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SANTA ANA REGION

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RESPONSE TO COMMENTS

for

Tentative Order R8-2026-0034

NPDES Permit No. CAS618000

National Pollutant Discharge Elimination System (NPDES) Permit
and Waste Discharge Requirements

For

Discharges of Pollutants in Runoff from the Municipal Separate Storm Sewer
Systems in the Counties of Orange, Riverside, and San Bernardino within the
Santa Ana Region

Santa Ana Regional MS4 Permit

September 1, 2026

This document contains version 2 of the response to comments received on the revised Tentative Order R8-2026-0034, NPDES Permit No. CAS618000, NPDES Permit and Waste Discharge Requirements for Discharges of Pollutants in Runoff from the Municipal Separate Storm Sewer Systems in the Counties of Orange, Riverside, and San Bernardino within the Santa Ana Region (Tentative Order).

The Tentative Order was first posted on March 1, 2024. The Santa Ana Water Board accepted written comments on the Tentative Order from March 1, 2024, through September 13, 2024. Response to Comments Version 1 (RTC#1) of the response to comments responds only to comments received in the first comment period. RTC#1 was released on June 4, 2026.

Staff have revised the Tentative Order in response to comments. The revised Tentative Order was posted for public comment on May 5, 2026. The Santa Ana Water Board accepted written comments on the revised Tentative Order from May 5, 2026, to July 20, 2026. This document contains responses to comments on the May 5, 2026, revised Tentative Order only. Pursuant to the original and revised Notices of Opportunity for Public Comment on Tentative Order R8-2026-0034, comments unrelated to the revisions and comments on the Response to Comments were not accepted and will not be included in the administrative record unless otherwise stated. On September 1, 2026, the Chair issued a *Ruling on Admissibility of Written Comments Received*, which identifies written comments determined to be outside the scope of the Notices of Opportunity for Public Comment and rules that those comments will not be admitted into the administrative record. Any comments that are not set forth below were outside the scope of the Notices of Opportunity for Public Comment, consistent with the Chair's September 1, 2026 ruling.

Copies of the full comment communications and RTC#1 can be obtained by contacting Hero Alexander at Hero.Alexander@waterboards.ca.gov or at (951) 782-4419.

Categories

Comments are sorted into one of several categories. Each category has a Category Number and Title. For example, "Category 5 – Trash Control" is the second comment category and contains comments related to the trash control provisions in the Tentative Order.

Individual Comments

Numbers at the beginning of each comment identify individual comments within a comment letter. The first digits correspond to the commenter number for each entity or person that provided a comment letter (provided in the Commenter Index below). The last digits provide a unique identifier to each comment within the submitted letter. For example, "3.5" refers to the fifth comment in comment letter #3.

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How to Navigate this Document

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Category 1 – Cost of Compliance

15.3. Comment: Funding Infeasibility

The Tentative Order requirements have significant financial impacts. As stated before, to comply with the TMDLs it requires the City to implement pollutant control measures that consist of projects with preliminary estimates of approximately \$400M in construction costs over a 20-year capital program with over \$40M in annual O&M. Specifically, changes to roadway project requirements would increase the costs of making local transportation efficient. Additionally, the Tentative Order increases frequency inspections, monitoring, reporting requirements, trainings, and more which will overwhelm the City's staffing resources and have major financial ramifications for its residents.

Over 1/3 of the City's population live in designated Senate Bill 535 disadvantaged communities and suffer higher pollutant burdens ranging from the 75th percentile to the 99th percentile statewide. Furthermore, these communities are economically disadvantaged, faced historical disinvestment, and have limited access to transportation options. Therefore, the City of Riverside adopted the Riverside PACT, which is a multidisciplinary planning document including the City's active transportation plan and complete street ordinances. The document also contains plans to develop sidewalks, trails, and bike lanes and update the City's development standards to include stormwater management features. Compliance with the Tentative Order will place additional financial burden to disadvantaged affected groups and reduce available funding to projects drafted in the Riverside PACT that were designed to be an environmental improvement.

The City of Riverside recognizes the section 'Economic Considerations' in the Fact Sheet of the Tentative Order and the changes that have been made to lower the impact of some cost elements, including adjusting the figures to 2022 dollars, but these estimates are not reflective of modern costs in 2026. The cost associated with the Tentative Order requirements are restricting and would have a notable, negative impact on already disadvantaged communities. The City of Riverside agrees with and appreciates the Regional Board's goal to ensure all people have equitable access to a clean environment and are protected from disproportionate exposure to pollution, hazardous waste, and climate hazards. The TO however, seems to be predicated on a unilateral judgement of the community's needs and priorities without confirming their alignment on the costs their households will bear, to achieve them.

Recommendation: The Regional Board perform an in-depth analysis of the financial implications of the Tentative Order using modern cost estimates.

Response: This response is presumed to discuss the redline changes in Fact Sheet section XXI.D.

The Beacon Economics analysis is where the commenter obtained the stated estimate of “preliminary estimates of approximately \$400M in construction costs over a 20-year capital program with over \$40M in annual O&M.” The Beacon Economics analysis discussed in Fact Sheet section XXI.D illustrates the limitations of extrapolating Los Angeles Region WMP costs to the Santa Ana Region. The Beacon Economics analysis shows that about 99% of the estimated costs are from developing and implementing Watershed Management Plans. These costs are based on cost estimates for the approved Plans in the Los Angeles Region that are extrapolated by management area. The costs are not based on any actual proposal by the Permittees or based on the circumstances of any individual Permittee. For example, they do not consider existing detention or retention infrastructure or existing structural treatment controls, the technical feasibility of new facilities, or the use of non-structural controls such as public education, litter control programs, and street sweeping. The analysis is exploratory, but it is not predictive. It reveals the potential economic impact of an infrastructure-heavy scenario that no stakeholder supports and which no permittee has proposed.

The Tentative Order is not new. It is the continuation of a regulatory program that began in the 1990’s. It does contain requirements to update certain programs and activities that have not been formally reviewed in over a decade. These requirements are a matter of normal management upkeep that may result in net cost savings. It also contains requirements to assess programs based on objective performance metrics. The performance assessments are indicated in the current permits but were made into requirements in the Tentative Order. These requirements will involve costs for developing and measuring the metrics. But the costs may also be offset by cost savings. Other costs are associated with requiring more robust methods for documenting decisions regarding the inclusion of structural treatment controls for pollution in stormwater runoff from capital improvement projects. A new waiver process has been added that, combined with new streamlined decision-documentation tools from the required program reviews, is expected to reduce those costs over time. The Tentative Order introduces a new compliance alternative called Watershed Management Plans. Watershed Management Plans are not a required compliance method. Much of

the cost cited by the commenter is based on an economic analysis of using this method.

Updating the unit costs underlying that assumed scenario from 2022 to 2026 dollars would not resolve these more fundamental uncertainties. No change has been made.

24.4. Comment: The proposed RB8 Permit provides no accurate cost estimates regarding compliance because it is inherently difficult.

All the board needs to do is come-up with a best estimate based on cost data from the RB4 MS4 Permit, which the proposed RB8 permit approximates. RB4 and its permittees have known that compliance costs would be out of reach without a funding source. For Los Angeles County this matter was resolved with the passage of Measure W (aka, the Safe, Clean Water Program) in 2018. The question is can Orange and San Bernadino counties adopt similar funding sources?

Response: This response is presumed to discuss the redline changes in Fact Sheet section XXI.D. See [Response 15.3](#).

Compliance costs depend on the particular watershed conditions, existing infrastructure and programs, pollutants being addressed, land availability, selected control measures, and compliance strategies chosen by individual Permittees. The Tentative Order does not require Orange, Riverside, or San Bernardino County Permittees to implement the same structural projects or watershed management strategies developed in the Los Angeles Region. Whether Orange or San Bernardino Counties establish funding mechanisms similar to Measure W is a matter for the applicable local agencies and voters, as appropriate. The Tentative Order does not prescribe a particular funding mechanism for compliance.

Category 2 – Findings

17.1. Comment: Finding II.A.8 - “Limits of Permittees’ Jurisdiction Over Runoff” should reflect similar Findings that are in the current municipal stormwater permits and properly acknowledge that limitations over the control of certain pollutant sources affect the ability of the Permittees to meet the strict numeric receiving water limitations (RWLs) and water quality based effluent limitations (WQBELs) imposed in the RTO.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO modified Finding II.A.8 as follows:

“...The Santa Ana Water Board recognizes that the Permittees can only be held responsible for discharges of pollutants from such entities to the extent that the Permittees have the authority to eliminate or control the pollutants. “Eliminate or control” may include, without limitation, treatment or structural control measures. While these limitations are recognized, the Permittees are expected to control pollutants in discharges into their MS4s from such entities according to CWA section 402(p)(3)(B). “

Concern and Rationale

In the July 2024 Tri County Group comment letter, the County requested modifications to Finding II.A.8 to reflect a similar Finding that is in the current Orange County MS4 Permit.

Order No. R8-2009-0030, Finding C.10 expressly acknowledges the limited permittee authority to control certain sources of pollutants that may enter the MS4 - it states:

“The permittees may lack legal jurisdiction over urban runoff into their systems from some state and federal facilities, utilities and special districts, Native American tribal lands, wastewater management agencies and other point and non-point source discharges otherwise permitted by the Regional Board. The Regional Board recognizes that the permittees should not be held responsible for such facilities and/or discharges...”

In the RTC, the request to have the TO incorporate a similar Finding as Order R8-2009-0030 was rejected. RTC 35.9 states as follows:

“The Santa Ana Regional MS4 Permit regulates discharges of pollutants from MS4s. It does not regulate the sources of discharges into or through the MS4s. Permittees must effectively prohibit all illicit discharges, regardless of the source; control pollutants to the maximum extent practicable; and meet applicable receiving water limitations and WQBELs. Jurisdictional limitations may be relevant to the determination of whether Permittees are meeting the MEP standard as long as Permittees have adequate legal authority to meet the requirements of 40 CFR section 122.26(d)(2)(i). Treatment control measures, structural control measures, or other measures are necessary where Permittees lack regulatory authority over sources of pollutants.

The limits of the Permittees' jurisdiction cannot be defined in this Finding with the suggested level of precision. Exclusions to the jurisdictional or geographic scope are best made based on specific circumstances instead of a generalization in a finding. Clarifying language has been added to Finding A.8"

The County has two concerns related to the language in the RTO and the RTC.

A. RTC 35.9 fails to adequately address the comment, which was to raise the issue of limited permittee authority to control certain sources of pollutants that may enter the MS4, and how that limited authority may negatively impact the end-point discharge from the MS4 and the permittees' ability comply with RTO Sections VI (RWLs), VII (Effluent Limitations) and Appendices 2-10 & 14. Thus, the RTO's modification to Finding II.A.8 similarly leaves the following unaddressed:

- RTO Finding II.A.8 states "...While these limitations are recognized, the Permittees are expected to control pollutants in discharges into their MS4s from such entities according to CWA section 402(p)(3)(B)."
 - o The language in CWA Section 402(p)(3)(B) does not require the Permittees to control pollutants in discharges into the MS4s from entities over which the Permittees have no legal jurisdiction. The County requests that Board staff identify the language in 402(p)(3)(B) that is being interpreted to require the County to regulate discharges from entities that they do not have legal jurisdiction over.
- The RTC states that "The limits of the Permittees' jurisdiction cannot be defined in this Finding with the suggested level of precision."
 - o It is unclear why Finding C.10 from Order No. R8-2009-0030 is no longer valid and cannot be brought forward into the RTO when the legal underpinnings of the stormwater permit have not changed from 2009.
 - o The County submits that the Permittees do not have legal jurisdiction over state and federal facilities, utilities and special districts, Native American tribal lands, wastewater management agencies and other point and non-point source discharges otherwise permitted by the Regional Board to regulate the activities conducted onsite and/or the discharges from these entities as is declared in RTO Finding II.A.8.

