposed in the previous requests will make these values more attainable, but it may be necessary to develop site specific interim limitations, depending on future modifications to the Tentative TSO. We look forward to working with Regional Water Board staff to refine the interim limitations and we hope that staff will remain open to the possibility of developing site-specific interim limitations based on data collected to date.</p> <p>Recommendation: The Copermittees request that the Regional Water Board staff work with the Copermittees to develop waterbody specific interim limitations for FIB and HF183 that are appropriate for Chollas Creek, Tecolote Creek, the Lower San Diego River and Forester Creek.</p>	<p>Table 5.b in Tentative TSO R9-2024-0010 includes an allowable <i>E.coli</i> exceedance frequency of 90 percent for Chollas Creek, 80 percent for Tecolote Creek, 70 percent for Lower San Diego River, and 60 percent for Forester Creek. Previously, Tentative TSO R9-2023-0006 included a 57 percent <i>E.coli</i> exceedance frequency for Chollas Creek, a 67 percent <i>E.coli</i> exceedance frequency for Tecolote Creek, a 68 percent <i>E.coli</i> exceedance frequency for Lower San Diego River, and a 80 percent <i>E.coli</i> exceedance frequency for Forester Creek.</p> <p>During development of Tentative TSO R9-2024-0010, San Diego Water Board staff requested Copermittees to review outfall monitoring results of current monitoring programs and recommend revised exceedance frequencies.</p> <p>The Copermittees proposed a 100 percent exceedance frequency be allowed based on the highest percent exceedance observed in the past years of data. A 100 percent exceedance frequency is the same as no limitation at all. San Diego Water Board staff is proposing the exceedance frequencies in Table 5.b to encourage the Copermittees to reduce and eliminate sources of bacteria causing exceedances in the City's MS4s.</p>
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
H.10	Chollas Creek Municipalities, Mission Bay WMA – City of San Diego, San Diego River WMA Copermittees, Orange County Permittees	Directive 2.A.1.a	<p><b>Additional Requirements for Dry or Pondered Monitoring Events in Receiving Waters</b></p> <p>The Tentative TSO states: “If a TMDL compliance station in creeks or streams is dry or only contains ponded water, the TSO Responsible Permittees shall examine the flow conditions within 200 meters (upstream and downstream) from the compliance station in the creeks and streams and collect samples if flows are observed within 200 meters from the compliance station.”</p> <p>Efficient sampling programs are particularly important for short hold time pollutants such as indicator bacteria. For agencies (e.g., City of San Diego) that lead sampling efforts for dozens of TMDL segments, efficiency is important to maximize the number of locations visited in a day while meeting time-sensitive hold times and adhering to laboratory operating hours. Secondly, the USEPA has provided guidance to assess representative and sampleable conditions based on the flow regime status (i.e., &gt;50% water throughout a channel reach (at least 150 meters in length) [USEPA, National Rivers and Streams Assessment 2018/19 Field Operations Manual for Wadeable Streams; Version 1.2. Document: EPA-841-B-17-003a. May 2019.]).</p> <p>Recommended Modifications: Modify Directive 2.A.1.a as proposed in Attachment 1 to clarify monitoring requirements related to dry conditions or ponded water.</p>	This comment is no longer applicable to Tentative TSO R9-2024-0010 because Tentative TSO R9-2024-0010 does not require TSO Responsible Permittees discharging to TSO Creeks to monitor in the receiving water.

I.1	Mission Bay WMA – City of San Diego	Table 2 and Table 5	<p><b>Remove select Pacific Ocean shoreline segments in the Mission Bay Watershed Management Area from the Tentative TSO</b></p> <p>The City requests that the Mission Bay Pacific Ocean Shoreline segments as noted in Table 1 be removed from the Tentative TSO. This change would apply to Table 2 and Table 5 of the Tentative TSO. The City has implemented effective dry weather programs to address bacteria under the MS4 Permit for over a decade, resulting in improved conditions in these segments of shoreline. Based on current watershed management efforts and resulting monitoring data, recreational beneficial uses are currently supported at these segments, and the City does not foresee future exceedances of the MS4 Permit’s requirements.</p> <p>This request is justified by:</p> <ol style="list-style-type: none"> <li>1. The consistent attainment of the final TMDL dry weather geometric mean receiving water limitations, with exception of Children’s Pool at Casa Beach, which is impacted by non-MS4 natural sources and complies with the TMDL via the No MS4 Discharge pathway.</li> <li>2. Contact recreational impairments for all but one of the requested beach segments have been removed and low flow sanitary sewer diversions have been implemented for the remaining listed waterbodies.</li> <li>3. Current and future plans for programs and projects that will continue to protect and improve water quality in this reach....</li> </ol> <p><b>Supporting Item 1.2: Contact recreational impairments for all but one of the requested beach segments have been removed and low flow sanitary sewer diversions are in place at the remaining listed segment.</b></p> <p>Of the seven waterbody segments proposed for removal from the Tentative TSO, six have been</p>	<p>By letter dated December 7, 2023, the City of San Diego submitted a request for TSO Inclusion of the TSO Beach segments or areas listed in Table 3.b and TSO Creek segments listed in Table 3.c of Tentative TSO R9-2024-0010, respectively.</p>
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>delisted, indicating that the waterbodies are no longer impaired. The six delisted beaches are in the La Jolla Shores area and should be removed from the Tentative TSO as water quality is supporting recreational beneficial uses at each of these beaches. The remaining beach segment listed as impaired on the 303(d) list is Children's Pool at Casa Beach and the City has a low flow sanitary sewer diversion system installed in their MS4 outfall at this location. The diversion ensures that no flow from the City's MS4 reaches the beach and therefore, the City's MS4 is not causing or contributing to exceedances at Children's Pool. This control measure ensures that the site is in compliance with the MS4 Permit, Attachment E.6 through the "no discharge" pathway. For this reason, the beach at the Children's Pool should also be removed from the Tentative TSO.</p>	



Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
I.2	Mission Bay WMA – City of San Diego, San Luis Rey WMA Copermittees, San Diego River WMA Copermittees, Orange County Permittees	Table 6.a	<p><b>Remove the interim limitations for MS4 discharge to inland tributaries to beach and saline water</b></p> <p>The inclusion of interim limitations for MS4 discharges to inland tributaries that are not included in the TMDL or the Tentative TSO creates unnecessary confusion and additional monitoring requirements that will not further water quality improvement. Additionally, during dry weather, some MS4 discharges to inland tributaries may never reach the beach.</p> <p>Recommendation: To improve clarity and consistency in the application of the interim effluent limitations, the City requests removal the interim effluent limitations for MS4 Discharges to Inland Tributaries to Beach and Saline water from Table 6.a. See suggested revisions in Attachment 1.</p>	Interim limitations for MS4 discharge to inland tributaries to beach and saline water were removed in TSO R9-2024-0010.

I.3	Mission Bay WMA – City of San Diego, Orange County Permittees	Directive 1.A	<p><b>Allow diversion design features and operational records to be used to demonstrate no discharge</b></p> <p>Directive 1.A requires weekly outfall monitoring or weekly conveyance system monitoring to demonstrate that effluent discharge is eliminated. At outfalls with low flow diversions, the design of these systems, including weirs, valve, and pump configurations provides a high level of confidence that when the system is operational, flow is fully eliminated. Therefore, no discharge can be reasonably demonstrated by publishing design information and providing operational records.</p> <p>Recommendation: The City requests that the Directive 1.A be modified to include language to allow alternative approaches to demonstrating no discharge. Suggested modifications are included in Attachment 1.</p>	<p>Directive 1.A from Tentative TSO R9-2023-0006 was removed from Tentative TSO R9-2024-0010. Tentative TSO R9-2024-0010 requires TSO Responsible Permittees to reduce effluent discharge instead of eliminating effluent discharges. San Diego Water Board staff included language to allow alternative approaches (such as the use of continuous flow monitoring devices) to be used in Directive 2.B. Proposed requirements in Directive 2.B allow TSO Responsible Permittees to show effluent discharges are being reduced using data from a continuous flow monitoring device. However, the use of low flow diversions was not included in Directive 2.B because the TSO Beach Outfalls and/or TSO Creek Outfalls selected by the TSO Responsible Permittees would likely not include outfalls with low flow diversions. Tentative TSO R9-2024-0010 focuses further bacteria source investigation and source abatement work on the flowing outfalls with no controls.</p> <p>TSO Responsible Permittees may demonstrate compliance of the Final Dry Weather WQBELs with the “No Discharge” pathway of Regional MS4 Permit, Attachment E, Specific Provision 6.b.3(a) through alternative approaches including the use of continuous flow monitoring or camera systems.</p>
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J.1	City of Lemon Grove	Table 5	<p><b>Comment 1: Remove the City of Lemon Grove from the TSO based on historical monitoring data showing dry conditions between the City of Lemon Grove and the TMDL Segment of Chollas Creek</b></p> <p>Table 6.0 in Specific Provision E.6.a of the Municipal Separate Storm Sewer Systems (MS4) Permit1 states that the Bacteria TMDL applies to the lower 1.2 miles of Chollas Creek. This segment of Chollas Creek includes portions of the North and South Forks of the creek and the portion of Chollas Creek downstream of the confluence of these two forks. The City of Lemon Grove drains only to the South Fork of Chollas Creek.</p> <p>The Bacteria TMDL responsible parties for Chollas Creek, including the City, have completed monitoring at a site on the South Fork at the upstream end of the TMDL segment for many years. As reflected in Chollas Creek Bacteria TMDL monitoring reports and San Diego Bay Water Quality Improvement Plan (WQIP) annual reports submitted to the San Diego Water Board each year, the South Fork site has been dry and therefore not sampled during every dry weather site visit for the past six years. This includes monthly dry weather condition visits during the wet season and weekly visits during the dry season. The City has also completed additional site visits to a location in a channel downstream of the City of Lemon Grove and upstream of the South Fork monitoring station that have shown that location is regularly dry. Those visits were reported in the 2020-2021 San Diego Bay WQIP Annual Report. It is the City of Lemon Grove's position that this large amount of historical data showing the receiving water between the City of Lemon Grove and the TMDL segment of Chollas Creek is dry demonstrates that the City is not contributing to exceedances that are sometimes observed farther downstream at a tidally influenced site below the confluence of the North and South Forks of</p>	<p>The City of Lemon Grove is not a TSO Responsible Permittee in TSO R9-2024-0010. The City continues to be a TMDL Responsible Permittee per the Regional MS4 Permit, Attachment E, Specific Provision 6.</p>
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>Chollas Creek. This data set spans both relatively dry and relatively wet years.</p> <p>Based on this data set, the City of Lemon Grove has demonstrated compliance with the dry weather requirements of the Bacteria TMDL and requests to be removed from the list of responsible parties in the Tentative TSO.</p>	

