



## THE CITY OF SAN DIEGO

September 14, 2015

VIA EMAIL TO: [Laurie.Walsh@waterboards.ca.gov](mailto:Laurie.Walsh@waterboards.ca.gov)

Laurie Walsh, Water Resource Control Engineer  
San Diego Regional Water Quality Control Board  
2375 Northside Drive, Suite 100  
San Diego, CA 92108

Subject: Comment Letter – Tentative Order No. R9-2015-0100

Dear Ms. Walsh:

The City of San Diego (City) appreciates the opportunity to provide comments on the Amendment to the Regional Municipal Separate Storm Sewer System (MS4) Permit for the San Diego Region (Tentative Order No. R9-2015-0100, herein referred to as the “Draft Tentative Order”). The City is committed to protecting and improving water quality in the San Diego Region. From this perspective, the City provides the following comments below. More detailed comments are included in the attached table (Attachment 1).

- *The Draft Tentative Order should include revisions to Provision B.3.c to align requirements with a once per permit term approach to milestones.* The City appreciates the inclusion of a Water Quality Improvement Plan (WQIP)-based alternative for complying with the receiving water limitations and discharge prohibitions in Provision A. In its recent order upholding a similar compliance alternative in the Los Angeles MS4 permit, the State Water Board recognized that allowing permit compliance to be based on implementation of watershed plans provide an opportunity to achieve greater water quality improvement than the status quo compliance approach. The City recommends several revisions to ensure an effective alternative compliance approach that is consistent with the State Water Board’s guidance. Milestones and interim goals provide opportunities to achieve key outcomes, measure progress to final goals, and support the adaptive management process. The City understands that the transparency that goals and milestones create is important for the Regional Water Board and the public to track progress and evaluate compliance. However, the annual milestones proposed may be counterproductive because they do not allow the City enough time to reprogram activities and secure funding the following fiscal year to make any necessary adaptations to implement the WQIPs. While the shift to implementing programs and building water quality improvement projects is our primary focus moving forward, effective adaptive management, which allows for adequate time and consideration, is a key component of successful WQIP implementation.



### Transportation & Storm Water Department

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- *The Draft Tentative Order should include revisions to Provision B.3.c to include alternative compliance coverage for Provision A.2.b.* The City supports the inclusion of the receiving water limitations in the alternative compliance pathway of Provision B.3.c. As proposed, however, Provision B.3.c. omits alternative compliance coverage for the receiving water limitations regarding the Area of Special Biological Significance (ASBS) in Provision A.2.b. To be consistent with the intent of the alternative compliance pathway approach, the ASBS provisions should be included in the alternative compliance provisions similar to the other receiving water limitations provisions.
- *Draft Tentative Order Attachment E Tables 6.1 and 6.4 should be modified for consistency with the TMDL.* The proposed addition of a 10-year wet-weather compliance deadline of April 4, 2021 to Table 6.1, for water bodies in a WQIP that does not include load reductions for pollutants besides bacteria, is inconsistent with the adopted TMDL and thereby violates the Clean Water Act regulations at 40 C.F.R. § 122.44(d)(1)(vii)(B). This proposed amendment would subject the segments of beaches and creeks that were removed from the 303(d) list to requirements from which the de-listed segments are specifically exempt under the adopted TMDL. Under the TMDL, no BLRP or CLRP is required for the de-listed segments. The WQIP is a requirement of the MS4 Permit, not the TMDL, and is not a BLRP. Thus, there is no justification to require a 10-year compliance schedule for the de-listed segments, and the proposed amendment is not consistent with the TMDL.
- *Draft Tentative Order Attachment E should be modified to allow individual jurisdictional compliance with the TMDLs.* The City is committed to protecting and improving water quality and achieving compliance with TMDLs via the implementation of Water Quality Improvement Plans. However, language throughout Attachment E appears to preclude any Copermittee from using the WQIP compliance pathway unless all other Copermittees also are in compliance. The City has no authority to compel other Copermittees to comply and cannot be held liable for the actions or inactions of other agencies. Under federal Clean Water Act regulations that have been incorporated into the MS4 Permit, a Copermittee is responsible only for conditions relating to the discharges for which it is an operator.
- *Draft Tentative Order, Section E.3.e.(1), should be modified to include for development approvals.* The City supports the inclusion of the language proposed in the Draft Tentative Order which provides clarifications when a development project should be subject to the Priority Development Projects Requirements. However, the City recommends incorporating additional language allowing for development approvals as suggested in the language submitted by the City of San Diego to Regional Board staff on June 10, 2015 (Attachment 2).