For clarity, the County requests that Board staff identify a situation where the Permittees would have legal jurisdiction over "state and federal facilities, utilities and special districts, Native American tribal lands, wastewater management agencies and other point and non-point source discharges otherwise permitted by the Regional Board."

The current record fails to provide sufficient reasoning as to why the language of C.10, which is in the current MS4 Permit for the County of Orange, is not being adopted. Finding II.A.8 does not reflect the limitations faced by Permittees in regulating urban runoff and does not include language consistent with current permit language. There are multiple sources of pollutants entering the MS4 from dischargers who are not regulated by the Permittees. MS4 owners and operators are not responsible for point and non-point source discharges over which the Permittees lack legal jurisdiction or are otherwise regulated and permitted by the Regional Board.

To clarify the jurisdictional bounds of the proposed regional National Pollutant Discharge Elimination System (NPDES) MS4 Permit, and to correctly note that Permittees lack jurisdiction over many sources of discharge into the MS4, Section II should include a similar finding regarding the numerous point and non-point sources which may discharge into the MS4 and as to which the Permittees have no jurisdiction.

B. The County has specific concerns with the new language that was added in the RTO “Eliminate or control” may include, without limitation, treatment or structural control measures.”

This new language suggests that, if the Permittees have “authority to eliminate or control the pollutants” then the Permittees would, de facto, be held responsible for discharges of pollutants from such entities. This language is of particular concern since it suggests that the Permittees would, through this Finding, be held responsible for the discharges of pollutants from federal facilities, utilities and special districts, Native American tribal lands, wastewater management agencies and other point and non-point source discharges otherwise permitted by the Regional Board.

The Finding cites the following “While these limitations are recognized, the Permittees are expected to control pollutants in discharges into their MS4s from such entities according to CWA section 402(p)(3)(B). However, 402(p)(3)(B)(ii) states:

“Permits for discharges from municipal storm sewers... (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers”

This section of the Clean Water Act speaks to the requirement of the Permittees to “effectively prohibit” non-stormwater discharges, it does not require the Permittees to control pollutants in discharges from entities over which they have no jurisdiction.

Recommendations

1. For clarity, identify the language in 402(p)(3)(B) that is being interpreted to require the County to regulate discharges from entities that they do not have legal jurisdiction over

such as “state and federal facilities, utilities and special districts, Native American tribal lands, wastewater management agencies and other point and non-point source discharges otherwise permitted by the Regional Board.

2. For clarity, identify a situation where the Permittees would have legal jurisdiction over “state and federal facilities, utilities and special districts, Native American tribal lands, wastewater management agencies and other point and non-point source discharges otherwise permitted by the Regional Board.”

3. Modify Finding II.A.8. Limits of Permittees’ Jurisdiction Over Runoff and corresponding section in the Fact Sheet as follows: Limits of Permittees’ Jurisdiction Over Runoff. The Permittees may lack or have limited legal jurisdiction over runoff into their MS4s from agricultural sources, some state and federal facilities, Native American tribal lands, utilities, special districts, and other entities. The Santa Ana Water Board recognizes that the Permittees can only be held responsible for discharges of pollutants from such entities to the extent that the Permittees have the authority to eliminate or control the pollutants. ~~“Eliminate or control” may include, without limitation, treatment or structural control measures.~~ While these limitations are recognized, the Permittees are expected to effectively prohibit ~~control pollutants in~~ discharges into their MS4s ~~from such entities~~ according to CWA section 402(p)(3)(B).

Response: The Tentative Order does not require Permittees to regulate activities conducted by state or federal facilities, tribal lands, utilities, special districts, wastewater agencies, or other entities over which they lack legal authority. Rather, the Tentative Order regulates discharges into and from the Permittees’ MS4s, consistent with the Clean Water Act and NPDES regulations.

As explained in the Finding, “eliminate or control” may include treatment, structural control measures, or other measures implemented by the Permittees to reduce pollutants discharged from their MS4. The Finding does not assign regulatory authority over third-party facilities to the Permittees. Finding II.A.8 has been modified to say “pollutants in discharges into and from their MS4s ~~from such entities~~ according to CWA section 402(p)(3)(B).”

The Tentative Order does not require Permittees to regulate the activities of third parties over whom they lack jurisdiction. The reference to Clean Water Act section 402(p)(3)(B) reflects the statutory requirements applicable to municipal separate storm sewer system permits, including requirements to effectively prohibit non-stormwater discharges, reduce pollutants to the maximum extent practicable, and include such other provisions as the Administrator or State determines appropriate for the control of pollutants. These requirements apply to discharges from the MS4 (Order WQ 2015-0075, p. 61) and do not depend upon

the Permittees possessing direct regulatory authority over every upstream source of pollutants.

The current Orange County permit language cited by the commenter acknowledged that permittees may lack jurisdiction over certain entities but did not relieve permittees of their obligations under the permit or the Clean Water Act. Similarly, the Tentative Order recognizes jurisdictional limitations while maintaining the requirement that Permittees implement all available measures necessary to control pollutants discharged from their MS4s. Whether a particular jurisdictional limitation affects compliance depends on the specific facts and circumstances (Order WQ 2015-0075, p. 48, n.133) and is therefore not appropriately resolved through a generalized finding.

Category 3 – Receiving Water Limitations and Numeric Water Quality Based Effluent Limitations – Legal Issues

6.1. Comment: 1. The Permit does not Comply with the Legal Requirements Described by *San Francisco v. Environmental Protection Agency*, 604 U.S. 334 (2025) (*SF v. EPA*)

The Tentative Order contains three new findings under a new Section I.C addressing the Regional Board's authority to impose receiving water limitations, specifically citing to the U.S. Supreme Court's decision in *City and County of San Francisco v. U.S. EPA*¹ for its federal authority and State Water Board precedential decisions for its authority under Porter Cologne and prior agency interpretations. The findings, at least with respect to federal authority, misconstrue and are directly contrary to the U.S. Supreme Court's holding that end-result provisions in NPDES permits are not authorized by the Clean Water Act. Under the *City and County of San Francisco* opinion, the Clean Water Act does not authorize the EPA, and by extension the Regional Board exercising federally delegated authority, to include "end-result" provisions in NPDES permits or condition compliance on receiving water quality. Instead, the Regional Board must specify how compliance with the permit will be met and the specific rules a permittee must follow to achieve water quality goals. "Determining what steps a permittee must take to ensure that water quality standards are met is the EPA's responsibility, and Congress has given it the tools needed to make that determination. If the EPA does what the CWA demands, water quality will not suffer."² In following the U.S. Supreme Court's opinion then, the Regional Board must remove the end-result limits in the Tentative Order or specify that

such limits are “goals” and further specify the steps the permittees must take to be in compliance.

The Tentative Order states, incorrectly, that *City and County of San Francisco* does not apply to NPDES permits issued under section 402(p) of the Clean Water Act, only permits issued under section 301. Section 301 prohibits all discharges of pollutants to navigable waters unless such discharges are permitted under section 402.3 Therefore, section 402 implements section 301. Under section 402(p), Congress established two standards for stormwater discharge regulation – industrial discharges and MS4 discharges. Industrial discharges are subject to more stringent technology-based effluent limitations or WQBELs while MS4 discharges are subject to the MEP standard. Furthermore, the Tentative Order does not remove receiving water limits or any end-result limits, or specify such limits as goals, but retains them as enforceable compliance limits throughout the permit. Despite the clear federal direction as to what can be enforced in a NPDES permit, the Tentative Order continues to state that a permittee cannot cause or contribute to an exceedance of water quality standards and that any exceedance of a receiving water limitation is a violation of the permit. It does not state the means for compliance, such as how monitoring should be conducted.

Section VI (Receiving Water Limitations), however, has been significantly revised in what is an apparent attempt to follow *City and County of San Francisco*’s direction to specify the steps the permittees must take to ensure water quality.⁴ In the event of a MS4 discharge causing or contributing to an exceedance of a receiving water limitation, Section VI now prescribes a process by which a permittee must file a report with the Regional Board for approval describing best management practices being implemented, an implementation schedule, and monitoring and associated stormwater program revisions that are being carried out. Despite the now inclusion of steps to achieve water quality goals for receiving water limitations, the Tentative Order continues to require compliance with such end-result limits. “However, compliance with this section VI.A shall not constitute compliance or deemed compliance with receiving water limitations: each responsible Permittees must demonstrate compliance with receiving water limitations according to section VI.E below.” Therefore, the new language regarding reporting might be lawful under *City and County of San Francisco* if it was clear that such actions constituted compliance with the permit.

As the U.S. Supreme Court explained, the inclusion of end-result provisions eliminates the permit shield provided by NPDES permits. A permittee cannot know what objectives might apply or what requirements are needed to meet an effective prohibition. “Because of it, a discharger that complies with all permit conditions can rest assured that it will not be penalized. But the benefit of this provision would be eviscerated if the EPA could impose a permit provision making the permittee responsible for any drop in water quality

below the accepted standard.”⁵ The Tentative Order does just that. It removes the permit shield by creating requirements for an effective prohibition of violating vague end-result provision without specifying the objectives or requirements that are needed to meet the prohibition or achieve compliance. No safe harbor is provided as required by section 402(k), and therefore the permit is directly in conflict with the recent U.S. Supreme Court ruling.

2 Id. at 720.

3 33 U.S.C. § 1311(a).

4 The Response to Comments does not address whether the revisions are intended to address the City and County of San Francisco opinion; however, if the findings in the Tentative Order state that the U.S. Supreme Court’s opinion does not apply to MS4 permits, then presumably the additional text regarding the specific steps that need to be taken are not required by federal law either.

5 *City and County of San Francisco* at 718.

Response The Santa Ana Water Board does not have discretion to reject State Water Board precedent as the City and other commenters suggest. For the reasons stated in Tentative Order Finding II.C, *City and County of San Francisco v. Environmental Protection Agency* (2025) 604 U.S. 334 does not prohibit receiving water limitations in MS4 permits. Even if it did, Order WQ 2015-0075 (affirming Order WQ 99-05), subsequent State Water Board guidance,¹ and the Tentative Order’s findings are all clear that the Receiving Water Limitations are based on the boards’ discretion under Clean Water Act section 402(p)(3)(B)(iii) and are also necessary under California law to protect water quality and implement water quality control plans. (Order 2015-0075, p. 15.)