J.2	City of Lemon Grove	N/A	<p><b>Comment 2: If Comment 1 is not accepted, reduce requirements in the Tentative TSO to reflect the lack of dry weather flow in Chollas Creek</b></p> <p>If the San Diego Water Board ultimately determines the City of Lemon Grove cannot be removed from the Tentative TSO as requested in Comment 1 above, the City requests requirements in the TSO be reduced to reflect the fact that dry weather flow in Chollas Creek downstream of Lemon Grove has not been observed in many years. We support the comments made in the Chollas Creek comment letter and refer to that letter for more details on specific requests.</p> <p>In particular, the City supports the comment made in the Chollas Creek comment letter that MS4 outfall monitoring should not be required when the downstream receiving water monitoring site is dry. Additionally, given the many years of no flow conditions observed in the South Fork of Chollas Creek, the City requests that MS4 outfall monitoring under the Tentative TSO be reduced to a more manageable level, such as quarterly or semiannually.</p> <p>If the City were required to visit its outfalls on a weekly basis and implement the other requirements included within the TSO then we anticipate the cost would be approximately \$50,000 to \$100,000 per year. This is a significant cost impact for a small City with a total General Fund budget, including public safety, parks, infrastructure maintenance, and other key functions, of about \$18 million. Dramatic cuts would need to be made to core City services to pay for the requirements of the Tentative TSO. Historical monitoring has shown no dry weather flow from the City reaches the TMDL segment of Chollas Creek, so cutting these important programs to pay for actions under the TSO is also unlikely to result in improvements to water quality</p>	See response in comment J.1.
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			downstream in the TMDL segment of Chollas Creek.	

K.1	San Luis Rey WMA Copermittees	N/A	<p>The fact that no exceedances of the GM have been observed in the past two years in the San Luis Rey Watershed indicates that the Copermittees have met the intent of the TMDL and are protecting beneficial uses.</p> <p>While the analysis also noted rare exceedances of the single sample maximum (SSM) (Regional Water Board analysis indicates five samples out of 119), the outcome appears to be overestimated, as the Regional Water Board's calculations include nine results that should not have been included in the exceedance analysis. Specifically, samples collected on 12/29/20, 01/24/21, 03/03/21, 03/04/21, 09/01/21, 10/05/21, 01/18/22, 02/23/22, and 03/23/22 were collected on wet days, within 72 hours of a rain event. Another sample collected on 02/05/21 was calculated incorrectly when averaged with other data collected on the same day. In this case, the TMDL-related data was counted twice when averaged with the AB411 data, resulting in an inaccurate representation of conditions on that day. With these samples removed, only two exceedances were noted: one during the 2020-21 monitoring year (04/28/21) and one during the 2021-22 monitoring year (11/03/21). The revised analysis is provided in Table 3.</p> <p>It is likely that the rare exceedances of a single sample (at a rate of one per year) were caused by sources other than urban runoff during dry weather, as elevated Enterococci concentrations have been shown to originate from a variety of other sources on the beach, including the wrack line and wildlife. In fact, for the exceedance that occurred on November 3, 2021, the sand berm across the San Luis Rey River was closed, preventing direct discharge of the River to the Beach. Based on the attainment of the GM in accordance with the TMDL requirements, data</p>	<p>San Diego Water Board staff reviewed the revised analysis provided in Table 3 of the Permittees' letter and the explanation of the potential sources causing the exceedances of the single sample maximum. Information like this is encouraged to be reported in existing Bacteria TMDL Compliance Reports and in the TSO Compliance Reports required in Tentative TSO R9-2024-0010.</p>
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			demonstrate that recreational beneficial uses are being protected.	



K.2	San Luis Rey WMA Copermittees	N/A	<p><b>Supporting Item 1.2: 2020-2022 Integrated Report Findings Support that the Waterbody is No Longer Impaired for Contact Recreation Beneficial Uses</b></p> <p>The conclusion that the TMDL requirements are being met and the Pacific Ocean Shoreline at the San Luis Rey River Mouth is no longer impaired is substantiated by the most recent assessment conducted by the Regional Water Board in accordance with the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (Listing Policy) (State Water Resources Control Board, 2015). For the 2020-2022 California Integrated Report (2020-2022 303(d) list), the Regional Water Board assessed available data collected between 2010 and 2019 to determine if the impairments still exist for the contact recreation (REC-1) beneficial use. Decision ID 128081 summarizes the results of their findings which identified that the REC-1 beneficial uses were fully supported. Specifically, the decision states the following:</p> <p>"Two lines of evidence are available in the administrative record to assess this pollutant for REC-1. Thirty-three of 376 exceed the GM threshold for Enterococci. Zero of 257 samples exceed the GM threshold for Fecal Coliform."</p> <p>"Based on the readily available data and information, the weight of evidence indicates that there is sufficient justification against placing this water segment-pollutant combination on the CWA section 303(d) List for impairment of REC-1."</p> <p>"This conclusion is based on the staff findings that:</p> <ol style="list-style-type: none"> <li>1. The data used satisfies the data quality requirements of section 6.1.4 of the Policy.</li> <li>2. The data used satisfies the data quantity requirements of section 6.1.5 of the Policy.</li> <li>3. Thirty-three of 376 samples exceeded the Enterococci water quality threshold, and zero of 257 samples exceeded the Fecal Coliform water</li> </ol>	<p>The San Luis Rey River Mouth is not listed in the most recent 2020-2022 California Integrated Report (2020-2022 303(d) List) for Enterococcus or Fecal Coliform. However, the 303(d) List assessments use different water quality thresholds and different allowable exceedance frequencies (e.g. more than 10 percent) than those required by the Bacteria TMDL (zero percent exceedance frequency). Although the Pacific Ocean Shoreline at San Luis Rey River Mouth is not 303(d) Listed as Impaired, the segment is listed as a Bacteria TMDL segment and Bacteria TMDL requirements in the Regional MS4 Permit must be met. See also, response to comment C.1.</p>
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			<p>quality threshold for the protection of REC-1, and this does not exceed the allowable frequency listed in Table 3.2 of the Listing Policy."</p> <p>The decision supports the finding that the REC-1 beneficial use at the Pacific Ocean Shoreline at the San Luis Rey River Mouth is no longer impaired, and the beneficial use is protected.</p>	