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Thank you for your time and consideration of these comments. If you have questions, please contact Ruth Kolb at (858) 541-4328 or at [rkolb@san Diego.gov](mailto:rkolb@san Diego.gov).

Sincerely,



Drew Kleis  
Deputy Director

DK\rk

Attachments: 1. City of San Diego Comment Table  
2. June 10, 2015 proposed permit language regarding applicability of Priority Development Project requirements

cc: Paz Gomez, Deputy Chief Operating Officer  
Mike Hansen, Director of Land Use and Environmental Policy, Office of the Mayor  
Kris McFadden, Director, Transportation & Storm Water Department  
Heather Stroud, Deputy City Attorney, City Attorney's Office  
Ruth Kolb, Program Manager, Transportation & Storm Water Department  
Sumer Hasenin, Senior Engineer, Transportation & Storm Water Department  
Clem Brown, Program Manager, Transportation & Storm Water Department

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General Comment	NA	NA	NA	The proposed amendments do not address the issues raised in the City’s Petition for Review of San Diego Regional Water Quality Control Board (Regional Board) Order No. R9-2013-0001, filed on June 7, 2013. The City does not waive any of those arguments, and urges the Regional Board to address those issues as part of this permit amendment.
<b>Provision A. Prohibitions and Limitations</b>				
II.A.1.d	16	Prohibitions and Limitations	Correction to updated ASBS resolution number.	Change reference from State Water Board Resolution No. 2012-0012, to Resolution No. 2012-0031.
<b>Provision B. Water Quality Improvement Plans</b>				
II.B.1	17	Watershed Management Areas	This NPDES Permit is applicable to discharges from Copermittee MS4s as stated in Section A.1. Discharges from other NPDES permits are governed by requirements within those permits.	Modify Section B.1 as follows:  The Copermittees must develop a WQIP for <u>their MS4 discharges within</u> each of the Watershed Management Areas in Table B-1.
II.B.3.c.(1)(a)(ii)	33-34	Prohibitions and Limitations	Correction to updated ASBS resolution number.	Change reference from State Water Board Resolution No. 2012-0012, to Resolution No. 2012-0031.
II.B.3.c.(1)(a)(iii) through (vii)	33-34	Prohibitions and Limitations Compliance Option	The “and/or” in subsection (iii) creates confusion regarding whether the categories of numeric goals that follow are mandatory or optional. The proposed revision and renumbering adds clarity and is consistent with the City’s understanding of Regional Board staff’s intent.	(a) Numeric goals, water quality improvement strategies, and schedules developed pursuant to Provisions B.3.a and B.3.b that include the following:  (i) Interim and final WQBELs established by the TMDLs in Attachment E to this Order applicable to the Copermittee’s jurisdiction within the Watershed Management Area; AND  (ii) Interim and final numeric goals for any ASBS subject to the provisions of Attachment B to State Water Board Resolution No. 2012-0012 applicable to the Copermittee’s jurisdiction within the Watershed Management Area; AND  (iii) Interim and final numeric goals applicable to the Copermittee’s MS4 discharges within the Watershed Management Area expressed as numeric concentration-based or load-based goals for all pollutants and conditions listed on the Clean Water Act Section 303(d) List of Water Quality