The redlined iterative process language in Section VI is not new. These provisions are required by State Water Board Orders WQ 99-05 and WQ 2015-0075. (Order WQ 2015-0075, p. 76, ¶ 1; the redlined language is the same as Order WQ 99-05 with minor grammatical changes.) The iterative process language has been in the permittees’ MS4 permits since 1996. (Section IV [except as noted] of Orders 96-31 and R8-2009-0030 (Orange County), 96-030 and R8-2010-0033 [section VII] (Riverside County), and 96-32 and R8-2020-0036 [section VI] (San Bernardino County).) See State Water Board Order WQ 2015-0075, pp. 66-70 and Tentative Order sections VI.B through VI.F. The

¹ Interim Guidance for Receiving Water Limitations/End-Result Requirements in Phase 1 Municipal Separate Storm Sewer System (MS4) NPDES Permits (July 31, 2025).

Tentative Order includes the State Water Board language and adds that permittees may demonstrate compliance by showing that all exceedances during a specific sampling event are the result of an authorized or exempt non-stormwater discharge.

Engaging in the iterative process never constituted a “safe harbor” or deemed compliance with receiving water limitations. (Order WQ 2015-0075, pp. 12-13.) The Santa Ana Region’s permits were even more explicit about this than the model language in Order WQ 99-05. (Order R8-2009-0030, § IV.D.4; Order R8-2010-0033, § VI.D.6; Order R8-2009-0033, §VII.D.6.)

The traditional iterative process was underutilized and largely ineffective in protecting water quality. Thus, in 2015, the State Water Board prescribed a more “well-defined, transparent, and finite alternative path” to compliance with receiving water limitations where permittees could not comply immediately. (Order WQ 2015-0075, pp. 13-16.) Section XII of the Tentative Order sets forth that alternative path.

As the commenter notes, the Receiving Water Limitations themselves include compliance determination language providing multiple avenues for permittees to demonstrate compliance, even without a Watershed Management Plan. The compliance determination language provides an adequate permit shield and explicitly relieves permittees of responsibility for discharges by other persons or pollutants already present in receiving waters. The Monitoring and Reporting Program was designed to afford maximum flexibility to permittees to implement the most cost-effective monitoring programs that meet federal requirements. Permittees concerned with incurring liability for other discharges have the option of conducting any additional monitoring that may be necessary. Permittees that are unable or unwilling to demonstrate that other factors are causing or contributing to receiving water exceedances can submit a proactive or reactive WMP. This provides the BMP-based protection various commenters have requested and, in the case of proactive WMPs, a 27-month safe harbor during WMP development and approval.

Section VI.’s incorporation by reference of water quality standards has been made more specific to address the concerns that permittees do not know what standards to apply.

No other changes have been made.

18.2. Comment: The 2026 Draft Permit's Receiving Water Limitations are Inconsistent with the Requirements of 33 USC §1311(b)(1)(C) as Applied by the Supreme Court.

In *SFPUC*, 604 US 334, the Supreme Court considered whether the receiving water limitation in the NPDES permit regulating discharges from the oceanside combined sewer system in San Francisco met the requirements of the Clean Water Act. The receiving water limitation in the SFPUC permit prohibited discharges that cause or contribute to violations of Water Quality Standards in the receiving waters, leaving the City to determine how it would meet those standards. The Supreme Court rejected the SFPUC permit's "end result" receiving water limitation, finding it to be inconsistent with Section 301(b)(1)(C) of the Clean Water Act. Section 301(b)(1)(C) requires all Clean Water Act Permits to include:

Not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards...or any other Federal Law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

The Supreme Court applied the requirements of 301(b)(1)(C) to reject permit terms imposing the burden of determining the method of compliance on the discharger, instead requiring that the regulator determine "...what steps a permittee must take to ensure that water quality standards are met..." *SFPUC* at 355.

Despite the clear ruling in *SFPUC*, the 2026 Draft MS4 Permit carries over the receiving water limitation from prior MS4 Permits: "Discharges of pollutants in runoff from the Permittees' MS4s must not cause or contribute to a condition of nuisance or exceedances of water quality standards..." 2026 Draft MS4 Permit at 31. For TMDL WLA based WQBELs, the 2026 Draft MS4 Permit references appendices for eluent limitations—appendices that were not attached to the draft permit. For receiving waters without TMDLs, compliance with Water Quality Standards is to be demonstrated by the permittee by 1) zero discharge from the MS4; 2) "monitoring, modeling, or other technical analysis;" 3) showing the pollutant is not discharged by the MS4, 4) showing the exceedance is caused by authorized non-stormwater discharge; or 5) by entering the Safe Harbor Watershed Management Program, whereby the discharger develops and implements a pollution control program, starting no sooner than 24 months after permit adoption. 2026 Draft MS4 Permit at 32-33. Thus, the discharger, with oversight by the Regional Board, determines how compliance with the receiving water limitations will be achieved. *Id.*

Regional Board staff argue in the Findings of the 2026 Draft MS4 Permit that carrying over precisely the Receiving Water Limitations rejected in the *SFPUC* decision is justified because SFPUC does not apply to MS4 NPDES permits. 2026 Draft MS4 Permit at 15-16. Staff asserts:

To the extent NPDES permitting authorities impose conditions requiring discharges to meet water quality standards, either strictly or through an iterative process, they are relying on authority in Clean Water Act section 402(p)(3)(B) to include “such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” (33 U.S.C. § 1342(p)(3)(B)(iii).) This order is not based on Clean Water Act section 301(b)(1)(C). Nothing in the U.S. Supreme Court’s holding in *City and County of San Francisco* addressed section 402(p)(3)(B), and the U.S. Supreme Court grounded its decision limiting end-result requirements in Clean Water Act section 301(b)(1)(C). (*City and County of San Francisco*, pp.10-29)

Staff’s effort to evade the requirements of the Clean Water Act are wrong for at least two reasons. First, the 2026 Draft MS4 Permit is expressly based on 33 USC §1311 as well as §1342. As in *SFPUC*, the permit tracks the structure of §1311(b), imposing technology-based limitations as required by §1311(b)(1)(A). *SFPUC* at 358; 2026 Draft MS4 Permit at 291. But because the technology based effluent limitations will not meet WQS, the permit includes WQBELs as required by §1311(b)(1)(C). *SFPUC* at 358; 2026 Draft MS4 Permit at 31. The 2026 Draft Permit cites to §1311 in support of the enforcement authority and the antibacksliding analysis for the permit at pp. 275, 276, 291, 376, 377, and 378. All prior MS4 permits issued in California cite to §1311 as the basis for the permit terms. Thus, the permit terms, the scheme of the Clean Water Act, and the express language of §1311(a) all make clear that the requirements of §1311 apply to all permits issued pursuant to the Act, including specifically those issued pursuant to §1342.

Further, the Supreme Court rejected the argument raised by staff in the 2026 Draft MS4 Permit Findings. The Permit at issue in *SFPUC*, like the 2026 Draft MS4 Permit, was issued pursuant to both §1311, and §1342(q)--regulating combined sewer overflows (*SFPUC*), or §1342(p)--regulating municipal stormwater systems (2026 Draft MS4 Permit). Rejecting EPA’s interpretation of the CSO Policy as inconsistent with §1311(b)(1)(C), they determined that the receiving water limitation was illegal. *SFPUC* at 354-355. And while §1342(p) requires Water Quality Standard compliance to the Maximum Extent Practicable rather than strict compliance, *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, the effluent limitation articulating that standard must meet the requirements of §1311(b)(1)(C).

Next, the 2026 Draft MS4 Permit argues that State Law provides an alternative basis for retaining the receiving water limitations. Even if true, state law cannot authorize effluent limitations that violate §1311 of the Clean Water Act in an NPDES permit. Further, to the extent that the receiving water limitations included in the 2026 Draft MS4 Permit go beyond the requirements of the Clean Water Act, those permit terms are subject to unfunded mandates challenges by the municipal permittees.

Response: See [Response 6.1](#). The requirements in Clean Water Act section 402(p)(3)(B) to effectively prohibit non-stormwater discharges and “reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods ...” serve as the technology-based standards for MS4s. (Tentative Order R8-2026-0038, Fact Sheet, § IX.A; see, *Defenders of Wildlife v. Browner* (9th Cir. 1999), 191 F.3d 1159, 1166; Order WQ 2015-0075, p. 10.) In addition to those controls, section 402(p)(3)(B)(iii) gives the Water Boards the discretion to impose more stringent water quality-based controls. (*Browner, supra*, 191 F.3d at 1166-1167.) The *Browner* court did not hold that such more stringent water quality-based controls must comply with section 301(b)(1)(C), which would be directly contrary to the conclusion that section 402(p)(3)(B) unambiguously provides that section 301(b)(1)(C) does not apply. The State Water Board has also clarified that TMDL-based effluent limitations are not based on section 301(b)(1)(C). (Order WQ 2015-0075, p. 21, n. 71.)

Neither the *Browner* court nor the Water Boards have ever taken the position that section 402(p)(3)(B)(iii) makes section 301(a) inapplicable. If that were the case, the Clean Water Act’s discharge prohibition would not apply to MS4s and they would not need an NPDES permit at all. (See, *Browner, supra*, 191 F.3d at 1163.)

The antibacksliding analysis is based solely on section 303(d) and (e). The findings merely state that section 402(o) applies to effluent limitations developed under section 301(b)(1)(C) and 303(d) or (e). This paraphrase of section 402(o) does not state or imply that section 301(b)(1)(C) applies to this permit. The Tentative Order’s findings are clear that the TMDL-based requirements are *not* based on section 301(b)(1)(C). RTC #1 also explained, repeatedly, that section 301(b)(1)(C) does not apply to MS4 permits. (Responses 32.5, 32.6, 32.10, 35.441, 35.499, 35.526, 36.1.) Minor, nonsubstantive clarifications have been made to section III.H .2 of Attachment D (Fact Sheet) to reiterate that section 301(b)(1)(C) does not apply.

The Tentative Order contains receiving-water limitations that make permittees responsible for conditions in receiving waters and provides that compliance with the prescribed iterative process does not constitute or establish compliance with those limitations. The Clean Water Act does not authorize NPDES permit provisions that fail to tell a permittee what it must do or refrain from doing and instead make it responsible for the quality of the receiving water. There is a fundamental unfairness and uncertainty produced when a permittee faces enforcement without ascertainable discharge-specific obligations.

The Clean Water Act authorizes controls to reduce pollutant discharges to the maximum extent practicable and such other provisions as are determined appropriate for controlling pollutants. It does not expressly authorize a permitting agency to impose undefined end-result liability or make one MS4 operator responsible for ambient receiving-water conditions caused by numerous independent sources. General language authorizing “other provisions” must be read within the NPDES permitting structure and cannot be treated as unlimited authority to impose any condition a permitting agency considers desirable.

At a minimum, significant due-process concerns arise with a Tentative Order that does not merely require specified BMPs, inspections, treatment controls, or measurable discharge limitations. It states that implementation of the prescribed iterative process does not establish compliance and leaves the City potentially liable for receiving-water exceedances even after it has performed every affirmative measure identified in an approved program.