K.3	San Luis Rey WMA Copermittees	N/A	<p><b>Supporting Item 1.3: Programs and Projects Will Continue to Reduce Dry Weather Bacteria Loading from the MS4s</b></p> <p>The San Luis Rey Watershed is currently implementing a variety of programs and projects to reduce bacteria impacts on water quality at the Pacific Ocean Shoreline. Strategy focus areas included:</p> <ul style="list-style-type: none"> <li>• Performing wastewater collection system inspection, cleaning, and repairs, and preventing sanitary sewer overflows;</li> <li>• Facilitating encampment cleanups and working toward long term solutions for homelessness;</li> <li>• Increasing monitoring to investigate sources and to help identify and eliminate dry weather flows which transport bacteria and other pollutants; and</li> <li>• Distributing educational materials to commercial RV dump stations and developing outreach materials for property owners with septic systems.</li> </ul> <p>Other appropriate strategies were also implemented to address non-human sources of bacteria such as pet waste and livestock, as well as other pollutants such as nutrients and trash. Looking ahead, there are two key efforts that will be implemented to achieve bacteria load reductions in a diversified, whole-watershed approach. The first is the suite of programs and projects described in the Reasonable Assurance Demonstration (RAD) for compliance with wet weather bacteria limits. This plan was submitted in September 2022 and approved by the Regional Water Board in January 2023. We are confident that the combination of programs, green infrastructure, and regional controls will ensure that water quality is maintained during dry weather in addition to wet weather.</p> <p>In addition, the Copermittees in the San Luis Rey Watershed have initiated discussions and analyses investigating the benefits of the</p>	<p>Per written requests from the Cities of Oceanside (December 7, 2023), Vista (December 7, 2023) and the County of San Diego (December 11, 2023), the San Luis Rey River watershed Copermittees remain in TSO R9-2024-0010 as TSO Responsible Permittees, identified in Table 3.a and Table 3.b. The San Luis Rey River watershed Copermittees individually submitted a letter requesting TSO Inclusion considering proposed changes that would be included in TSO-R9-2024-0010. Proposed changes were presented to TMDL Responsible Permittees by San Diego Water Board staff in 2023 TSO discussion meetings.</p>
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			Prohibitions and Limitations Compliance Options under Permit Provision B.3.c. This watershed planning and implementation option will ensure that the agencies take a more comprehensive and holistic approach to managing water quality in the watershed. Removal of the shoreline from the Tentative TSO will allow resources to be directed appropriately to address the other conditions in the watershed.	
K.4	San Luis Rey WMA Copermittees	N/A	<p><b>Supporting Item 1.4: The Level of Effort to meet the TSO Requirements is Estimated to be Five Times greater than the Existing TMDL Compliance Program</b></p> <p>During the public workshop held during the Regional Water Board meeting on February 8, 2023, Board Members Cantu and Warren requested an estimate of costs that would be incurred to comply with the requirements in the Tentative TSO. Based on the Tentative TSO, several assumptions are required to assess annual costs, including the compliance pathway selected for Directives 1 and 2 and the required number of outfall monitoring locations, among others. Even with the uncertainty regarding the level of required monitoring, planning, implementation, and reporting, the requirements in the Tentative TSO appear to significantly exceed the costs associated with the existing TMDL compliance program. The Copermittees are in the process of estimating costs and modifications to the TSO based on received comments will greatly influence these estimates. Copermittees plan to bring estimates forward for discussion at the May 2023 adoption hearing.</p>	Comment noted. Finding 30 in TSO R9-2024-0010 provides a cost estimate for TSO Permittees discharging to TSO Beach segments.

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K.5	San Luis Rey WMA Copermittees	N/A	In addition, the Copermittees wish to express their support of comments submitted by other agencies in San Diego County. Should the Regional Water Board agree with the modifications suggested above, the other modifications will not affect the San Luis Rey Watershed. However, if the Regional Water Board chooses not to make the suggested changes, comments submitted by other watersheds in the region are important to a successful time schedule order. Specifically, these include suggestions to improve the attainability of the Interim Limitations, options to improve the efficiency of monitoring, ideas to streamline extensive planning processes, and ways to align reporting with existing Permit requirements.	Comment noted.

L.1	Orange County Permittees	Directives 1 and 2	<p><b>Include a Load Reduction Compliance Pathway for Interim Limitations</b></p> <p>The Orange County Permittees would like to comply with the MS4 Permit and the Tentative TSO through the utilization of the load reduction compliance pathway or any other method authorized under the MS4 Permit. The Orange County Permittees have structured WQIP implementation using the load reduction compliance pathway and need the Tentative TSO to remain congruent with the Bacteria TMDL Provisions of the MS4 Permit and the accepted WQIP. As such, we request that an interim limitation based on load reductions be included in the Tentative TSO.</p> <p>The Permittees in Orange County have developed and implemented intensive programs and projects aimed at reducing pollutant loading to local waterbodies. Through the process, we have made contributions to the advancement of the science to better understand and demonstrate load reductions and improved the regulatory landscape, as we have demonstrated the effectiveness of our programs through load reductions. A load reduction compliance pathway is essential for waterbodies in South OC WMA, such as the Aliso and San Juan Creek systems that have groundwater influence and non-MS4 sources. For bacteria, these conditions result in challenges with demonstrating attainment of concentration limits in either outfalls or receiving waters even if the majority of loads from the MS4s have been eliminated. The load reduction pathway provides the one viable compliance pathway for these waterbodies.</p> <p>In May 2021, the Orange County Permittees submitted a compliance demonstration report describing the methodology, calculations and results that support the load reduction pathway for several TMDL segments. The analysis was based on outfall monitoring data, receiving water</p>	See response to comment H.1.
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>monitoring data, and BMP performance data, accounting for both source controls and structural controls. The Orange County Permittees subsequently submitted an updated version of this report December 2021 that addressed written and verbal comments from San Diego Water Board staff. The calculations contained in this report demonstrate that major progress has been made in improving water quality and reducing loads and demonstrate that the Orange County Permittees are attaining the interim limitations included in Specific Provision 6.c.(2)(b) of the MS4 Permit. This finding is based on both outfall and receiving water data.</p> <p>Recommendation: Modify the Tentative TSO to include interim limitations based on the load reductions. See Attachment 1 for suggested modifications.</p>	

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
L.2	Orange County Permittees	N/A	<p><b>Add Finding Regarding No Admission of Non-Attainment</b></p> <p>Orange County Permittees dispute the San Diego Water Board’s determination that the final dry weather limits have not been met in some water bodies. We request inclusion of a finding, commonly included in enforcement actions such as these, that notes the issuance of the TSO is not an admission of liability by the TSO Responsible Permittees.</p> <p>Recommendation: Modify Tentative TSO to include a finding that states that the issuance of the TSO is not an admission of liability by the TSO Responsible Permittees.</p>	<p>San Diego Water Board staff acknowledge that the TSO Responsible Permittees may have legitimate reasons to request a TSO while still denying liability. However, staff disagrees that a denial of liability belongs in an order issued after a lengthy public comment and hearing process. Denials of liability are typical in settlement agreements or stipulated orders. The TSO has some commonality with a settlement agreement, in that the TSO is being issued at the request of the TSO Responsible Permittees and has the effect of avoiding enforcement actions for future violations. However, it is not a settlement agreement or stipulated order. The final TSO will be based on the board's findings after considering the record as a whole. This is unlike a settlement agreement that merely recites allegations and denials. In addition, the issuance of the TSO cannot constitute an admission on the part of the TSO Responsible Permittees because they are not issuing the TSO.</p>



L.3	Orange County Permittees	Finding 8, Table 2 and Table 5	<p><b>Remove Responsible Permittees that are Hydrologically Disconnected from a TSO Waterbody</b></p> <p>The responsible parties listed in Table 2 of the Tentative TSO include several Orange County Permittees that are hydrologically disconnected from the listed TSO waterbody segment. The hydrologically disconnected Orange County Permittees are shown in Table 1. A map depicting the drainage areas is available here: <a href="https://arcg.is/zHHmL">https://arcg.is/zHHmL</a>.</p> <p>The Orange County Permittees shown in Table 1 should be removed as Responsible Permittees, as shown in Tables 2 and 5 of the Tentative TSO for the following factual reasons:</p> <ul style="list-style-type: none"> <li>- Municipal separate storm sewer system (MS4) discharges from these Permittees do not drain to the TSO waterbody segment. Because these Permittees are not hydrologically connected to the TSO waterbody segment and their MS4 does not drain or discharge there, the RWQCB cannot make Finding 8 in the Tentative TSO that they “discharge bacteria from [its] MS4 into the corresponding receiving waterbodies and segments in excess of the final dry weather bacteria WQBELs, therefore causing or contributing to FIB exceedances of water quality” and further cannot be found to be “violating or threatening to violate the final dry water bacteria WQBELs in Specific Provision 6 and the receiving water limitation prohibition of Provision A.2.a with respect to bacteria water quality objectives.” Since the RWQCB cannot make this finding for the Permittees in Table 1, it must remove the agencies as Responsible Permittees.</li> <li>- California Water Code sections 13300 and 13385, which provide the legal basis for the Tentative TSO, apply to “dischargers” who are violating or threatening to violate an effluent</li> </ul>	<p>Unlike the City of Carlsbad (see response to Comment F.1), these Responsible Permittees did not provide documentation that would allow staff to reach any conclusions about the fate and transport of their discharges, in particular, whether these Copermittees are hydrologically disconnected as stated. However, these Responsible Permittees and associated waterbody segments or areas listed in Table 1 of this comment were removed from Tables 3.b and 3.c of Tentative TSO R9-2024-0010 as requested.</p>
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>limitation and require additional time to comply with that effluent limitation. The Permittees in Table 1 are not “dischargers” to their respective waterbody segments and cannot, therefore, violate or threaten to violate any effluent limitation there. Because these Orange County Permittees are hydrologically disconnected from the respective TSO waterbody shown in Table 1, the facts do not support proposed Finding 8 in the Tentative TSO or a similar finding that they are “dischargers” for purposes of Water Code sections 1330 and 13385. As such, the Orange County Permittees request that the Permittees in Table 1 be removed as a Responsible Permittees in the TSO for their respective waterbodies as shown in the table. Recommendation: Modify Table 2 and 5 in the Tentative TSO to remove the Responsible Permittees noted in the comment.</p>	