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				<p>Impaired Segments for the receiving waters in the Watershed Management Area that do not have a TMDL incorporated into Attachment E to this Order; <del>AND/OR</del> (iv) Interim and final numeric goals for pollutants and conditions identified as receiving water priorities in the Water Quality Improvement Plan that will result in chemical, physical, and biological conditions protective of the beneficial uses of the receiving waters impacted by the Copermittee’s MS4 discharges within the Watershed Management Area; AND</p> <p>(iv) The Copermittee has the option to include interim and final numeric goals applicable to the Copermittee’s MS4 discharges and/or receiving waters within the Watershed Management Area for any pollutants or conditions in addition to those described in Provisions B.3.c.(1)(a)(i)-(iii); AND</p> <p>(v) Schedules for achieving each final numeric goal that reflect a realistic assessment of the shortest practicable time needed for achievement; AND</p> <p>(vi) For each final numeric goal developed pursuant to Provisions B.3.a and B.3.c.(1)(a)(i)-(iv), at least one annual milestone and date for its achievement must be included within each Water Quality Improvement Plan Annual Report reporting period until the final numeric goal is achieved.</p>
<p>II.B.3.c, II.B.3.c.(1), and II.B.3.c.(2)</p>	<p>33, 35</p>	<p>Prohibitions and Limitations Compliance Option</p>	<p>State Board Order No. WQ 2015-0075 (p. 52) requires the Regional Board to “incorporate an ambitious, rigorous, and transparent alternative compliance path that allows permittees appropriate time to come into compliance with receiving water limitations without being in violation of the receiving water limitations during full implementation of the compliance alternative.” The City appreciates the inclusion of most of the receiving water limitations in the alternative</p>	<p><b>c. Prohibitions and Limitations Compliance Option</b></p> <p>Each Copermittee has the option to utilize the implementation of the Water Quality Improvement Plan to demonstrate compliance with the requirements of Provisions A.1.a, A.1.c, A.1.d, A.2-a, and A.3.b within a Watershed Management Area subject to the following conditions:</p> <p>(1) A Copermittee is eligible to be deemed in compliance with Provisions A.1.a, A.1.c, A.1.d, A.2-a, and A.3.b within a Watershed Management Area when the Water Quality Improvement Plan for a Watershed Management Area incorporates the following:</p>

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			<p>compliance pathway of Provision B.3.c. As proposed, however, Provision B.3.c. omits alternative compliance coverage for the receiving water limitations regarding the ASBS in Provision A.2.b, which states that “Discharges from MS4s composed of storm water runoff must not alter natural ocean water quality in an ASBS.” Without inclusion in the alternative compliance pathway, the City does not have appropriate time to come into compliance with this provision.</p>	<p>. . . .</p> <p>(2) Each Copermittee that voluntarily completes the requirements of Provision B.3.c.(1) is deemed in compliance with Provisions A.1.a, A.1.c, A.1.d, A.2-a, and A.3.b for the pollutants and conditions for which numeric goals are developed when the Water Quality Improvement Plan, incorporating the requirements of Provision B.3.c.(1), is accepted by the San Diego Water Board pursuant to Provision F.1.b or F.2.c. The Copermittee is considered to be in compliance during the term of this Order as long as:</p>
<p>II.B.3.c.(1)(a)(vii) II.B.3.c.(1)(d) ) II.B.3.c.(2)(c) )-(d)</p>	<p>34, 35, 36</p>	<p>Prohibitions and Limitations Compliance Option</p>	<p>Milestones and interim goals provide opportunities to achieve key outcomes, measure progress to final goals, and support the adaptive management process. The transparency that goals and milestones create is important for the Regional Water Board and the public to track progress and evaluate compliance as well as for the Copermittees to secure funding to implement the WQIPs. As the Copermittees complete the WQIP development/planning phase we are shifting to implementation. Upon completion of WQIPs, Copermittees will require much effort to transition from plan development to implementation, capital improvement planning, and seeking of funding sources to ensure that projects can be scheduled within the short planning periods. With the uncertainty of much of these efforts, Copermittee staff will</p>	<p>The following changes to Provision II.B.3.c are proposed to align requirements with a once per permit term approach to milestones:</p> <p>II.B.3.c.(1)(a)(vii) For each final numeric goal developed pursuant to Provisions B.3.a and B.3.c.(1)(a)(i)-(v), at least one <del>annual</del> milestone<sup>9</sup> and date for its achievement must be included within <u>the permit term</u> <del>each Water Quality Improvement Plan Annual Report reporting period</del> until the final numeric goal is achieved.</p> <p>Footnote 9 <del>Annual m</del> Milestones for each final numeric goal must build upon previous milestones and lead to the achievement of the final numeric goal. The <del>annual</del> milestones may consist of water quality improvement strategy implementation phases, interim numeric goals, and other acceptable metrics.</p> <p>II.B.3.c.(1)(d) Documentation showing that the numeric goals, schedules, and <del>annual</del> milestones proposed pursuant to Provision B.3.c.(1)(a), the analysis performed pursuant to Provision B.3.c.(1)(b), and the specific monitoring and</p>