If the Regional Board relies on federal authority, the City objects that the provisions are unauthorized end result requirements. If the Regional Board relies alternatively on independent state authority, the Regional Board must clearly identify the receiving-water limitations as state-only requirements, fully comply with Water Code sections 13241 and 13263, address state-mandate reimbursement, and establish that the provisions are sufficiently definite, reasonable, and supported by substantial evidence. The Regional Board cannot simultaneously characterize the provisions as discretionary state requirements for one purpose and as federally compelled requirements for purposes of avoiding economic analysis and reimbursement.

The Permit should be revised to provide that a permittee is deemed in compliance with receiving-water limitations when it timely and fully implements all approved BMPs, control measures, monitoring requirements, adaptive-management measures, and schedules applicable to the permittee’s discharge. Any additional obligation should arise only after a supported finding that the City’s own discharge is causing or contributing to

an exceedance and after the Regional Board identifies specific additional measures and a feasible compliance schedule.

The present structure offers a process but no actual safe harbor. That is legally insufficient and practically unworkable.

Response: The limitations the commenter requests are included in Section XII (Watershed Management Plans) of the Tentative Order. Permittees are only responsible for exceedances to which they cause or contribute. Demonstrating compliance at the end-of-pipe, which is identical to the type of limitation CCSF upheld for wastewater permits, is one available option. (Tentative Order, sections VI.E.1 and E.2.b, and TMDL-specific Compliance Determination language in the appendices.) Section VI.E.2 has been clarified to make it more explicit that end-of-pipe compliance demonstrations are acceptable. The Tentative Order provides additional options for a permittee to demonstrate compliance where end-of-pipe monitoring is infeasible or the receiving water has assimilative capacity that allows a permittee to discharge at levels above the applicable water quality standard. These options for demonstrating compliance, which are not available to wastewater dischargers subject to end-of-pipe numeric effluent limits, expand rather than eliminate the permit shield. See also, [Response 6.1](#) and section XXI of the Fact Sheet.

22.1 Comment: *Loper Bright Enterprises v. Raimondo* (2024) 603 U.S. 369 Makes Reliance on the Pre-2024 Clean Water Act Legal Framework Impermissible.

Response: The commenter suggests that *Loper Bright Enterprises v. Raimondo* (2024) 603 U.S. 369 implicitly overruled a large swath of Clean Water Act jurisprudence and, by extension, any State Water Board precedent that relied on it. To the contrary, the U.S. Supreme Court has not “called into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful ... are still subject to statutory *stare decisis* despite our change in interpretive methodology.” ([Loper Bright Enterprises, supra, 603 U.S. at 412.](#)) Even without that admonishment, *Loper Bright* would have no bearing on *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, which was based on the Ninth Circuit’s interpretation of an unambiguous statute and not deference to EPA’s interpretation. (*Id.* at 1164-1166.) The Water Boards’ discretion to impose more stringent water quality requirements under Clean Water Act section 402(p)(3)(B)(iii) is based on an explicit Congressional delegation of authority, not statutory ambiguity or *Chevron* deference. (See,

Loper Bright, supra, 603 U.S. at 394; *Browner, supra*, 191 F.3d at 1166-1167; *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 882-885, *as modified on denial of reh'g* (Jan. 4, 2005).) Nor, obviously, does the U.S. Supreme Court's analytical framework have any bearing on State Water Board interpretations of California law.

22.1a. Comment: The Legal Framework in Place Prior to 2024: The MEP standard is a Technology-Based Limit and MS4 Permits May Include “Any More Stringent” Water-Quality Based Limit

The following EPA guidance describes the way EPA viewed the NPDES stormwater program historically:

Section 402(a)(1) requires that all NPDES permits comply with the applicable provisions of section 301. This includes compliance with appropriate technology-based standards and effluent limits (sections 301(b)(1)(B), 301(b)(2)). Permits must include “any more stringent limitation” necessary to meet WQS. Section 301(b)(1)(C). . . . As part of the 1987 amendments to the Clean Water Act, Congress added Section 402(p) to the Act, related to storm water discharges. . . . Permits for discharges associated with industrial activity are to require compliance with all applicable provisions of Sections 301 and 402 of the CWA, i.e., all technology-based and water quality-based requirements. Section 402(p)(3)(A). By contrast, permits for discharges from municipal separate storm sewers “shall require controls to reduce the discharge of pollutants to the maximum extent practicable” (“MEP”). Section 402(p)(3)(B)(iii).

The relationship of Section 402(p)(3)(B)(iii) to Section 301(b)(1)(C) is not clear, either on the face of the statute or in legislative history. Section 402(p)(3) is clearly intended to draw a distinction between the requirements on industrial and municipal storm water discharges. Section 402(p)(3)(A) states that industrial discharges shall comply with the applicable provisions of section 301, i.e., BAT/BCT technology-based requirements as well as any more stringent WQ-based requirements pursuant to 301(b)(1)(C). In the next sub-paragraph, Congress requires municipalities to control storm water to the MEP standard; no mention is made of section 301. The juxtaposition of (p)(3)(A) and (p)(3)(B) gives rise to the argument that Congress may have intended to waive all section 301 requirements for municipal discharges in favor of the MEP standard. On the other hand, one could read (p)(3)(B)(iii) as modifying only technology-based requirements for municipal storm water (i.e., MEP substitutes for BAT/BCT); any

WQ-based requirements would still be necessary in a municipal permit, even if those requirements are more stringent than “practicable.”

(“Compliance With Water Quality Standards In NPDES Permits Issued To Municipal Separate Storm Sewer Systems, 1991 WL 326640, at *1-*2 [Emphasis added] [citing *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837].) Based on the foregoing, EPA interpreted CWA 402(p)(3)(B) to impose more than MEP on the MS4 even though the Congress intended and plainly stated that MEP was the standard for MS4s.

In 1999, *Defs. of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir. 1999) found that Congress deliberately omitted from CWA § 402(p)(3)(B).¹ Defenders, however, did purport to allow enforcement of water-quality based effluent limits (“WQBELs”) under CWA § 301, even though that statutory reading is unsupportable. Ninth Circuit Court decisions are persuasive authority only in California state courts. (*Nat’l Grange of Ord. of Patrons of Husbandry v. California Guild* (2017) 17 Cal. App. 5th 1130, 1155.) However, we recognize that *Building Industry Association of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866 adopts the *Defenders* view, and this case would be controlling authority.² Even *Defenders*, however, acknowledged permitting agencies have the discretion to not require strict enforcement of water quality standards through WQBELs in MS4 permits. In light of *Loper Bright* and *San Francisco v. EPA*’s prohibition on end-result requirements – even for permits subject to 301(b)(1)(C), like industrial dischargers – it is arbitrary and capricious to impose strict numeric WQBELs on an MS4, especially for a pollutant like bacteria.

Loper Bright and *San Francisco v. EPA* demonstrate that existing law under BIA of San Diego is no longer valid because it was based on EPA interpretations like the 1991 memorandum discussed above. The Ninth Circuit in *Defenders* relied upon *Nat. Res. Def. Council, Inc. v. U.S. EPA*. (9th Cir. 1992) 966 F.2d 1292, 1308 in which the Ninth Circuit expressly relied upon EPA interpretations stating “we must defer to EPA on matters such as this, where EPA has supplied a reasoned explanation of its choices. See 55 Fed.Reg. at 48,049” and citing in footnote 17 to EPA’s rulemaking, 55 Fed. Reg. 47990 at 48049, 48068-48071 (Nov. 16, 1990). The RTC likewise relies upon the 1990 rulemaking guidance (see e.g., RTC at 95, 187, 248) and other EPA Guidance (see e.g., 61 Fed. Reg. 43761 (Aug. 26 1996), RTC at 248) – all of which were based on *Chevron* deference that is no longer applied, according to *Loper Bright*. Similarly, in *BIA of San Diego, supra*, 124 Cal.App.4th at 886, the court relied on EPA interpretations (based on *Chevron* deference) in the November 16, 1990 Federal Register rulemaking — 55 Fed. Reg. 47990, 47994 — in which the EPA stated that § 1342(p)(3)(B)(iii) requires controls to reduce pollutant discharges to the MEP standard and, where necessary, water

quality-based controls. The reliance on interpretations based on Chevron are no longer valid where, as here, they depart from text in the statute.

Further, it is not grammatically supportable to read CWA § 402(p)(3)(B) to find that “controls to reduce the discharge of pollutants” and “such other provisions as the Administrator . . . determines” to exceed the MEP standard. The operative verb phrase in § 402(p)(3)(B)(iii) is “shall require,” and its direct object is “controls.” Congress did not write “shall require effluent limitations” or “shall impose numeric discharge standards.” Congress’s use of the term “controls” denotes actions, mechanisms, and measures that a permittee implements — not quantified numerical thresholds. The clause “such other provisions as the Administrator or the State determines appropriate for the control of such pollutants” does not liberate the permitting authority to impose numeric limitations. This clause follows the list of controls preceded by the conjunction “and.” Grammatically, “such other provisions” is part of the same phrase related to “controls,” not a new, independent grant of authority that undoes what the first clause establishes. Moreover, the catchall clause “such other provisions” itself is non-numeric in character because it repeats “for the control of such pollutants” from the main clause.

The Permit reflects this 1991 CWA framework that largely ignores the MEP standards, referring, for example, to “the technology-based MEP requirements (RTC at 112, 317, 393) and allowing applicability of WQBELs, like the MSAR TMDL Limit, to MS4 permits pursuant to 40 C.F.R. § 122.44(d) (RTC at 188, 197, 250). The particular regulation the RTC relies upon, however – 40 C.F.R. § 122.44(d), – implements CWA section 301 (33 U.S.C. § 1311), which the statutory text of the Clean Water Act in section 402(p)(3)(B)(iii) does not impose.

In attempting to construct an argument to avoid application for *San Francisco v. EPA* to MS4 permitting, the State Water Resources Control Board’s July 31, 2025 Interim Guidance for Receiving Water Limitations/End-Result Requirements argues MS4 permits are issued under 402(p), not 301(b). Given that position, it is unsupportable to apply 40 C.F.R. § 122.44(d) to MS4 permitting.

The interpretation of CWA § 402(p)(3)(b) as allowing imposition of numeric WQBELs beyond MEP was never correct, though we acknowledge Defenders and BIA so found. These interpretations, on which the Permit relies, warrant little to no deference, given *Loper Bright*, *San Francisco v. EPA* and the State Board’s own guidance.

Response: See Responses [6.1](#), [18.2](#) and [22.1](#). As an aside, this comment also miscites the 1991 Office of General Counsel memorandum. The memorandum concluded that section 402(p)(3)(B) did *not* waive or override the application of

section 301(b)(1)(C) to MS4 permits. The *Browner* court obviously did not defer to that conclusion.

22.1.b. Comment: The Legal Framework Since 2024: *Loper Bright* does not Defer to Any EPA Interpretation Especially Where the Clean Water Act Does Not Impose a Strict Water-Quality Based Limit

The law has changed since the March 5, 2024 Tentative Order that proposed strict CWA § 301 numeric limits for bacteria. (See *Loper Bright, supra*, 603 U.S. 369.)