L.4	Orange County Permittees	Table 2, Directive 1 and Directive 2	<p><b>Modify Tentative TSO to Remove Orange County Waterbody Segments Attaining Final Permit Limits or, Alternatively, Eliminate Extra-Permit Requirements for these Waterbody Segments</b></p> <p>As noted in the introduction to the letter, the Orange County Permittees have demonstrated that the majority of Orange County waterbodies listed in the Tentative TSO are meeting final WQBELs in the Bacteria TMDL Special Provision 6 of the MS4 Permit. Therefore, there is no need for a TSO for these waterbodies, as the additional actions intended to be part of a TSO are not necessary to meet final compliance.</p> <p>If the Tentative TSO is issued without eliminating these water body segments, the Orange County Permittees request that the Tentative TSO be modified to require only MS4 permit requirements for waterbodies that are presently meeting final dry weather permit limitations through the receiving water limitation pathway (Specific Provision E.6.b.(3)(b)). Additionally, a number of segments have been shown to meet the final limitations through a load reduction pathway<sup>6</sup>.</p> <p>Since a load reduction pathway constitutes compliance with final TMDL limitation as described in Specific Provision E.6.b.(3)(d) of the Permit, the Orange County Permittees are committed to working with San Diego Water Board staff to demonstrate these segments are meeting the Permit Requirements.</p> <p>The Orange County Permittees view the compliance status of the waterbodies in South Orange County as a significant success. We would like the Tentative TSO to reflect the significant progress that has been made to date through implementation of the leading-edge approaches in</p>	<p>Additional monitoring requirements beyond those already required by the Regional MS4 Permit/Bacteria TMDL are not required in TSO R9-2024-0010 for TSO Responsible Permittees discharging to TSO Beach segments, unless a TSO Responsible Permittee discharging to TSO Beach segment decides to comply with Directive 2 (Interim Effluent Limitations). Per written requests from South Orange County TMDL Responsible Permittees, several TMDL beach and creek segments were removed, and a few remain in Tentative TSO R9-2024-0010 and are identified in Table 3.a and Table 3.b. South Orange County TMDL Responsible Permittees submitted requests for TSO Inclusion or TSO Exclusion considering proposed changes that would be included in Tentative TSO-R9-2024-0010. Proposed changes were presented to TMDL Responsible Permittees by San Diego Water Board staff in 2023 TSO discussion meetings. Also see response to comments G.3 and H.2.</p>
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			<p>the WQIP and CHWSRS work plan. To do this, the Tentative TSO should be modified as follows:</p> <ol style="list-style-type: none"> <li>1. Remove waterbodies that have zero exceedances of the GM or single sample maximum (SSM) permit limitations in Specific Provision E.6.b.(3)(b)) of the MS4 Permit. These waterbodies have been demonstrated to be meeting the permit requirements and a TSO is not needed.</li> <li>2. Remove waterbodies that are not impaired (delisted from 303(d) list or found to be no longer impaired for water contact recreation (REC-1) beneficial uses) and are meeting the GM permit limitations, as contemplated in the Bacteria TMDL adopted into the Basin Plan. These waterbodies are meeting the intent of the TMDL and a TSO is not needed for these waterbodies (let alone the TMDL itself). If they are maintained in the Tentative TSO, the Orange County Permittees request that the Tentative TSO requirements only require continued implementation of permit requirements until the few remaining single sample maximum exceedances are addressed.</li> <li>3. For waterbodies complying through the load reduction compliance pathway (Specific Provision E.6.b.(3)(d)), in addition to making the changes outlined in the comments above, adjust Finding 7 to remove the requirement to demonstrate this pathway using only MS4 outfall data.</li> </ol> <p>Making the requested changes noted above for waterbody segments in the Tentative TSO that are currently meeting permit limitations and protecting beneficial uses, will avoid having the Tentative TSO disrupt the implementation actions that have resulted in demonstrated progress, and support</p>	
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>efficient use of resources on higher priority conditions and remaining impairments.</p> <p>A summary of the compliance and listing status for each waterbody and the corresponding recommended modifications to the Tentative TSO based on that status is shown in Table 2. The supporting justification for the requests is outlined in Comments 9.1, 9.2 and 9.3. The comment number providing the supporting justification is shown in Table 2...</p>	

L.5	Orange County Permittees	N/A	<p><b>Address Underlying Issues with the Bacteria TMDL and Its Incorporation into the MS4 Permit</b></p> <p>In the 2014 Triennial Review Project Summary Evaluation of Contact Water Recreation (REC-1) Water Quality Objectives and Methods for Quantifying Exceedances<sup>11</sup> (2014 Triennial Review Report), the San Diego Water Board found that controlling human waste sources of FIB is a more cost-effective way of protecting public health and should be a priority for implementation. The 2014 Triennial Review Report established near term and long term recommended actions to address the findings. The near term actions included stormwater management actions and MS4 permit modifications that would allow a focus on addressing human waste sources of FIB<sup>12</sup>, and the long term actions included modifying the Bacteria TMDL. <sup>13</sup> More recently, Item # 3 in the Executive Officer’s Report for the 2021 Triennial Review Project No. 4:</p> <p>Contact Water Recreation (REC-1) Water Quality Objectives, February 8, 2023, states:  “Furthermore, as part of the 2021 Triennial Review, staff will investigate the feasibility of developing a narrative risk-based objective and potential revision to the 20 beaches and Creeks Bacteria TMDL”.</p> <p>As noted throughout the comment letter, a number of inconsistencies between the Bacteria TMDL and the MS4 permit and issues with the underlying TMDL document result in challenges for demonstrating the TMDL has been attained. Additionally, more recent science, acknowledged in the Triennial Review reports, needs to be incorporated into the MS4 permit and the TMDL. It is important to consider the history and intent of the use of fecal indicator bacteria (FIB) as a public health risk-based water quality criteria when</p>	<p>Comment noted. Requests for Total Maximum Daily Load (TMDL) updates must be provided during public comment periods for specific TMDL and Basin Plan amendments.</p>
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			<p>considering their application as measures of TMDL compliance and now as objectives in the Tentative TSO. From their original use to assess swimmer health risk in receiving waters with known point source wastewater treatment plant discharges, to subsequent application as EPA recommended criteria for</p> <p>all recreational water quality, their use has been applied as a surrogate for much more difficult and costly direct testing of viruses and other pathogens found in fecal waste. Bacteria regrowth, FIB sources from wildlife, and even sources from decomposing plants make FIB source investigation difficult and treatment sometimes futile as these bacteria sources do not present the same public health risk as human sources of FIB. Accordingly, an exceedance of an FIB water quality concentration objective does not necessarily mean the presence of harmful levels of pathogens and the TMDL zero percent dry weather allowable exceedance rate is not reflective of even natural stream systems. Largely uncontrollable and lower risk FIB sources, such as decomposing wrack at the beach, could result in an exceedance of FIB water quality objective and result in TMDL noncompliance despite full control of upstream MS4 discharges. Therefore, unlike other water body pollutants, it is important to modify the TMDL to recognize that FIB are an indicator and not a definitive measure of actual impairment, and that not all FIB sources present the same public health risk.</p> <p>The Orange County Permittees appreciate the San Diego Water Board's desire to use the TSO to continue to ensure compliance with the MS4 Permit. However, action on the permittees' part must be met with equal urgency and action on the part of the San Diego Water Board and staff to begin the reassessment and complete the necessary revision and correction of the Bacterial</p>	
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>TMDL and its incorporation into the MS4 Permit. This action, which only the San Diego Water Board can take, is required to reflect true public health risk more accurately, work that was originally acknowledged as necessary by the San Diego Water Board and Water Board staff when the Bacteria TMDL was adopted in 2010. We urge the San Diego Water Board to prioritize this work in order to bring the TMDL in line with the advancements in science and regulation.</p>	