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			<p>be creating internal planning mechanisms and systems to restructure procedures and operations to facilitate this process. As part of the shift, Copermittees will work to secure funding via the budgeting process, which for the City is on two to five year planning horizons. The City submits annual budget requests the year before the funds are approved for implementation. . A five year planning horizon allows for implementation of more effective adaptive management.</p> <p>While the shift to implementing programs and building water quality improvement projects is our primary focus moving forward, adaptive management is a key component of WQIP implementation. As part of annual reporting Copermittees are required to describe the progress of implementing the WQIPs as well as identify modifications to the WQIP. These requirements include, but are not limited to reporting on the following:</p> <ol style="list-style-type: none"> <li>1. Progress toward achieving the interim and final numeric goals;</li> <li>2. The water quality improvement strategies that were implemented and/or no longer implemented;</li> <li>3. The water quality improvement strategies planned for implementation during the next reporting period;</li> </ol>	<p>assessments proposed pursuant to Provision B.3.c.(1)(c) have been reviewed by the Water Quality Improvement Consultation Panel (see Provision F.1.a.(1)(b)). Updates must be reviewed by the Water Quality Improvement Consultation Panel for any recommendations.</p> <p>II.B.3.c.(2)(c) The Copermittee’s assessments in the Water Quality Improvement Plan Annual Report submitted pursuant to Provision F.3.b.(3) support a conclusion that: 1) the Copermittee is in compliance with the <del>annual</del> milestones and dates for achievement developed pursuant to Provision B.3.c.(1)(a)(vii), OR 2) the Copermittee has provided acceptable rationale and recommends appropriate modifications to the interim numeric goals, and/or water quality improvement strategies, and/or schedules to improve the rate of progress toward achieving the final numeric goals developed pursuant to Provisions B.3.a and B.3.c.(1)(a)(i)-(vi); AND</p> <p>II.B.3.c.(2)(d) Any proposed modifications to the numeric goals, schedules, and/or <del>annual</del> milestones are accepted by the San Diego Water Board as part of subsequent updates to the Water Quality Improvement Plan pursuant to Provision F.2.c;10 AND</p>

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			<p>4. Proposed modifications to the water quality improvement strategies, the public comments received and the supporting rationale for the proposed modifications;</p> <p>5. Previous modifications or updates incorporated into the WQIP and/or jurisdictional runoff management program document, which have been implemented; and</p> <p>6. Proposed modifications or updates to the WQIPs and/or jurisdictional runoff management program document.</p> <p>These requirements, in conjunction with additional adaptive management provisions of the Permit, ensure a transparent measure of progress and meaningful modifications to the program are considered and implemented.</p> <p>However, requiring the identification and achievement of specific annual milestones as part of the Prohibitions and Limitations Compliance Options effectively keeps City staff within the planning framework with a major focus on reporting that dilutes resources for the shift to implementation. Additionally, the annual milestone requirement effectively accelerates the adaptive management process, lessening the ability to evaluate</p>	

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			<p>meaningful information and creatively adapt programs without risking non-compliance with the Permit. Because the City operates on two to five year planning horizons (described earlier, above), obtaining funding to significantly modify programs in response to information on an annual basis is not feasible. Furthermore, as required by the Permit, modifications must be reviewed and revised based on separate reviews by the Water Quality Improvement Consultation Panel, the public review, and Regional Water Board staff. Given this lengthy process, the City could identify modifications, but not be able to implement those modifications within the construct and compliance coverage of the Prohibitions and Limitations Compliance Options on an annual basis.</p> <p>While the City understands the desire to utilize milestones and supports interim measures of progress, the City feels that consideration should be given to an alternative approach or timeframe. Such an alternative should meet the goal of providing a transparent measure of progress (which is already supported by the Permit’s annual reporting and adaptive management requirements) and support a determination of compliance while also supporting the shift to implementation in a manner consistent with both WQIP revision and review</p>	