The Permit's strict CWA § 301 approach is based on the logic in the 1991 EPA memorandum, which was expressly premised on *Chevron* deference. Even in 1991, however, EPA admitted that its conclusions were based on its view of a statutory ambiguity and selection of what it considered merely a “reasonable” interpretation among alternatives. Following the Supreme Court's decision in *Loper Bright*, which overruled *Chevron*, the strict CWA § 301 approach for the Permit can no longer warrant deference. The statutory text, structure, and precedent compel a different result.

The Regional Board relies on *Defenders, supra*, 191 F.3d 1159, using the argument that CWA § 402(p)(3)(B)(iii)'s “such other provisions as the Administrator ... determines appropriate for the control of such pollutants” language permits a state to impose mandatory CWA § 301 requirements. This interpretation faces a fundamental flaw for the reasons stated above. The *Defenders* court recognized that this clause grants discretionary authority to determine what pollution controls are appropriate — it does not mandate any particular standard, and it certainly is not reasonable to read *Defenders* to restore CWA § 301 requirements that Congress deliberately omitted from CWA § 402(p)(3)(B).

There are decisions, like *BIA of San Diego County, supra*, 124 Cal.App.4th 866, that have held that water boards were not prohibited by the Clean Water Act's “maximum extent practicable” standard from including provisions in municipal stormwater permits requiring compliance with state water quality standards. These conclusions, however, were grounded on *Chevron* deference and were made prior to *San Francisco v. EPA*, which has invalidated RWLs in NPDES permits.

Under *Loper Bright*'s independent interpretation framework, a court would be required to fix the boundaries of this delegated discretionary authority and ensure the agency acts within them. Discretion to impose “appropriate” controls cannot be read to compel the imposition of a specific statutory standard — CWA § 301 — that Congress expressly chose not to include in CWA § 402(p)(3)(B). To hold otherwise would effectively rewrite

the statute by reading back into CWA § 402(p)(3)(B) the very CWA § 301 language that Congress included in § 402(p)(3)(A) but omitted from § 402(p)(3)(B).

The discretion granted under CWA section 402(p)(3)(B)(iii) to impose “such other provisions as the Administrator or the State determines appropriate” does not extend to incorporating the very statutory requirements Congress excluded from municipal stormwater permits. Neither EPA nor the Water Boards may add section 301(b)(1)(C) requirements to section 402(p)(3)(B) through regulatory interpretation. (See *National Ass’n of Mfrs. v. Department of Defense* (2018) 583 U.S. 109, 126; *Earl v. Boeing Co.* (E.D. Tex. 2021) 515 F. Supp. 3d 590, 622.) Fundamental canons of statutory interpretation foreclose the Board’s interpretation to impose CWA § 301 standards through the MSAR TMDL Limit.

Response: See Responses [6.1](#) and [22.1](#).

22.1.c. Comment: Permittees Never Contested a BMP-Based WQBEL Under 40 C.F.R. 122.44(k), the Applicable Regulation

Permittees have never contested BMP-based WQBELs in the past, and do not contest such BMP-based WQBELs now, because they are based on 40 C.F.R. § 122.44(**k**), not § 122.44(**d**). The core effluent limitation provisions of § 122.44 — subsections (a), (b), and (d) — were promulgated well before Congress added section 402(p) to the CWA through the Water Quality Act of 1987. Section 402(p) was enacted specifically to address the previously unregulated category of stormwater discharges.

Section 402(p) appears in 40 C.F.R. § 122.44 only once: in subsection (k)(2), which authorizes BMPs when authorized under section 402(p) of the CWA for the control of storm water discharges. This limited, specific reference to § 402(p) in the BMP provision is consistent with what Congress contemplated for MS4s. CWA section 402(p) is completely absent from the technology-based and water quality-based effluent limitation provisions in 40 C.F.R. § 122.44(d). We submit that today, unlike at the time of the 2024 tentative order, the legal landscape does not provide deference to interpretations that impose CWA § 301 strict, numeric standards in a CWA § 402(p)(3)(B)(iii) permit provision. The statute excludes such strict, numeric standards on the MS4 and is most reasonably interpreted to “waive all section 301 requirements for municipal discharges in favor of the MEP standard,” as U.S. EPA identified in its 1991 guidance memo. (See 1991 WL 326640, at *1-*2.)

Response: Comment noted.

22.2. Comment: THE MS4 PERMIT IS AN NPDES PERMIT SUBJECT TO MEP AND THAT CANNOT INCLUDE END-RESULT LIMITS LIKE THOSE IN THE TENTATIVE ORDER

In addition to *Chevron* deference interpretations related to CWA § 301, for many decades, the California State Water Resources Control Board (“State Water Board”) has added “receiving water limitations” (“RWL”) into all NPDES permits to prohibit any discharge from “causing or contributing” to pollution in the receiving water. A RWL imposes permit requirements that condition permit holders’ compliance on whether receiving waters meet applicable water quality standards. If the receiving water exceeds a water quality standard, any Regional Water Quality Control Board (“Regional Water Board”) or citizen suit enforcer can allege a violation of the RWL and allege that discharges under the NPDES permit caused or contributed to that exceedance. In March 2025, the U.S. Supreme Court invalidated RWLs ruling that NPDES permits can no longer hold the permittee “responsible for the quality of the water in the body into which the permittee discharges pollutants.” (*San Francisco v. EPA*, *supra*, 145 S. Ct. at 710.) A RWL is improper, according to the Court, because it judges compliance on the “end-result” in the water body. (*Id.*)

Despite the holding in *San Francisco v. EPA*, the State Water Board plans to include RWL in permits issued to MS4s. (See SWRCB Interim Guidance for Receiving Water Limitations/End-Result Requirements in MS4 Permits.) Unlike MS4 permits, the Board will no longer include RWLs in individual NPDES permits. (See May 2025 Interim Guidance for Implementation of RWL/End-Result Limitations in Individual NPDES Permits (“Individual Permit Guidance”).) Despite the fact that the MEP language in CWA section 402(p)(3)(B)(iii) establishes the requirements for an MS4, the RWL language in the Tentative Order appears to borrow the “cause and contribute” language from 40 C.F.R. § 122.44(d)(1), an EPA regulation promulgated under CWA section 301 for individual NPDES permits (not stormwater permits). In contrast, subsection (b)(1)(C) of CWA section 301 omits any “cause or contribute” language and specifically authorizes “any more stringent limitation *including those necessary to meet water quality standards.*” (Emphasis added.)

Response: See Responses [6.1](#), [18.2](#), and [22.1](#).

22.2.a Comment: The Permit’s RWL Ignores MEP and Makes The Municipal Permit Stricter Than Individual NPDES Permits – Exactly the Opposite of What Congress Stated and Intended in the Clean Water Act

The Permit reflects the reasoning in the Interim Guidance and is not only contrary to the Supreme Court’s holding in *San Francisco v. EPA* but also results in NPDES permits for MS4s that are exactly opposite of what Congress intended. Congress intended that the most stringent water-quality requirements be imposed **only** upon individual NPDES permits based on CWA § 301 and NPDES permits for stormwater associated with industrial activity.³ Congress created sections 301 and 402(a) of the Act specifically to accomplish stringency in these types of NPDES permits. Later, Congress created section 402(p) of the Act specifically to remove that level of stringency for municipal stormwater.⁴ Under the Permit, the opposite results: **all** the stringent RWL requirements will be imposed only on the MS4s and not on individual NPDES permits. The Water Boards have not yet determined how to proceed with individual permits governing stormwater associated with industrial activity. (See *Statewide & Regional Policies*, Status Code A-26, June 8, 2026.) The Water Boards’ regulatory interpretation accomplishes the opposite of what Congress intended. Courts do not defer to regulatory interpretations that are contrary to a statute. (*Loper Bright, supra*, 144 S.Ct. 2244.)

Response: See [Responses 6.1](#) and 3.4/9.4. MS4 permits are not stricter than individual permits, which require reasonable potential analyses and numeric effluent limitations for all pollutants that have the reasonable potential to cause or contribute to an excursion above water quality standards. Receiving water limitations represent less than strict compliance with water quality standards. (State Water Board Order WQ 2015-0075, p. 11.)

22.2.b. Comment: San Francisco v. EPA Forbids End-Result Provisions

In *San Francisco v. EPA*, the Court held that NPDES permits must “spell out what a permittee must do or refrain from doing” instead of measuring compliance based on “the quality of the water in the body into which the permittee discharges[.]” (*San Francisco v. EPA*, 145 S. Ct. at 710–12.) Under *San Francisco v. EPA*, end-result provisions are illegal primarily for two reasons. First, Congress deliberately omitted such limits from the 1972 CWA amendments. The pre-1972 enforcement mechanism allowed direct enforcement against a polluter based on the quality of the receiving water, but after 1972 the CWA instead imposed direct restrictions on polluters. (*Id.*, 715-16.) Second, the NPDES program provides a permit shield. “[A] permittee is deemed to be in compliance with the CWA if it follows all the terms in its permit. This protection is very valuable because violations of the CWA, even if entirely inadvertent, are subject to hefty penalties. . . \$25,000 per day per violation.” (*Id.*, at p. 718.) The Court held that the permit shield becomes meaningless if any drop in water quality constitutes a violation of the permit. (*Id.*)

Response: See [Responses 6.1](#) and 3.4/9.4. The suggestion that any drop in water quality constitutes a violation of the permit is incorrect. Discharges in compliance with concentration or mass-based WLAs, including such provisions as allowable exceedance days or allowable single sample exceedances, do not cause or contribute to an exceedance of receiving water limitations for the same pollutant-waterbody combination. (State Water Board Order WQ 2015-0075, p. 77, ¶12(2).) As described in Response 3.4/9.4, discharges to non-TMDL waterbodies do not cause or contribute to exceedances if the discharges meet water quality standards end-of-pipe. Similarly, discharges to receiving waters with adequate assimilative capacity do not cause or contribute to exceedances, since no exceedances occur.

22.2.c. Comment: The RWL and MSAR TMDL Limit Are Both Impermissible End-Result Provisions Under *City and County of San Francisco v. EPA*

The Tentative Order includes a RWL and the MSAR TMDL Limit, which measure compliance based on the quality of receiving waters unless, in the case of the MSAR TMDL, Permittee does not discharge, retains the discharge, or has a way to show that its MS4 discharges do not exceed the limit. (TO App. 11, § IV.A-C, E-G.) Both of these requirements condition compliance on receiving water quality and are entirely contrary to the Supreme Court’s holding in *San Francisco v. EPA*, *supra*, 145 S. Ct. at 707. The CWA “chose to impose ‘direct restrictions’ on polluters rather than working backward from pollution to assign responsibility.” (*Id.*, at 717.)

The RWLs’ “cause or contribute” formulation functions as an “end result” requirement, making compliance turn on the condition of the receiving water, a condition shaped by myriad factors beyond any permittee’s control which would be inconsistent with the Court’s holding. (*San Francisco v. EPA*, 145 S. Ct. at 715–16 [“Simply telling a permittee to ensure that the end result is reached is not a ‘concrete plan’ for achieving the desired result. Such a directive simply states the desired result; it does not implement that result.”].)