M.1	Heal the Bay	N/A	<p>We thank the San Diego Regional Water Quality Control Board Regional Board) for the opportunity to comment on this issue. We also commend San Diego Area permittees (Permittees) for all the work they have done to keep fecal pollution out of San Diego waterways. During the February 8 workshop, it was encouraging to learn about the mitigation efforts Permittees are taking to identify and eliminate bacteria sources. However, given that Permittees have obtained high rates of compliance at various sites using the current bacterial objectives, we do not see the need to establish HF183 interim objectives as outlined by this TSO. We hereby urge the Regional Board to reject this TSO, and if the Regional Board does decide to approve, we recommend setting the interim objectives according the California’s recreational water quality objectives. We also recommend measuring HF183 in parallel with fecal indicator bacteria, which will provide sufficient public health protection while allowing Permittees to conduct source tracking.</p>	<p>Tentative TSO R9-2024-0010 does not require the use of the human marker HF183 and does not establish interim limitations for HF183. Instead, Tentative TSO R9-2024-0010 encourages the use of human source indicators, such as HF183, for source investigation and tracking.</p> <p>Tentative TSO R9-2024-0010 includes water quality threshold values for the single sample maximum that are consistent with California’s recreational water quality objectives for Ocean waters (a.k.a. the 2019 Ocean Plan). Although the values for Beach single sample maximums (SSM) in TSO R9-2024-0010 are the same as the standard threshold values (STV) in the 2019 Ocean Plan, the exceedance frequencies allowed are not the same. For example, Tentative TSO R9-2024-0010 requires either Table 4 Interim Receiving Water Limitations or Table 5.a Interim Outfall Effluent Limitations be met for TSO Permittees discharging to TSO Beaches. The ten percent exceedance frequency allowed in Table 4 is based on all samples collected during the 20 weeks of the dry season (May 1 to September 30). The 80 percent and 30 percent exceedance frequencies allowed in Table 5.a is also based on all samples collected during the dry season. In contrast, the 2019 Ocean Plan requires no more than ten</p>
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				percent of the samples collected in a calendar month exceed the STV.
M.2	Heal the Bay	N/A	<p><b>1. This TSO is not public health focused.</b> USEPA's 2012 Recreational Water Quality Criteria<sup>1</sup> did not recommend a separate set of objectives for non-human sources of bacteria because there is a substantial body of research showing both human and non-human fecal pollution pose a public health risk. We understand that fecal indicator bacteria have limitations in assessing the health risk of human-origin fecal contamination, but solely measuring HF183 is not sufficient for protecting public health. In addition, HF183 measurements are not foolproof as they can be influenced by environmental microbial resistance and there can be wide variance depending on the method used to measure HF183. <b>Therefore, we recommend using objectives based on fecal indicator bacteria as mandated by the USEPA, which will protect the public from human and non-human fecal pollution.</b></p>	See response to comment P.1 above.

Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
M.3	Heal the Bay	N/A	<p><b>2. Site-specific research and mitigation are needed.</b></p> <p><b>USEPA’s QMRA guidelines clearly state that a site can only obtain alternative objectives once 1) all HF183 sources have been identified and eliminated and 2) the public health risk posed by non-human fecal matter is quantified. That would require separate source tracking studies at all 20 beaches included in the TSO and implementation of mitigating measures before alternative objectives are created. Neither of those conditions have been met at the 20 sites included in the TSO.</b></p>	<p>The requirement for HF183 sampling and HF183 compliance pathways were removed and are not included in Tentative TSO R9-2024-0010. San Diego Water Board staff therefore did not review the merits of this comment.</p>

M.4	Heal the Bay	N/A	<p><b>3. Boehm &amp; Soller (2020) is misinterpreted.</b></p> <p>The key finding of the sole study used to justify the interim objectives in the TSO is that the health risk posed by human fecal matter changes depending on how much avian and other wildlife fecal matter is present in the water. A single numeric objective for the HF183 human marker is therefore not justifiable according to the research.</p> <p>While not included in our original comment letter submitted March 2021, we have since noticed several assumptions from Boehm &amp; Soller (2020) that have implications for this TSO. Boehm &amp; Soller (2020) calculated HF183 objectives assuming the beaches in their study received raw sewage of a specific age and amount. Those assumptions limit the paper’s applicability to San Diego beaches because each beach receives fecal matter from various sources, and they may not receive raw sewage aside from an occasional sewage spill. The raw sewage input estimates in Boehm &amp; Soller (2020) were derived from earlier research that quantified the HF183 discharge from 54 wastewater treatment facilities across the United States. However, none of the wastewater treatment facilities included in the study were located in Southern California. Additionally, Boehm &amp; Soller (2020) did not quantify wastewater inputs from the Tijuana River or the Punta Bandera Wastewater Treatment Plant, which would have a substantial impact on HF183 concentrations in the San Diego Area. <b>Consequently, we believe the HF183 objectives derived from Boehm &amp; Soller (2020) need to be verified with supplementary research that takes into account local sewage sources.</b></p>	HF183 sampling requirements and HF183 compliance pathways were removed and are not included in Tentative TSO R9-2024-0010.
M.5	Heal the Bay	Table 4	<p><b>4. Cleanup of homeless encampments as a control measure is problematic.</b></p> <p><b>We ask that the Regional Board remove the cleanup of homeless encampments as a control measure in this TSO.</b> Many people</p>	Table 4 of Tentative TSO R9-2023-0006 is now Table 2 in Tentative TSO R9-2024-0010 and includes examples of structural and non-structural BMPs implemented by

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			<p>experiencing homelessness live along rivers and close to the ocean because these areas provide privacy and peace – the same core values that renters, homeowners, and people in housing seek. We fear that cleanup of homeless encampments will lead to the displacement of an already vulnerable group that has nowhere else to go. Further, recent research conducted in the San Diego Area determined that encampments were not a significant source of fecal contamination in waterways.</p>	<p>Copermittees. The cleanup of homeless encampments is not a TSO required control measure and remains identified as an example of a control measure implemented by Permittees.</p>

N.1	Environmental Groups	Several	<p>Environmental Groups are deeply concerned that the instant TSO fails to protect the water contact recreation (REC-1) Beneficial Use of the Receiving Waters specified in the TMDL, and thus fails to protect human health. First, the TSO extends an already protracted dry-weather compliance deadline, with no contemplation for any enforcement action, thus rendering the entire dry-weather regulatory framework of the TMDL and MS4 Permit obsolete. Second, the TSO's alternative compliance pathway for both WQBELs and Receiving Water Limitations for FIB, based solely on HF183, is scientifically dubious, fails to account for all anthropogenic sources of bacteria, and thus fails to adequately protect human health. Using the HF183 standard in this way is also inconsistent with the TMDL and MS4 Permit's technical and policy foundations, as well as their existing FIB standards. Third, the timing of the issuance of this TSO is inappropriate as new data and information regarding the utility and limitations of HF183, including the final report on the Regional Board's Investigative Order on bacteria sources tracking the San Diego River, will soon become available. Fourth, the TSO inappropriately (and perhaps inadvertently) adopts language from an antiquated Clean Water Act rule, potentially divesting the Board of Clean Water Act jurisdiction for Chollas Creek and Tecolote Creek.</p> <p>In short, this tentative TSO is not public health-focused. It extends deadlines, ignores existing penalties and enforcement mandates, changes a key definition in the Clean Water Act, and shifts the interim compliance goalposts to an entirely new standard – one that is based on faulty science and reasoning, inconsistent with TMDL and MS4 Permit, and fails to consider rapidly developing data and studies. In light of the foregoing, Environmental Groups urge the Board to deny the TSO. If the Board proceeds with the TSO, the</p>	See response to comments N.2 through N.5.
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Comment Number	Commenter(s)	Applicable Time Schedule Order (TSO) R9-2023-0006 Section	Comment	Response
			<p>following changes must be made: (1) monitoring at all outfalls and receiving waters must be for HF183 and FIB; (2) interim compliance determinations must be for HF183 and FIB; (3) the HF183 standard should be zero detection; (4) the TSO deadlines should be as short as possible; and (5) the reference to ephemeral streams should be deleted. Environmental Groups offer the following comments to further explain their position.</p>	