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			<p>requirements and internal Copermittee processes.</p> <p>The 2013 Permit’s approach of permit term interim limits and corresponding strategies with annual and permit term adaptive management requirements are manageable and appropriate. The approach was an improvement over the Los Angeles Region’s disparate approach of requiring some water quality priorities to follow a schedule based on unrelated TMDLs and requiring others to meet annual milestones. The San Diego Region’s approach provided opportunity to gather sufficient information to adapt where possible annually and approach more complex modifications on a permit term basis. This approach provides essential time for responsible agencies to shift planning and operational procedures, while seeking funding opportunities. A single milestone within the permit term also provides sufficient time to not only plan and implement projects, but to develop reporting procedures that demonstrate reasonable assurance and quantitative documentation of the progress towards meeting milestones. As such, the City proposes that the Regional Water Board maintain the balance set forth in the 2013 Permit and require the establishment of a single milestone within the permit term that measures progress towards meeting the interim or final goals set</p>	

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			for the permit term.	
<b>Provision E.3. Development Planning</b>				
E.3.b.(1)	91, 92	Definition of Priority Development Projects	Sub-sections c and e should be combined to improve clarity of the requirements. Both sections have the same requirements for new and redevelopment projects but list different categories under each one.	Combine sub-sections (c) and (e). If sub-sections are not combined, add “collectively over the entire project site” to sub-section e, for consistency.
		Definition of Priority Development Projects	To provide clarity regarding redevelopment projects. There has been confusion of what is considered redevelopment vs. maintenance on “not redevelopment”.	
E.3.d.	101	BMP Design Manual Update	This section should define the implementation date of the BMP Design Manual as the “effective date of the BMP Design Manual”, to avoid confusion. Section E.3.e(1)(a)(i) references the “effective date of the BMP Design Manual”.	Add the following clarifying language to Provision E.3.d:  <b>d. BMP DESIGN MANUAL UPDATE</b> Each Copermitee must update its BMP Design Manual pursuant to Provision F.2.b. Until the Copermitee has updated its BMP Design Manual pursuant to Provision F.2.b.(1), the Copermitee must continue implementing its current BMP Design Manual. The Copermitee must implement the updated BMP Design Manual within 180 days following completion of the update pursuant to Provision F.2.b.(1), unless directed otherwise by the San Diego Water Board Executive Officer. <u>The date the BMP Design Manual is implemented is the “effective date” of the BMP Design Manual.</u> The update of the BMP Design Manual required pursuant to Provision F.2.b.(1) must include the following:
E.4		Construction Management	To streamline the requirements, minimize confusion and improve readability, sub-sections E.4.b. and E.4.d.(3) should be combined and duplicates deleted. Both sections contain information that needs to be collected, inventoried and tracked.	Combine sections E.4.b and E.4.d.(3).
Attachment	c-9	Definitions	The Redevelopment Definition is not	Revise the definition as follows to provide clarity:

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C			easily understood.	<p>Redevelopment – The creation and/or replacement of impervious surface on an already developed site. Examples include the expansion of a building footprint, road widening, the addition to or replacement of a structure, <del>and creation or addition of impervious surfaces.</del> Replacement of impervious surfaces includes any activity <del>that is not part of a routine maintenance activity</del> where impervious material(s) are removed, exposing underlying soil during construction. Redevelopment does not include routine maintenance activities; trenching and resurfacing associated with utility work; resurfacing existing roadways <u>and parking lots</u>; new sidewalk construction, pedestrian ramps, or bike lane on existing roads; and routine replacement of damaged pavement, such as pothole repair, <u>overlay and pavement grinding.</u></p>
F.2.b.(4)	126, 127	BMP Design Manual Update	<p>It is unclear whether the 90 days to incorporate permit amendments changes the BMP Design Manual implementation date, which is also its effective date for the purpose of applicability of the development project requirements. There is a lot of confusion related to the initial effective date of Dec 24, 2015 and the update date anticipated to be Feb 18, 2016. If the intent is to change the implementation date (the “effective date”) of all of the requirements of the BMP Design Manual to February 18, 2016, which appears to be the case based on correspondence with Regional Board staff, then clarifying language is needed.</p>	<p>Add the following clarifying language to Provision F.2.b.(4):</p> <p>(4) If the San Diego Water Board amends Provisions E.3.a-d during the permit term but after the Copermittee has completed the update pursuant to Provision F.2.b.(1), the Copermittee must revise its BMP Design Manual to incorporate the amended Provision E.3.a-d requirements as soon as possible but not later than 90 days after the date the San Diego Water Board adopts the amendments to Provisions E.3.a-d, unless otherwise directed by the San Diego Water Board Executive Officer. <u>Under these circumstances, the effective date of the BMP Design Manual is 90 days after the date the San Diego Water Board adopts the amendments to Provisions E.3.a-d.</u></p>