We recognize the Board’s position that *San Francisco* is “inapplicable” because the RWLs derive from CWA § 402(p)(3)(B) rather than CWA § 301(b)(1)(C). (RTC at 275.) However, the Court’s holding addressed a fundamental structural concern about “end result” requirements and the NPDES permit shield, both of which apply regardless of the statutory subsection invoked. Section 402(p)(3)(B)(iii) authorizes “controls to reduce the discharge of pollutants to the maximum extent practicable” and “such other provisions as the [permitting authority] determines appropriate for the control of such pollutants.” (33 U.S.C. § 1342(p)(3)(B)(iii).) This language does not authorize holding

permittees responsible for receiving-water conditions caused by sources beyond their jurisdiction. Imposing the RWL and the MSAR TMDL Limit jeopardizes the NPDES permit shield for the MS4, something the San Francisco decision specifically sought to protect for all NPDES permits.

The Board relies on *NRDC v. County of Los Angeles* (9th Cir. 2013) 725 F.3d 1194 (RTC at 277-78) for liability based on receiving water monitoring data, but this pre-San Francisco decision addressed the evidentiary sufficiency of monitoring data rather than the threshold question of whether end-result obligations are permissible under the CWA.

Response: See [Responses 6.1](#) and [18.2](#) regarding receiving water limitations.

The MSAR WQBELs in the Tentative Order were designed to be consistent with the receiving water monitoring approach to determining compliance with the TMDLs and WLAs (Basin Plan, Chapter 6, Task 3, pp. 6-165 – 6-167). As discussed in RTC#1, the permit must require compliance with TMDLs by their compliance dates or, in the case of past compliance dates, the effective date of the Tentative Order. Even for BMP-based WQBELs, once implemented, BMP effectiveness must be confirmed by monitoring data, and adaptive management is required where MS4 WLAs were not attained. Attainment of the WLAs by their respective due dates are assumptions as well as requirements of the TMDLs. The MSAR WQBELs are consistent with the assumptions and requirements of the TMDL as required by 40 CFR § 122.44(d)(1)(vii)(B) and Order WQ 2015-0075, as described in RTC #1, Responses 35.521 and 35.550.

The Permittees have not proposed a suite of BMPs capable of meeting the MSAR Bacteria WLAs on the permit effective date and have not provided rigorous modeling, monitoring, statistical analysis, or other science-based evidence demonstrating that the CBRPs or any other suite of BMPs will result in attainment of WLAs. Citations to findings in the San Francisco Bay Regional Water Board permit, which is based on a different record and a robust monitoring program, are not an adequate substitute for the rigor, accountability, and transparency the State Water Board required in Order WQ 2015-0075.

Because the Santa Ana Water Board cannot provide more time to comply with the MSAR TMDL without amending the Basin Plan, the BMPs would have to be fully implemented by the Permit's effective date. These BMPs have not been developed yet for inclusion in the Permit as WQBELs. Any BMP-based WQBEL would therefore require a TSO to avoid Water Board enforcement pending development of the BMPs, their inclusion as WQBELs, and final TMDL compliance. That leaves only one other alternative to the WQBELs in the

Tentative Order: strict compliance with the WLAs through numeric WQBELs. This could expose the permittees to mandatory minimum penalties in addition to discretionary or citizen suit enforcement.

22.2.d. Comment: The Permit's Own Findings Reflect RWLs' End-Result Nature Punishes MS4s for Discharges Outside their Control

The Permit acknowledges that Permittees “may lack or have limited legal jurisdiction over runoff into their MS4s from agricultural sources, some state and federal facilities, Native American tribal lands, utilities, special districts, and other entities.” (Tentative Order at 12, ¶ II.A.8.)

For waterbodies impaired by legacy pollutants—nitrogen in Lake Elsinore, phosphorus in Big Bear Lake, DDT in Newport Bay sediment—the Fact Sheet concedes that “the dominant causes of degradation are pollutants that have accumulated from past discharges, legacy pollutants such as DDT in sediment, or non-point sources,” and that “[a] complete prohibition of pollutants in runoff would not affect the dominant causes of degradation.” (Fact Sheet at 262.) MS4s also “convey pollutants deposited on surfaces in urban areas,” including “particles from automobile brakes, tire wear and road surfaces, atmospherically deposited combustion byproducts and industrial processes” and “receive stormwater and non-stormwater flows from various sources, including . . . other public agencies, NPDES permitted discharges, discharges authorized by USEPA . . . rising ground water, and natural flows.” (Fact Sheet at 247-48.)

These findings are equally applicable to bacteria because, as explained in Section I.A of San Bernardino County's comment letter, data shows that even a “complete prohibition of pollutants in runoff” would not restore receiving water quality. Conditioning Permittees' compliance on ambient conditions in the MSAR places Permittees in a position where full compliance may not be achievable regardless of the measures they implement.

Response: The examples in this comment all refer to TMDL-based WQBELs. In cases where the dominant causes of impairment are due to in-water sources, such as sediment, the Permit only requires that the discharger comply with their waste load allocation, that is expressed as a WQBEL. For bacteria and other pollutants, the Permit allows the Permittee to demonstrate that they did not cause or contribute to the impairment. This allows the Permittee to demonstrate compliance even though the receiving water is not in attainment of water quality objectives.

22.2.e. Comment: Alternative Compliance by Measuring Outfalls Provides No Relief

The alternative compliance options based on measuring outfalls provide no relief, as Permittees explained, most recently at the July 15, 2026 workshop. Yet, Response No. 13.8 (RTC at 38-39) “claims outfall monitoring and/or upstream and downstream monitoring may demonstrate that a Permittee is not the source of in-stream excursions above a water quality standard.”

The alternative compliance pathways place a significant burden on Permittees to demonstrate a negative—that their discharges did not contribute to exceedances driven substantially by uncontrollable sources—under a regulatory framework that the Board itself acknowledges lacks a “consensus process” for making that determination. (See Exhibit D.) For wet weather conditions, the Tentative Order requires Permittees to submit a Wet Weather Controllable Sources Report identifying “specific activities, operations, and processes in urban or agricultural areas that contribute controllable sources of bacterial indicators.” Appendix 11, § III.C. This requirement implicitly acknowledges what the Permittees have suggested all along: that the distinction between controllable and uncontrollable sources matters for compliance.

Response: See Response 21.18.

22.2.f. Comment: Appendix 11 Pathways

Sections IV.F and IV.G offer alternative compliance through use of an alternative indicator at levels equivalent to fewer than 32 illnesses/1,000 people, or through an approved QMRA/epidemiological study demonstrating the same threshold. (Appendix 11, § IV.F, IV.G.) This is most likely because the MSAR Bacteria TMDL, which became effective in 2007, is based on outdated science because its waste load allocations for fecal coliform and *E. coli* were derived from 1986 U.S. EPA recreational water quality criteria that have since been superseded by the 2012 U.S. EPA recommended criteria reflecting updated illness-rate methodologies.

Alternative pathways based on the 2018 California Bacteria Provisions, however, require evaluation using short averaging periods (rolling 6-week geometric mean, calendar month STV) that are inconsistent with the seasonal-scale epidemiological studies from which the 32/1,000 illness benchmark derives. U.S. EPA’s 2012 replacement criteria were developed from studies collecting data over a full recreational season — not a 30-day or 6-week window. (U.S. Environmental Protection Agency, Recreational Water Quality Criteria (2012).)

We request that the Regional Board revise Sections IV.F and IV.G to authorize seasonal or annual averaging periods consistent with the epidemiological studies underlying the 2012 EPA Criteria. Without these revisions, the alternative compliance pathways remain scientifically unsound and practically infeasible.

Response: See [Response 17.50](#). For section IV.F, the restriction on the averaging period has been removed. Section IV.G does not have a prescribed averaging period.

22.2. g. Comment: The RWLs Do Not Align with the MEP Standard

The MEP standard “establishes a boundary on requirements that would not be ‘practicable.’” (Utility Air Regulatory Grp. v. EPA (2014) 573 U.S. 302, 321; 33 U.S.C. § 1342(p)(3)(B)(iii).) A municipality that “employs all applicable BMPs except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit to be derived, . . . would have met the standard.” (State Water Res. Control Bd., “Definition of ‘Maximum Extent Practicable,’” Memorandum from Elizabeth Miller Jennings, at 3 (Feb. 11, 1993).)

The Regional Board’s position is that MEP does not limit TMDL-based WQBELs because they derive from 40 C.F.R. § 122.44(d)(1)(vii)(B). (RTC at 250–51.) However, the State Water Board itself stated that “requiring strict compliance with water quality standards (e.g., by imposing numeric effluent limitations) is at the discretion of the permitting agency.” (Order WQ 2015-0075 at 10.) We respectfully suggest that this discretion should be exercised consistently with the MEP standard and the CWA. (See *Defenders*, supra, 191 F.3d at 1164–65.)

Response: See State Water Board Order WQ 2015-0075, pp. 54-59.

22.2.h. Comment: Other Concerns on “End-Result” Provisions

The Tentative Order’s end-result provisions raise additional legal concerns beyond those addressed above.

First, the Board’s imposition of end-result provisions implicates the major questions doctrine. In *West Virginia v. Environmental Protection Agency* (2022) 597 U.S. 697, the Supreme Court held that agencies must “point to clear congressional authorization” when claiming authority over matters of vast economic and political significance. (Id. at 724.) Municipal stormwater programs affect thousands of local governments and involve

billions of dollars in infrastructure investments, yet Congress deliberately excluded CWA section 301 requirements from municipal stormwater provisions in CWA section 402(p)(3)(B). The Regional Board lacks the clear congressional authorization to require MS4s to comply with CWA § 301 where Congress did not.

Second, in response to comments for the Tentative Order, the Board relies on State Water Board Order WQ 99-05 in defense of the use of receiving water limitations in MS4 permits based on state law. (RTC Resp. No. 35.499 [“Receiving water limitations are not new. The Water Boards have included them in MS4 permits since 1999.”].) WQ 99-05 was not based on state law. Instead, it adopted the then-applicable EPA receiving-water limitation language in lieu of adopting the Board’s own proposed alternative language. Notably, at the time of WQ 99-05 and subsequent Orders relying on WQ 99-05, the EPA’s language was federally permissible. However, the Supreme Court has since determined that the language adopted by the EPA is no longer authorized. (*San Francisco v. EPA*, *supra*, 604 U.S. 334.) Thus, WQ 99-05 is inapplicable and unsupportive of the Board’s position, as WQ 99-05 was solely based on prior EPA-authorized language that is no longer federally permitted or authorized.

Third, state law does not support the RWL. In the Interim Guidance on RWLs, the State Water Board relied upon decisions like *In the Matter of the Petitions of Building Industry Association of San Diego County and Western States Petroleum Association*, SWRCB Order No. WQ 2001-15 to support RWLs. In that decision, the State Board distinguishes and disagrees with the holdings in *Defenders*, *supra*, stating it declined to adopt a BMP-only approach even though *Defenders* allows it. (2001 WL 36247998 at *3 [stating “[i]t is true that the holding in *Browner* allows the issuance of municipal storm water permits that limit their provision to BMPs that control pollutants to the maximum extent practicable (MEP), and which do not require compliance with water quality standards. . . we decline to adopt that approach.”] Inconsistent agency interpretations and positions are legally vulnerable.