N.2	Environmental Groups	N/A	<p><b>1. The TSO Extends an Already Protracted Dry-Weather Compliance Deadline, with No Contemplation for Enforcement, and thus Renders the Entire Dry-Weather Regulatory Framework of the TMDL and MS4 Permit Obsolete.</b></p> <p><b>a. Historical Timeline of the TMDL and MS4 Permit.</b></p> <p>Environmental Groups express great frustration that dry weather bacteria exceedances continue, particularly in the inland waterbody creek segments, after many years of regulatory oversight and the expenditure of significant public resources on the development of FIB standards protective of human health. The Twenty Beaches and Creek TMDL project was initiated in 2003 and approved in 2007, though it was withdrawn from State Board consideration in 2008 to enable revisions and additional segments. In 2010, the TMDL was revised primarily to accommodate the Reference System and Antidegradation Approach/Natural Sources Exclusion Approach (RSAA/NSEA) Basin Plan amendment. In addition, the Copermittees were provided a 22 percent exceedance frequency for wet weather. This was justified based on a reference system approach. (See, 2009-1125 Technical Report, p. 3; R9-2008-0028).</p> <p>Because the Copermittees chose to address bacteria and other constituents in their load reduction programs, the wet weather TMDL compliance date is April 4, 2031 – twenty years after the adoption of the revised TMDL. For dry weather, the Regional Board set a ten-year compliance deadline of April 4, 2021. This deadline has been incorporated in to the Regional MS4 Permit. (See, MS4 Permit, Attachment E, Section 6.(b)(1), p. E-32). In developing the dry weather TMDL, the Regional Board assumed all dry weather surface runoff flows originate from</p>	See response to comment N.7.
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			<p>land uses associated with the MS4. (2009-1125 Technical Report, pp. 4-5). This inures to the benefit of the Copermittees as they were allocated all the available waste load allocations (“WLAs”). (Id., p. 4).</p> <p>The TMDL exists as both a part of the Basin Plan and incorporated into the MS4 Permit. (See, Regional MS4 Permit, Attachment E. Section 6). Translated into the MS4 Permit as, in part, WQBELs and Receiving Water Limitations, the TMDL requires Copermittees to take measurable steps and implement best management practices (“BMPs”) to achieve the TMDLs. (See, e.g. Regional MS4 Permit, Attachment E. Section 6.b.(2)(c)). However, the MS4 Permit requires elimination of bacteria sources in other ways. Pursuant to CWA section 402(p)(3)(B), the MS4 Permit requires that non-storm water discharges into the MS4 must be effectively prohibited. (MS4 Permit, Finding 15). Thus, during dry weather, the MS4 should be free from virtually all non-storm water discharges (unless separately regulated by an individual NPDES Permit). To achieve this goal, the MS4 Permit requires Copermittees to “actively detect and eliminate illicit dischargers and improper disposal into the MS4.” (MS4 Permit, Section E.2.). Each Copermittee is also required to “implement controls to prevent infiltration of sewage into the MS4 from leaking sanitary sewers.” (Id., Section E.5.b.(c)(iv)). Section A.1.a prohibits non-storm water discharges from the MS4 from “causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in CWC section 13050), in waters of the state.”</p> <p>In addition, pursuant to Section A.2.a, non-storm water discharges “must not cause or contribute to</p>	
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			<p>the violation of water quality standards in any receiving waters.”</p> <p>The Copermittees have now blown past the dry-weather compliance deadline of April 4, 2021 by almost two years. Nonetheless, over twenty years after the 303(d) listing, fifteen years after the original TMDL was approved, and thirteen years after the revised TMDL was approved, many Copermittees continue to violate the MS4 Permit and fail to achieve the TMDL requirements.</p> <p>Through a Public Records Act request (“PRA Request”) submitted on December 20, 2022, San Diego Coastkeeper and CERF requested all documents related to the TSO. Responsive documents produced to date show the magnitude of some of these exceedances. Though Copermittees highlighted areas where they are close to meeting the MS4 Permit terms and the TMDL, they did not spotlight areas of chronic exceedances. San Diego River, in particular, has numerous exceedances. In light of the City of San Diego and County of San Diego’s \$700 million plan to restore the San Diego River<sup>1</sup> and make the San Diego River Master Plan a reality, the chronic bacteria exceedances are particularly troubling. As reflected in the tables below (pulled from the Board’s responsive documents to the PRA Request), San Diego River exceedances range from 34% to 94% for single sample maximum exceedances for individual Creek segments and 71% to 94 % for combined Creek segments. Exceedances for 30-day geomean exceedances range from 39% to 100% for individual Creek segments and 71% to 100% for combined Creek segments. Forester Creek in particular has especially high exceedance frequencies.</p>	
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			In light of these chronic exceedances, punctuated by extreme instances, a more aggressive approach to dry weather source tracking and the TSO is necessary.	

N.3	Environmental Groups	N/A	<p><b>b. The Mandatory Minimum Penalty Exclusion is Improper.</b></p> <p>Through a Public Records Act Request, the Environmental Groups obtained Regional Board emails dating back to 2019 that reflect the Copermittee’s and Regional Board’s intent and interest in pursuing an alternative compliance HF183 pathway. An earlier Tentative TSO, R9-2021-0028, was published in early 2021 with no public outreach conducted, though the Copermittees were heavily involved with the creation of R9-2021-0028. Indeed, it appears the Regional Board proceeded with R9-2021-0028 based solely on the MS4 Copermittees’ desire to avoid mandatory minimum penalties. Had the Copermittees acted as swiftly to comply with the TMDL and MS4 Permit, perhaps we would not find ourselves in this situation.</p> <p>The instant TSO’s findings similarly exempt Copermittees from mandatory minimum penalties. The TSO relies on Water Code Section 13385(j)(3) to forego imposition of such penalties. The relevant provision requires the following finding:  (B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:  (i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed,</p>	<p>The TSO is consistent with Water Code section 13385, subdivision (j)(3). The final dry weather WQBELs did not become applicable until April 4, 2021. The State Water Board has consistently interpreted section 13385, subdivision (j)(3) since its enactment to allow a protective TSO at the expiration of a permit’s compliance schedule: “If there is a compliance schedule accompanying the new effluent limitation, of course, this exception from mandatory penalties [i.e., a protective TSO or CDO] would not be necessary until the effluent limitation takes effect.” (SB 709 and SB 2165 Questions and Answers (April 17, 2010), Q&amp;A 47, emphasis added.) Dischargers are not required to comply with final effluent limitations before their effective date and cannot violate final effluent limitations until they take effect. (Id., Q&amp;A 42.) Since dischargers are not required to comply with final effluent limitations before the final compliance deadline, those limitations are not “applicable” during the permit’s compliance schedule period. In this context, “effective date” and “deadline” are synonymous. Thus, the final dry weather WQBELs are “new, more stringent, or modified regulatory requirement[s]” that first became “applicable to the waste discharge” on April 4, 2021. As required by section 13385, subdivision (j)(3), the TSO does not exceed five years in</p>
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			<p>installed, and put into operation within 30 calendar days.</p> <p>The TSO justifies a “Need for Additional Time to Comply” based, in part, on the April 4, 2021 deadline for the dry weather TMDL. (TSO, ¶19). The TSO states “the San Diego Water Board finds that a. the ‘effluent limitations’ in Specific Provision 6.b.(2)(b) of the Regional MS4 Permit are a new, more stringent or modified regulatory requirement that became applicable to the MS4 waste discharges on April 4, 2021.” (TSO, ¶19).</p> <p>However, the MS4 Permit WQBELs are not “new, more stringent or modified regulatory requirements” that become applicable on April 4, 2021. The MS4 Permit TMDL requirements became applicable as soon as they were incorporated therein. April 4, 2021 is not the effective date – rather, it is the deadline. The Copermitees knew this deadline was looming when the TMDL was adopted and certainly were aware of its approach once it was incorporated into the MS4 Permit. To interpret a deadline as a new, more stringent or modified regulatory requirement would essentially allow all dischargers to evade mandatory minimum penalties at the expiration of a compliance deadline. As reflected in the legislative history for SB 2165 (1999-2000) which amended Water Code Section 13885 to include the relied upon exemption, it was intended to apply where the effluent limitation was “a new, more stringent, or modified regulatory requirement that became applicable after issuance of the WDR and such regulatory requirement was not taken into account in the design of the control measures used by the discharger.” This language describes a completely different scenario, where WDRs have been issued and a new regulation takes effect that requires a discharger to alter its control measures significantly (i.e. in the POTW context). It is</p>	<p>length from the effective date of the TSO. (Id., Q&amp;A 47.)</p>
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			contrary to the plain language of the statute and the legislative intent to apply the exemption here, where the dry weather TMDL and associated Permit requirements have been applicable since the Permit was adopted. (See, Order No. R9-2013-0001).	