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<b>Attachment E. Specific Provisions for Total Maximum Daily Loads Applicable to Order No. R9-2015-0001</b>				
Attachment E, Sections 1.b(3)(d) 1.b(3)(d)(iv) 1.b(3)(d)(v) 2.b(3)(d)(iv) 2.b(3)(d)(v) 3.b(3)(d)(iv) 3.b(3)(d)(v) 4.b(3)(d) 4.b(3)(d)(iv) 4.b(3)(d)(v) 5.b(1)(a) 5.b(3)(d) 5.b(3)(e) 5.b(3)(f) 4.b(3)(g) 4.b(3)(g)(iv) 4.b(3)(g)(v) 5.c(1)(b)(iv) 5.c(1)(b)(v) 5.c(1)(b)(vi) 5.c(1)(b)(vii) 5.c(1)(b)(viii) 6.b(2)(b)(ii) 6.b(3)(d) 6.b(3)(e) 6.b(3)(f) 6.b(3)(f)(iv) 6.b(3)(f)(v) 6.c(2)(a)(i) 6.c(2)(a)(ii) 6.c(3)(d) 6.c(3)(e) 6.c(3)(f) 6.c(3)(g) 6.c(3)(h)	E-4 E-8 E-11 E-16 E-19 E-23 E-24 E-25 E-34 E-36 E-37 E-41 E-42 E-47	Final TMDL Compliance Determination	Compliance language requires all Copermittees to implement a WQIP for any of the Copermittees to utilize the WQIP based compliance approach for TMDLs. Copermittees have no authority to compel other Copermittees to implement BMPs and should not be held liable for the actions or inactions of others. Under 40 C.F.R. §§ 122.26(a)(3)(vi) and 122.26(b)(1), a Copermittee is responsible only for conditions relating to the discharges for which it is the operator.	Revise Attachment E Provisions to allow independent jurisdictional compliance.  For example, revise Provisions E.1.b(3)(d) as follows:  (d) The Responsible <del>Copermittees</del> <u>Copermittee</u> <del>develop</del> <u>develops</u> and <del>implement</del> <u>implements</u> the Water Quality Improvement Plan as follows: ..... (iv) The Responsible <del>Copermittees</del> <u>Copermittee</u> <del>continue</del> <u>continues</u> to implement the BMPs required under Specific Provision 1.b.(2)(c), AND  (v) The Responsible <del>Copermittees</del> <u>Copermittee</u> <del>continue</del> <u>continues</u> to perform the specific monitoring and assessments specified in Specific Provision 1.d, to demonstrate compliance with Specific Provisions 1.b.(3)(a), 1.b.(3)(b) and/or 1.b.(3)(c).

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Attachment E. 6.	E-31	Final TMDL Compliance Requirement, Table 6.1	<p>The proposed addition of a 10-year wet-weather compliance deadline of April 4, 2021 to Table 6.1, for water bodies in a Water Quality Improvement Plan (WQIP) that does not include load reductions for pollutants besides bacteria, is inconsistent with the adopted TMDL and thereby violates the Clean Water Act regulations at 40 C.F.R. § 122.44(d)(1)(vii)(B). This proposed amendment would subject the segments of beaches and creeks that were removed from the 303(d) list to requirements from which the de-listed segments are specifically exempt under the adopted TMDL.</p> <p>The adopted TMDL states in multiple instances (pp. A-2; A-12; A-65; and A-66) that for these delisted shorelines of the Pacific Ocean, no further action is required as long as monitoring data continues to support compliance with water quality standards, i.e., the beaches remain off future iterations of the 303(d) list:</p> <p>“Specific beach segments from some of the Pacific Ocean shorelines listed in the above table have been delisted from the 2008 303(d) list that was approved by the San Diego Board on December 16, 2009, <u>and therefore are not subject to any further action</u> as long as monitoring data continues to support compliance with water quality standards.” Reso. No. R9-2010-0001 at</p>	Delete proposed language in Table 6.1 and footnote.