Fourth, while 33 U.S.C. § 1370 broadly preserves state authority to “adopt or enforce” standards or limitations “respecting discharges of pollutants” and requirements “respecting control or abatement of pollution” that are more stringent than those under the CWA, this authority requires affirmative promulgation of independent state-law standards—not reinterpretation of a federal standard such as MEP. Because Section 1311 requires that more stringent limitations be “established pursuant to any State law or regulations (under authority preserved by section 1370 of this title),” a state that wishes to exceed the federal MEP floor must do so through duly promulgated state standards, not by construing the federal MEP standard under Section 402(p) to mean something contrary to its established federal meaning. Here, the RWL in the Permit is not supported by any independent state law or regulation, nor could it be because any

state-issued NPDES permit must preserve the protection of the permit shield and arbitrary enforcement of end-result provisions. The asserted numeric MSAR TMDL Limit is likewise not supported by any independent state law or regulation because the MSAR TMDL did not adopt a numeric limit.

Response: See [Responses 6.1](#) and [18.2](#).

19.5. Comment: Modify Section VI.A Receiving Water Limitations

The TO contains three new findings under a new Section I.C addressing the Regional Board's authority to impose receiving water limitations, specifically citing to the U.S. Supreme Court's decision in *City and County of San Francisco v. U.S. EPA*² for its federal authority and State Water Board precedential decisions for its authority under Porter Cologne and prior agency interpretations. The findings, at least with respect to federal authority, misconstrue and are directly contrary to the U.S. Supreme Court's holding that end-result provisions in NPDES permits are not authorized by the Clean Water Act.

Under the *City and County of San Francisco* opinion, the Clean Water Act does not authorize the EPA and by extension the Regional Board exercising federally delegated authority, to include "end-result" provisions in NPDES permits or condition compliance on receiving water quality. Instead, the Regional Board must specify how compliance with the permit will be met and the specific rules a Permittee must follow to achieve water quality goals. "Determining what steps a permittee must take to ensure that water quality standards are met is the EPA's responsibility, and Congress has given it the tools needed to make that determination. If the EPA does what the CWA demands, water quality will not suffer."³ In following the U.S. Supreme Court's opinion then, the Regional Board must remove the end-result limits in the Tentative Order or specify that such limits are "goals" and further specify the steps the Permittees must take to be in compliance.

The TO states, incorrectly, that *City and County of San Francisco* does not apply to NPDES permits issued under section 402(p) of the Clean Water Act, only permits issued under section 301. Section 301 prohibits all discharges of pollutants to navigable waters unless such discharges are permitted under section 402.⁴ Therefore, section 402 implements section 301. Under section 402(p), Congress established two standards for stormwater discharge regulation – industrial discharges and MS4 discharges. Industrial discharges are subject to more stringent technology-based effluent limitations or WQBELs while MS4 discharges are subject to the Maximum Extent Practicable (MEP) standard. Furthermore, the TO does not remove receiving water limits or any end-result limits, or specify such limits as goals, but retains them as enforceable compliance limits throughout the permit. Despite the clear federal direction as to what can be enforced in

a NPDES permit, the TO continues to state that a Permittee cannot cause or contribute to an exceedance of water quality standards and that any exceedance of a receiving water limitation is a violation of the permit. It does not state the means for compliance, such as how monitoring should be conducted.

Section VI (Receiving Water Limitations), however, has been significantly revised in what is an apparent attempt to follow *City and County of San Francisco's* direction to specify the steps the permittees must take to ensure water quality.⁵

In the event of a MS4 discharge causing or contributing to an exceedance of a receiving water limitation, Section VI now prescribes a process by which a permittee must file a report with the Regional Board for approval describing best management practices being implemented, an implementation schedule, and monitoring and associated stormwater program revisions that are being carried out. Despite the now, inclusion of steps to achieve water quality goals for receiving water limitations, the TO continues to require compliance with such end-result limits. "However, compliance with this section VI.A shall not constitute compliance or deemed compliance with receiving water limitations: each responsible Permittees must demonstrate compliance with receiving water limitations according to section VI.E below." Therefore, the new language regarding reporting might be lawful under *City and County of San Francisco* if it was clear that such actions constituted compliance with the permit.

As the U.S. Supreme Court explained, the inclusion of end-result provisions eliminates the permit shield provided by NPDES permits. A Permittee cannot know what objectives might apply or what requirements are needed to meet an effective prohibition. "Because of it, a discharger that complies with all permit conditions can rest assured that it will not be penalized. But the benefit of this provision would be eviscerated if the EPA could impose a permit provision making the permittee responsible for any drop in water quality below the accepted standard."⁶

The TO does just that. It removes the permit shield by creating requirements for an effective prohibition of violating vague end-result provision without specifying the objectives or requirements that are needed to meet the prohibition or achieve compliance. No safe harbor is provided as required by Section 402(k) and therefore the permit is directly in conflict with the recent U.S. Supreme Court ruling.

Response: See [Responses 6.1](#), [18.2](#), 3.4/9.4, 22.2.a, 22.2.b and 17.2.

17.2. Comment: Finding II.C.1 "Receiving Water Limitations" and *City and County of San Francisco v. U.S. EPA*.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO includes three new findings:

- C.1 - Proposed finding that City and County of San Francisco v. U.S. EPA Does Not Apply to MS4 NPDES Permits.
- C.2 and C.3 - Interpreting State Water Board Precedential Decisions as authority for RWLs Concern and Rationale

In *City and County of San Francisco v. EPA*, 604 U.S. 334 (2025), the Supreme Court held that CWA Section 1311(b)(1)(C) “does not authorize the EPA to include ‘end-result’ provisions in NPDES permits.” (Id. at 355). In reaching this conclusion, the Court reasoned that end-result requirements, including RWLs, run contrary to the congressional intent to do away with the “backwards-looking approach” of determining responsible point sources based on below-standard receiving water quality. (See, id., at 345-49; 55). The Court further reasoned that end-result requirements were also inconsistent with the CWA’s permit shield feature in 33 U.S.C. 1342(k). On this point, the Court stated that “the benefit of the [permit shield] would be eviscerated if the EPA could impose a permit provision making the permittee responsible for any drop in water quality below the accepted standard.” (Id. at 350-51).

Importantly, the Court’s reasoning rests not on section 1311 uniquely. Rather, it is based on an assessment of congressional intent in adopting the 1972 overhaul which resulted in the current CWA, as well as analysis of the CWA’s broader statutory scheme, and applies equally to MS4 permit requirements issued under section 1342(p). The California Stormwater Quality Association (CASQA) has taken a similar position in comments to the State Water Resources Control Board, stating, “considering SCOTUS’ broad rationale ... it defies logic to think that SCOTUS would find end-result provisions to be authorized by the Clean Water Act and acceptable in MS4 NPDES permits, but not other NPDES permits.” (See Appendix B, CASQA Position Letter, July 22, 2025, at p. 3).

While the Regional Board may, nevertheless, find that City and County of San Francisco, in and of itself, does not expressly prohibit the board from imposing end-result receiving water limitations such as those proposed in TO R8-2026-0034, it is critical to note that the absence of such a prohibition in no way limits the Board’s discretion to adopt the Supreme Court’s reasoning to fashion MS4 permit provisions that avoid conflict with the permit shield provisions in 33 U.S.C. §1342(k). More specifically, in light of *City and County of San Francisco*, the Board is urged to direct staff to include a compliance pathway in Section

VI.E.2 (Receiving Water Limitations), which expressly allows a permittee to demonstrate compliance with any applicable receiving water limitation by the programmed implementation of best management practices (BMPs).

Recommendation

1. Modify Section VI.E.2 Receiving Water Limitations to add the following:

e. Implementation of BMPs consistent with an approved stormwater management plan that outlines a schedule of BMPs to reduce discharges of the applicable pollutants of concern such that they do not cause or contribute to an exceedance of water quality standards.

Response: See [Response 6.1](#). The proposed language is inconsistent with State Water Board precedent. The court in *Puget Soundkeeper* did not consider, let alone decide, that NPDES permits must identify any provisions that are more stringent than federal law. (*Puget Soundkeeper Alliance v. Port of Tacoma* (9th Cir. 2024) 104 F.4th 95, 104, *cert. denied* (2025) 145 S.Ct. 2849.)

Category 4 – Receiving Water Limitations – Technical Issues

2.4. Comment: Proof of Exempt Non-stormwater Discharges

Receiving Water Limitations VI.E.d.:

“All exceedances are the result of an authorized or exempt non-stormwater discharge specified in section IV.A.2 of this Order during a specific sampling event. The Permittee must support this demonstration with measurements of the water quality of the specific authorized or conditionally exempt non-stormwater discharge(s) alleged to have caused or contributed to the exceedance.”

For small municipalities with limited staffing and resources, this requirement may be impracticable because exempt discharges are often intermittent, difficult to access, and may no longer be occurring when an exceedance is identified. Moreover, where a discharge originates from a separately permitted facility or another regulated entity, the City may lack the legal authority, site access, or technical information necessary to collect representative samples and demonstrate causation.

The City recommends that the permit allow Permittees to rely on multiple lines of evidence, including field observations, available monitoring data, information provided by the permitted facility, discharge characteristics, and other reasonable documentation, rather than requiring direct sampling of the specific discharge in all cases. This approach would provide a more practical and achievable compliance pathway while recognizing that municipalities should not be responsible for obtaining data or proving compliance matters associated with discharges originating from facilities regulated under separate permits.

Response: The provision provides an optional compliance demonstration for circumstances where an exceedance is attributable to an authorized or conditionally exempt non-stormwater discharge rather than the Permittee's MS4 discharge. This demonstration may establish compliance with the Receiving Water Limitations. It requires sufficient evidence that connects the alleged alternative source to the exceedance to demonstrate that the source caused or contributed to the exceedance. Where other permitted facilities have their own monitoring requirements for their discharges, Permittees may rely on another party's monitoring data.

Section VI.E.d has been modified to be more flexible with what types of evidence may be used for this demonstration.

13.4. and 11.9 and 16.4 Comment: Proof of exempt Non-stormwater Discharges

Receiving Water Limitations VI.E.d.:

"All exceedances are the result of an authorized or exempt non-stormwater discharge specified in section IV.A.2 of this Order during a specific sampling event. The Permittee must support this demonstration with measurements of the water quality of the specific authorized or conditionally exempt non-stormwater discharge(s) alleged to have caused or contributed to the exceedance."

There needs to be exemptions for Water Board permitted facilities. Also, federal and state managed lands need to be exempted from this requirement.

Response: The term "authorized non-stormwater discharge" is defined in section IV.A.2.a. There is no basis for a blanket exemption for federal and state-managed lands.

2.5. Comment: Receiving Water Limitation and Rain Event Sizing

Receiving Water Limitations VI.E.2.b :

“The discharge from the Permittee’s MS4 was controlled to a level that it did not cause or contribute to the exceedance in the receiving water(s).The Permittee must support this demonstration using monitoring, modeling, or other technical analysis.”

The City respectfully requests clarification of Section VI.E.2.b, which requires a Permittee to demonstrate that its MS4 discharge was "controlled to a level" that did not cause or contribute to a receiving water exceedance. Throughout the Tentative Order, the 85th percentile storm event is consistently used as the basis for BMP sizing, treatment design, modeling assumptions, and performance standards. However, this section does not identify whether the same benchmark applies when evaluating compliance with receiving water limitations.