N.4	Environmental Groups	Several	<p><b>2. The HF183 Alternative Compliance Pathway for WQBELs and Receiving Water Limitations is Scientifically Unsound, Fails to Account for all Human Sources of Bacteria, and Thus Fails to Adequately Protect Human Health.</b></p> <p><b>a. Scientific Research Strongly Indicates an HF183 Standard is Not Protective of Human Health.</b></p> <p>Environmental Groups have serious concerns about the HF183-only standard’s scientific foundation and its ability to protect human health. The TMDL’s very premise is that indicator bacteria from all controllable anthropogenic sources should be eliminated,<sup>2</sup> not solely human fecal bacteria. However, HF183 quantifies only human fecal bacteria sources, and thus fails to account for other FIB or pathogens.</p> <p>While HF183 is a useful tool, particularly for tracking sources of human fecal bacteria, the TSO assumes that HF183 is a valid proxy for FIB and human health risk without reliable data and studies. To the contrary, a significant body of scientific research indicates that HF183 is a poor proxy for FIB. Numerous peer reviewed studies have shown that bacteria and pathogens associated with livestock, pet waste, birds, plastic trash, food waste, and other human generated waste (such as municipal solid waste) pose a threat to human health. As one recent study has emphasized, “[t]enuous relationships between human and nonhuman [microbial source tracking] markers and pathogenic bacteria and viruses warrant further investigation to understand better the relationships between source and pathogen markers and their application to water quality management.”</p>	See response to comment A.1. The San Diego Water Board staff revised Tentative TSO R9-2024-0010 which no longer requires compliance with the HF183 standard.
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			<p><b>b. The TSO Misinterprets and Misapplies Boehm &amp; Soller (2020).</b></p> <p>Despite the readily available body of scientific research indicating an HF183 standard would not be protective of human health, the TSO relies on one study without technical peer review to develop a HF183 threshold.</p> <p>First, Boehm &amp; Soller (2020) found that bird fecal matter poses a human health risk and that its presence in the water actually changes the health risk of human fecal matter. As such, based on the findings of this study alone, HF183 is unlikely to be protective of human health, yet the TSO ignores this inconvenient detail.</p> <p>Second, the Boehm &amp; Soller (2020) finds that the health risk posed by human fecal matter changes depending on how much bird fecal matter is present, a static numeric objective for the HF183 human marker is not sufficient. Permittees should simultaneously quantify avian markers to properly assess the health risk associated with the human marker concentration. Thus, the human marker objective would exist on a sliding scale dependent upon the concentration of avian markers.</p> <p>Third, the TSO failed to conduct site specific research and mitigation required under the QMRA approach. According to the 2012 RWQC, the QMRA approach must be site-specific and should only be implemented once all human sources are identified, quantified, and controlled. That would require separate source tracking studies at all 20 beaches and implementation of mitigating measures before alternative objectives are created. The Regional Board has not conducted such studies, nor implemented such mitigation measures. As such, the incorporation of an</p>	
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			<p>alternative HF183 standard is entirely inappropriate.</p> <p>In light of existing scientific findings and significant data gaps, it is inappropriate to focus solely on HF183, even on an interim basis.</p> <p><b>c. The TSO's assumption that HF183 is an appropriate alternative to FIB is contrary to the technical and policy foundation of the TMDL.</b></p> <p>At the time the TMDL was amended in 2010, the Regional Board emphasized the need to control anthropogenic sources of bacteria, not just human waste. For example, in response to Copermittee comments that some dry weather bacteria exceedances were caused by birds and wildlife, the Board responded:</p> <p>We acknowledge that birds and other wildlife may cause dry weather exceedances, but in many situations there is a strong anthropogenic component associated with these sources. For example, birds (squirrels, etc.) congregate where humans feed them or have left food. In many locations, the presence of humans and their food attract birds and wildlife in large numbers. Furthermore, the health risk associated with bacteria from non-human sources is not well understood at this time. (Revised Bacteria TMDLs Project I, Responses to Comments Part III, February 3, 2010, p. 59).</p> <p>Additionally, in response to the City of San Diego's request to focus on human sources of bacteria for wet weather compliance, the Regional Board stated:</p>	
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			<p>The BLRPs or CLRPs that are developed should provide a framework of the actions that will be taken to reduce bacteria loads. Monitoring and source identification are essential elements that need to be included in the BLRPs or CLRPs. While sources that can be traced specifically to humans may be helpful, other anthropogenic sources may not be human in origin (e.g., domestic pets). Furthermore, the health risk associated with bacteria from non-human sources is not well understood at this time. Special studies and monitoring that is above and beyond the minimum monitoring requirements can certainly be included in the BLRPs or CLRPs, and would be supported by the San Diego Water Board. (Id., p. 58).</p> <p>In establishing its 2012 Recreational Water Quality Criteria, the EPA similarly concluded there is insufficient data to conclude non-human bacteria sources do not pose a risk to human health.</p> <p>EPA has continued to examine the potential for illness from exposure to nonhuman fecal contamination compared to the potential for illness from exposure to human fecal contamination....Overall, the aforementioned reviews indicate that both human and animal feces in recreational waters do pose potential risks to human health, especially in immunocompromised persons and vulnerable individuals. EPA has conducted analyses to characterize the potential differences in magnitude of illness arising from different fecal sources. These analyses indicate that the human health risk associated with exposure to waters impacted by animal sources can vary substantially. In some cases these risks can be similar to exposure to human fecal contamination, and in other cases, the risk is substantially lower. (EPA 2012 Recreational Water Quality Criteria, p. 35).</p>	
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			<p>“Because there have been few epidemiological studies, with mixed findings, in waters impacted by nonhuman sources and QMRA shows that risks from some animals may be comparable to humans, EPA is not developing separate national criteria for nonhuman sources.” (Id., p. 38).</p> <p>Notably, EPA suggests states may adopt site-specific alternative criteria to reflect local environmental conditions and human exposure patterns but notes they should be scientifically defensible, protective of the use, and reviewed and approved by EPA. (Id., pp. 48-49).</p> <p>The Environmental Groups understand both the Regional Board and Copermittees desire to focus limited resources on addressing the ultimate issue – supporting the REC-1 beneficial use and attaining water quality objectives. To ensure human health is protected, the Regional Board has already identified some potential avenues to achieve this goal, including identification of direct pathogen measurements. (See, 2009-1125 Technical Report, p. 125). Environmental Groups are likewise supportive of efforts to directly measure pathogens and related epidemiological studies.<sup>9</sup></p> <p>However, the current focus on HF183 excludes important data points in the process of attempting to characterize human health risks. First, the reliance on one study to develop a human marker HF183 threshold without technical peer review in this context is inappropriate. Further, there is a disconnect between the WQBEL FIB compliance determinations and the interim receiving water HF183 compliance pathways. For example, the WQBEL interim compliance monitoring is rightfully conducted end-of-pipe. The TSO also notes</p>	
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			<p>encampments of unhoused individuals, sewage collection systems, private lateral contributions, septic system contributions, and other illicit discharges, may be additional sources of bacteria without an accompanying waste load allocation. (TSO, p. 7). However, the TSO fails to characterize these sources' pathways to receiving waters (whether via MS4) and whether they would be reflected in the Copermittee outfall monitoring (i.e. WQBEL compliance monitoring) or the receiving waters (or both). Likewise, the TSO does not align with the TMDL Technical Report's focus on controlling anthropogenic sources of bacteria – not simply human bacteria.</p>	