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			<p>A-2 [emphasis added].</p> <p>Accordingly, the adopted TMDL specifies that for the de-listed segments, no Comprehensive Load Reduction Plan or Bacteria Load Reduction Plan is required:</p> <p>“For watersheds in [Insert table number] [sic] where there are no longer any impairments listed on the 2008 303(d) List, <u>the Phase I MS4s and Caltrans are not required to submit a BLRP or CLRP within 18 months of the effective date of these TMDLs.</u> If, however, any segment of a waterbody for the watershed (Pacific Ocean shoreline, creek, or mouth as shown in Table 11-5) is re-listed on a future 303(d) List for any type of indicator bacteria, the Phase I MS4s and Caltrans will be required to submit a BLRP or CLRP within 6 months of the adoption of the 303(d) List by the San Diego Regional Board.” Reso. No. R9-2010-0001 at A-66 [emphasis added].</p> <p>Under the TMDL, no BLRP or CLRP is required for the de-listed segments. The WQIP is a requirement of the MS4 Permit, not the TMDL, and is <u>not</u> a BLRP. Thus, there is no justification to require a 10-year compliance schedule for the de-listed segments, and the proposed amendment is not consistent with the TMDL and should not be adopted.</p>	
Attachment	E-38	Interim TMDL	See above comment.	Delete proposed language in Table 6.4 and footnote.

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E. 6.	through E-40	Compliance Requirements, Table 6.4		
<b>Attachment F. Fact Sheet/Technical Report</b>				
Applicable Statutes, Regulations, Plans and Policies	F-30 – F-32	Antidegradation Policy & Anti-Backsliding Policy	The City supports the proposed amendments to the discussion on the MS4 Permit’s consistency with the antidegradation policy and anti-backsliding policy.	NA
Provisions	F-60	Provision B.3 (Water Quality Improvement Plan Goals, Strategies and Schedules)	<p>Finding no. 3 is not accurate as the MS4 Permit is currently drafted. Finding no. 3 states:</p> <p>“3. Provision B.3.c is an ambitious, rigorous, and transparent alternative compliance pathway that allows a Copermittee appropriate time to come into compliance with receiving water limitations without being in violation of the receiving water limitations during implementation of the compliance alternative.”</p> <p>As currently drafted, Provision B.3.c does not allow the City appropriate time to come into compliance with the ASBS receiving water limitations in Provision A.2.b.</p>	No changes are needed to this portion of the Fact Sheet so long as the City’s proposed change to Provision B.3.c. to include compliance coverage for Provision A.2.b is accepted.

Revise May 14, 2015, Draft of Provision E.3.e.(1)(a) as follows:

**e. PRIORITY DEVELOPMENT PROJECT BMP IMPLEMENTATION AND OVERSIGHT**

Each Copermittee must implement a program that requires and confirms structural BMPs on all Priority Development Projects are designed, constructed, and maintained to remove pollutants in storm water to the MEP.

(1) Structural BMP Approval and Verification Process

- (a) Each Copermittee must require and confirm that all Priority Development Projects implement the requirements of Provision E.3, except that the Copermittee may allow previous land development requirements to apply to a Priority Development Project if all of the following conditions are met:
  - (i) The Copermittee has, prior to the effective date of the BMP Design Manual required to be developed pursuant to Provision E.3.d, approved<sup>1</sup> a design that incorporates the storm water drainage system for the Priority Development Project in its entirety, including all applicable structural pollutant treatment control and hydromodification management BMPs, and that complies with the Priority Development Project requirements of the Previous Term MS4 permit;<sup>2</sup> AND
  - (ii) For private projects, the Copermittee has, prior to the effective date of the BMP Design Manual required to be developed pursuant to Provision E.3.d, issued a development approval or construction permit based on a design that incorporates the approved storm water drainage system for the Priority Development Project in its entirety; AND
  - (iii) All subsequent development approvals and construction permits, or equivalent approvals for public projects, that are needed to implement the initial approval, must be issued within 5 years of the effective date of the BMP Design Manual pursuant to Provision E.3.d. BMP installation must remain in substantial conformity with the design of the storm water drainage system included in the initial approval.
- (b) Alternatively, the Copermittee may allow previous land development requirements to apply to a Priority Development Project if application of Provision E.3 would be legally infeasible.

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<sup>1</sup> For public projects, approval means that the design of the storm water drainage system for the project in its entirety has been stamped by the City or County Engineer, or engineer of record for the project.

<sup>2</sup> Order Nos. R9-2007-0001, R9-2009-0002, and R9-2010-0016 for San Diego, Orange, and Riverside Counties, respectively.