N.5	Environmental Groups	Several	<p><b>3. The HF183 Alternative Compliance Pathway is Inappropriate and Inconsistent with the Existing Regulatory Scheme.</b></p> <p>Although the TSO retains the FIB WQBELs and Receiving Water Limitations for the final compliance deadline of January 31, 2028, the Interim Effluent Limitations and Receiving Water Limitation enables Copermittees to establish compliance solely through HF183 monitoring and demonstration. (TSO, Directives 1 and 2). Additionally, the TSO allows Copermittees to conduct dry weather outfall discharge monitoring for FIB or HF183. (TSO Directive 1.B). Further still, for interim Receiving Water Limitation compliance monitoring, the Copermittees are required to monitor for E. Coli and HF183 for streams and creeks, but only HF183 or FIB for beach segments. (TSO, Directives 2.A.1.b–c.).</p> <p><b>a. The Flawed Reference System Approach Should Not Be Replaced with An Equally Flawed Alternative Compliance Path in the TSO.</b></p> <p>As noted above, the Regional Board amended the bacteria TMDL in 2010 to incorporate the reference system approach.</p> <p>The purpose of the reference system approach is to account for the natural, and largely uncontrollable sources of bacteria (e.g., bird and wildlife feces) in the loads generated in the watersheds and at the beaches that can, by themselves, cause exceedances of WQOs. The reference system approach is utilized in the calculation of the wet weather TMDLs by allowing a 22 percent exceedance frequency of the single sample maximum WQOs for REC-1. (2009-1125 Technical Report, p. 3; Basin Plan, p. 7-62). The “reference system” used in the TMDL calculation was the Arroyo Sequit Watershed in</p>	See response to comment N.3.
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			<p>the Los Angeles region, originally used to calculate the Santa Monica Bay beaches and Malibu Creek TMDL. (Id., p. 28, footnote 15, p. 31). The reference system approach is different than the natural source exclusion approach because the latter “requires evidence that remaining indicator bacteria densities do not indicate a human health risk.” (Id. at p. 29). Both approaches require control of indicator bacteria from anthropogenic sources. (Id.).</p> <p>Environmental groups, including San Diego Coastkeeper, argued at the time that the reference system approach was flawed, based in part, on the assumption that exceedances at the “reference” watersheds were due solely to natural sources. (See, January 22, 2010, San Diego Coastkeeper Comments, pp. 1-2). In fact, in SCCWRP’s 2006 study, Microbiological Water Quality at Non-Human Impacted Reference Beaches in Southern California During Wet Weather, indicators of human sources were found in three instances. (Id., p. 2). Today, Environmental Groups remain concerned with the TMDL’s reference approach for numerous reasons. First, if the reference system FIB exceedances were due to anthropogenic sources, it would be inappropriate to allow a similar exceedance frequency based on the assumption that exceedances were due solely to wildlife. Second, it is unclear whether FIB exceedances at the reference systems were associated with human health risks – even if such exceedances were solely due to non-anthropogenic bacteria sources. Third, assuming reference system FIB exceedances were solely attributable to natural, non-anthropogenic bacteria sources, it would be inappropriate to allow the same exceedance frequency for anthropogenic, potentially harmful sources. And finally, the compounding effect of natural, non-anthropogenic</p>	
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			<p>bacteria combined with anthropogenic (especially human fecal) sources was not taken into account.</p> <p>It is therefore frustrating to see internal Regional Board communications reveal similar concerns with the reference system approach form the basis of the instant TSO. Though such observations validate Coastkeeper’s prior (and current) concerns, the Regional Board’s proposed solution has the potential to compound the issue rather than resolve it. It is readily apparent from the TSO itself as well as internal Regional Board communications that the shift to HF183 monitoring and compliance assessment for dry weather is a first step to amending the wet weather targets and the TMDL itself in an attempt to correct the reference system approach. However, by focusing on HF183 without concurrent epidemiological studies, pathogen testing, and FIB sampling, the TSO – as did the original TMDL reference system approach – relies on a dangerous assumption to form the basis of TMDL compliance. As discussed above, the Regional Board assumes that HF183 is a valid proxy for FIB and human health risk without reliable data and studies. As horse, cow, domestic pet, rodent and/or trash-related<sup>10</sup> anthropogenic sources of bacteria, and by extension pathogens, in stormwater lead to human health impacts, HF183 will not serve as an appropriate alternative compliance metric. Moreover, as detailed above, an HF183-only standard contradicts the TMDL’s premise that indicator bacteria from all controllable anthropogenic sources should be eliminated.</p> <p><b>b. The TSO Is Inconsistent with the Basin Plan and TMDL</b></p> <p>Clean Water Act regulations require NPDES WQBELs be consistent with the “assumptions and requirements” of waste load allocations. (40 C.F.R. § 122.44(d)(1)(vii)(B)). The Basin Plan</p>	
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			<p>summarizes the “assumptions and requirements” included in the calculation of the TMDL and WLAs, including the following:</p> <ul style="list-style-type: none"> <li>• The numeric targets consist of the numeric WQOs from the Basin Plan and/or Ocean Plan and an allowable exceedance frequency.</li> <li>• The numeric targets for dry weather TMDLs consist of the REC-1 30-day geometric metric mean WQOs and a 0 percent allowable exceedance frequency.</li> <li>• The TMDL calculations are based on either the single sample maximum WQO (for wet weather) or 30day geometric mean WQOs (for dry weather), but both the single sample maximum and 30-day geometric mean numeric WQOs and allowable exceedance frequencies must be met in the receiving waters.</li> <li>• The TMDLs, and in turn the WLAs for point sources and LAs for nonpoint sources, are assumed to be met when the numeric targets for all three indicator bacteria (fecal coliform, total coliform, and Enterococcus) are met in the receiving waters.</li> <li>• The mass-load based TMDLs calculated at the critical location are dependent on the flow, which can vary from year to year, but the numeric targets will not vary. When the numeric targets are met in the receiving water, the TMDLs are assumed to be met.</li> <li>• The mass-load based TMDLs, WLAs, and LAs are calculated for the critical location, but the appropriate numeric targets (based on freshwater and/or saltwater REC-1 WQOs and allowable exceedance frequencies) must be met throughout the waterbodies addressed by these TMDLs.</li> <li>• The TMDLs, and in turn the WLAs for point sources and LAs for nonpoint sources, are assumed to be met when the numeric targets are met in the receiving waters.</li> </ul>	
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			<ul style="list-style-type: none"> <li>• The load reductions needed to meet the WLAs for point sources and LAs for nonpoint sources are assumed to be achieved when the numeric targets are met in the receiving waters. (Basin Plan, pp. 7-91 to 7-93).</li> </ul> <p>The Basin Plan is replete with similar statements confirming compliance with the WLAs and TMDL is based on achieving the numeric targets in the receiving waters.</p> <p>If the receiving water limitations (based on the numeric targets) are met in the receiving waters, the assumption will be that the MS4s have met their WLAs. If, however, the receiving water limitations are not being met in the receiving waters, the Phase I MS4s will be responsible for reducing their bacteria loads and/or demonstrating that controllable anthropogenic discharges from the Phase I MS4s are not causing the exceedances, as outlined below in the Monitoring for TMDL Compliance section below.” (Basin Plan, p. 7-95).</p> <p>Compliance with the TMDLs, WLAs, and LAs will be assessed primarily by comparing receiving water indicator bacteria results from the monitoring locations outlined above with receiving water limitations expressed in terms of the appropriate numeric REC-1 WQOs and allowable exceedance frequencies of the appropriate numeric REC-1 WQOs. (Basin Plan, p. 7-102).</p> <p>At the end of the TMDL Compliance Schedules, which are given in the following section, the receiving waters must meet the receiving water limitations above to be considered in compliance with these TMDLs, WLAs, and LAs. (Basin Plan, p. 7-103).</p>	
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			<p>However, this assumption and requirement is undermined by the TSO, which provides Copermittees the option of demonstrating compliance with interim receiving water limitations through HF183 monitoring in lieu of FIB monitoring. (TSO, Directive 2). And though the final WQBELs are FIB-based, the Regional Board's internal communications reflect a desire to amend the TMDL to allow for an alternative compliance demonstration, suggesting achieving the FIB numeric targets in the receiving waters will not be required. Unless and until the TMDL and Basin Plan are amended, structuring the TSO to undermine the FIB numeric targets is inappropriate and inconsistent with the Basin Plan and Clean Water Act.</p> <p>Although the WQBELs are an essential and important aspect of the TMDL and MS4 Permit, ultimately the intent is to attain water quality objectives within the receiving waters. Therefore, the emphasis and focus on HF183 to establish interim compliance will result in data gaps and continued water quality issues. The interim Receiving Water Limitations presumably lay the groundwork for ultimate compliance with the final FIB WQBELs and FIB Receiving Water Limitations of the MS4 Permit. (See, MS4 Permit, Attachment E, Section 6.b.(1)). Therefore, the TSO's interim HF183 standard (likely at the exclusion of FIB), may ultimately set the Copermittees up for failure in 2028.</p>	

N.6	Environmental Groups	Directive 4	<p><b>The Term Ephemeral Must be Struck from Directive 4.A.</b></p> <p>The Clean Water Act governs “navigable waters,” defined broadly in the Act as “the waters of the United States, including the territorial seas.” 33 U.S.C. 1362. Unfortunately, the definition of “water of the United States” has frequently changed over the past decade. On June 29, 2015, U.S. EPA and the Army Corps of Engineers published the “Clean Water Rule” 80 F.R. § 37054 (June 29, 2015) codifying a relatively broad definition of “jurisdictional by rule” waters.<sup>11</sup> On January 23, 2020, the agencies finalized a new “Navigable Waters Protection Rule” (“NWP”) 85 F.R. § 22250 (April 21, 2020), which went into effect on June 22, 2020. The NWP narrowed the scope of “water of the United States” by excluding “ephemeral features,” which were defined as surface waters that flow only in direct response to precipitation, including ephemeral streams, swales, gullies, rills, and pools. <i>Id.</i> at 22251. The NWP still retained jurisdiction over “perennial” and “intermittent” waterbody segments.</p> <p>On December 30, 2022, the agencies announced the final “Revised Definition of ‘Waters of the United States’” rule. On January 18, 2023, this new rule was published in the Federal Register, and the rule is set to take effect on March 20, 2023. Under this new “Revised Definition” rule, tributaries to navigable waters are jurisdictional under the Clean Water Act if they meet either the “relatively permanent” standard or “significant nexus” standard. Hence, beginning on March 20, 2023, references to “ephemeral,” “intermittent,” and “perennial” waterbodies are no longer relevant.</p> <p>Directive 4.A requires the TSO Responsible Permittees for Chollas Creek and Tecolote Creek</p>	<p>The San Diego Water Board staff revised Tentative TSO R9-2024-0010 which no longer includes the terms “ephemeral,” “intermittent,” and “perennial.”</p>
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			<p>to complete a watershed hydrology survey for those waterbodies “in order to determine whether these waterbodies are ephemeral.” The directive goes on to require the responsible Copermittees to make potential changes to monitoring stations based on whether certain segments are found to be “ephemeral,” versus “perennial” or “intermittent.”</p> <p>If adopted, the TSO will not go into effect prior to March 20, 2023, and would remain in effect long after the effective date of the new “Revised Definition.” As such, it is inappropriate for Directive 4.A to require the TSO Responsible Permittees for Chollas Creek and Tecolote Creek to conduct a survey “to determine whether these waterbodies are ephemeral.” Environmental Groups support an analysis of these waterbodies using continuous flow monitoring devices, and an analysis of optimal locations for such monitoring devices. However, a determination regarding whether these waterbodies are “ephemeral” is unnecessary and inappropriate.</p>	

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N.7	Environmental Groups	N/A	<p>The Regional Board and stakeholders spent years developing, revising, and implementing the instant TMDLs. The instant TSO does not get us closer to achieving the TMDLs and potentially endangers public health. After almost two decades, the Copermittees cannot credibly claim they were caught unaware of the pending compliance deadline. Almost two years after the compliance deadline, any protestation that the existing FIB standards are overly protective or inapplicable should be met with skepticism, not reward. To ensure protection of the REC-1 beneficial use, the Environmental Groups urge the Regional Board to require strict interim and final compliance with the TMDL in the TSO. In parallel, the Environmental Groups would welcome the opportunity to engage in a public process to explore the potential use of emerging technologies and assess the need for further studies.</p>	<p>Tentative TSO R9-2024-0010 requires compliance with the Final Dry Weather WQBELs as soon as possible and no later than September 30, 2028. The Tentative TSO considers what is “as soon as possible” based on current conditions rather than what the Copermittees could or should have done decades ago. Further, Tentative TSO R9-2024-0010 requires TSO Responsible Permittees to demonstrate compliance with the TSO directives annually, specifically the Interim Bacteria Receiving Water Limitations in Directive 1 or the Interim Bacteria Outfall Effluent Limitations in Directive 2. San Diego Water Board staff will engage with the Environmental Groups in future public processes relating to the potential use of emerging technologies and studies.</p>