To ensure consistency and regulatory certainty, the City recommends that the Regional Board clarify that a discharge is considered sufficiently controlled when BMPs are designed, operated, and maintained in accordance with the permit's established 85th percentile storm capture standard. Aligning this provision with the permit's existing design and performance criteria would provide a practical and widely accepted compliance framework while avoiding the creation of an undefined and potentially unattainable standard for demonstrating that an MS4 discharge did not cause or contribute to a receiving water exceedance.

Response: Section VI.E.2.b provides a separate compliance option that allows a Permittee to demonstrate, using monitoring, modeling, or other technical analysis, that its MS4 discharge did not cause or contribute to a particular receiving water exceedance. It is intentionally broad to allow different technically supported demonstrations based on the circumstances.

Meeting an 85th percentile design standard does not, by itself, demonstrate that an MS4 discharge did not cause or contribute to a receiving water exceedance. When the 85th percentile storm event standard is applied to the drainage area tributary to the receiving water, it can be used to be deemed in compliance with Receiving Water Limitations. This pathway is available through a Watershed Management Plan. Its use through a Watershed Management Plan does not mean that the pollutant is adequately controlled. An adequate level of control must be demonstrated. “[U]ltimate compliance is subject to continued planning, monitoring, and adaptive management”. (WQO 2015-0075, p. 46) This option is recognized in section VI.E.3.

Other areas that reference the 85th percentile storm event standard are for post-construction design standards and should not be conflated with receiving water compliance determinations. No change has been made.

13.5. and 11.10 and 16.5 Comment: Receiving Water Limitation and Rain Event Sizing

Receiving Water Limitations VI.E.2.b :

"The discharge from the Permittee's MS4 was controlled to a level that it did not cause or contribute to the exceedance in the receiving water(s). The Permittee must support this demonstration using monitoring, modeling, or other technical analysis."

Throughout the TO, the rain event threshold used for sizing BMPs, for modeling and for thresholds is the 85th percentile storm capture. How can the Water Board rationalize that "controlled to a level" should not reflect the consistent use of the 85th percentile. This clarification will make the TO consistent and is a practical acknowledgement of nationally held thresholds.

Response: See [Response 2.5.](#)

21.7. Comment: Receiving Water Limitations. We propose that the Board delete the RWL provisions.

Response: The Santa Ana Water Board does not have discretion to remove the receiving water limitations. See State Water Board Orders 99-05 and 2015-0075.

21.17. Comment: VI Receiving Water Limitations

There is concern that the alternative compliance pathways outlined via Watershed Management Plans (WMPs) lack explicit "safe harbor" protections. As currently drafted, even if a municipality is diligently implementing an approved WMP in good faith, it remains vulnerable to immediate third-party litigation and enforcement actions for localized numeric receiving water limit (RWL) exceedances. This structure disincentivizes the massive financial and planning investments required to build out regional watershed infrastructure.

Recommendation: Respectfully requests for the language of Section VI to explicitly state that the development, submission, and active implementation of an approved WMP constitutes full compliance with Section IV (Discharge Prohibitions) and Section V (Receiving Water Limitations). Furthermore, establish a strict 180-day regulatory deadline for Executive Officer review and approval of submitted WMPs to avoid prolonged legal exposure during administrative backlogs.

Response: Regarding deemed compliance with Receiving Water Limitations, the commenter is incorrect. See sections VI.E.3 and VII.B.5 of the Tentative Order. Compliance with an approved WMP constitutes compliance. Since there is no violation, there is no potential for citizen suit enforcement. A permittee that fails to complete all tasks in an approved WMP is no longer in compliance with the permit. This is a strict liability standard. A permittee that cannot comply with an approved WMP in good faith may seek an extension of the deadlines (unless the schedule would extend compliance beyond a TMDL final compliance date) or request a TSO. The extended WMP would continue to protect the permittee from citizen suits. A TSO would not.

Section XII.A.9 has been clarified for reactive WMPs to be more explicit that permittees implementing an approved WMP are in compliance with the relevant sections of the permit.

Deemed compliance with section IV would be inconsistent with the Clean Water Act requirement to effectively prohibit non-stormwater discharges and the statewide trash requirements. See also, RTC#1, Response 35.526.

21.18. Comment: VI.D. Receiving Water Limitations

A. Where Permittees have commingled MS4 discharges to the receiving water(s), compliance in the receiving water(s) shall be determined for all Permittees contributing to the discharge unless an a Permittee or Permittees demonstrate that their discharge did not cause or contribute to the exceedance of the receiving water limitation.

This language makes Permittees guilty until proven innocent. Change language to show the opposite. Innocent until proven guilty. In addition, this language can promote issues between Permittees putting them against one another, instead of promoting productive joint efforts.

Recommendation: Please refer to the issue/concern.

Modify language to show the opposite. Innocent until proven guilty.

Response: See [Response 6.1](#) and RTC#1, Response 35.501. The Clean Water Act places the burden on dischargers to ensure permit compliance through monitoring that is representative of their discharges. (40 C.F.R. §§ 122.48(b), 122.44(a)(1)(i); *Food & Water Watch v. U.S. Environmental Protection Agency* (9th Cir. 2021) 20 F.4th 506, 516; *Natural Res. Def. Council v. County of Los Angeles*, 725 F.3d 1194, 1205-1207 (9th Cir. 2013).)

3.5. and 9.5. Comment: The Permit Improperly Imposes Collective Responsibility For Commingled Discharges

The Tentative Order states that permittees with commingled discharges are jointly responsible for satisfying the Order while also stating that permittees are responsible only for systems they own or operate. Those provisions are internally inconsistent and create uncertainty regarding causation, allocation, and enforcement.

Canyon Lake does not control all runoff entering its jurisdiction, all upstream discharges, all private activities, all regional flood-control facilities, or all pollutant sources affecting downstream receiving waters. It cannot lawfully or practically guarantee the performance of another permittee, a private discharger, an agricultural operation, an institutional facility, a state or federal agency, or a natural background source.

The Permit must not place the burden on Canyon Lake to disprove responsibility for an exceedance. The permitting and enforcement agency bears the burden of establishing that a discharge from a City-owned or City-operated MS4 caused or contributed to the alleged violation.

The final Permit should expressly provide that: (i) each permittee is responsible only for discharges from an MS4 it owns or operates; (ii) liability requires substantial evidence of causation or material contribution attributable to that permittee's discharge; (iii) commingling alone does not create joint or several liability; (iv) regional monitoring data do not establish an individual violation unless the data can reliably identify the responsible discharge; (v) permittee may demonstrate noncontribution through all relevant evidence, without being confined to a method approved after the fact by the Executive Officer; and (vi) watershed cooperation does not waive any permittee's defenses or create contractual, statutory, or regulatory liability for another participant.

The current joint-responsibility language should be deleted or replaced with a clear, causation-based allocation standard

Response: See [Response 21.18](#).

17.6. Comment: Comment 6. Modify Section VI.A “Receiving Water Limitations” to provide clarity as to how compliance is demonstrated.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO includes revised language in Section VI.A including, but not limited to:

“...If exceedances of receiving water limitations persist, notwithstanding implementation of the Permittees’ stormwater management program and its components and other requirements of this Order, the Permittee shall ensure compliance with discharge prohibitions and receiving water limitations by complying with the following procedure:...”

The phrasing that is a focus of this comment is “the Permittee shall ensure compliance with discharge prohibitions and receiving water limitations by ”

Concern and Rationale

The term “ensure” is vague and is being used, within this context, to describe the end point that needs to be achieved as a result of the implementation of the stormwater program but is subjective and does not provide Permittees with any guidance or clarity as to how compliance is demonstrated.

Recommendation

Modify Section VI.A Receiving Water Limitations to:

“...If exceedances of receiving water limitations persist, notwithstanding implementation of the Permittees’ stormwater management program and its components and other requirements of this Order, the Permittee shall comply ~~ensure compliance~~ with discharge prohibitions and receiving water limitations ~~by complying with~~ through the following procedure:...”

Response: See State Water Board Order WQ 2015-0075, p. 76, 1 and Order WQ 99-05. No changes have been made.

Category 5 – Bacteria Compliance, Including Appendix 11

5.3. **Comment:** Water Quality Based Effluent Limitations For Dry-Weather -

Appendix 11 of the Order converts the MSAR TMDL waste load allocations (WLAs) from the BMP-based approach in Order RB-2023-0043 to numeric WQBELs. This provision effectively invalidates the deemed-in-compliance status granted for the development and implementation of a dry-weather Comprehensive Bacterial Reduction Plan (CBRP). Appendix 11, Section II, requires Permittees to revise or amend their CBRPs to include WQBELs as performance metrics within two years of the Order's effective date.

Sections VI.E.2. and Appendix 11. IV. allow for the "demonstration that the Permittee's discharge did not cause or contribute to the exceedance of the receiving water limitation. A demonstration that the Permittee did not cause or contribute to the exceedance of the

- a. receiving water limitation may be made by any of the following: There was no discharge from the Permittee's MS4 into the affected receiving water(s) during the relevant period.
- b. The discharge from the Permittee's MS4 was controlled to a level that it did not cause or contribute to the exceedance in the receiving water(s)."

The concern is that the Regional Board has not acknowledged the City's compliance documentation showing that the City met WQBELs by December 31, 2015, as set forth in the TMDL. Since then, the City continued to document its ongoing compliance efforts. Beginning with the 2015/2016 Annual Report, the City certified and documented its compliance with the final dry-weather WQBELs through the "timely implementation of the dry-weather CBRP" and by observing the elimination of dry-weather flows from the 397 acres the City hydrologically connects to Chino Creek.

On May 11, 2018, Regional Board staff accepted the City's May 8, 2018, response to the "Incomplete Notice," confirming that the City had met the waste load allocations for dry-weather bacterial loads in the Middle Santa Ana River. After the Incomplete Notice was withdrawn, the City requested that Regional Board staff assess the City's compliance with the dry-weather Waste load Allocations. However, no response was provided.

Further, the City requested acknowledgment of compliance with the Permit conditions set forth in Section II1.B.2.b of Order No. R8-2013-0043 in its Report of Waste Discharge submitted to the Regional Board on March 29, 2018. However, our request for acknowledgment of compliance was not accommodated.

The City therefore requests that the Permit include a mechanism and requirement for the Regional Board to acknowledge a Permittee's compliance status upon a Permittee's request for confirmation, accompanied by evidence demonstrating compliance with Section VI.E. or Appendix 11. Section IV.

Response: An NPDES Permit is not the appropriate place to report on past compliance actions.

The commenters are correct that the City “documented its compliance with the final dry-weather WQBELs through the ‘timely implementation of the dry-weather CBRP’ and by observing the elimination of dry-weather flows from the 397 acres the City hydrologically connects to Chino Creek.” The Permittees are still able to use the proposal that the City is hydrologically disconnected to demonstrate compliance with the Revised Tentative Order. The City would be able to demonstrate that there is no discharge to the Middle Santa Ana River based on the hydrologic disconnection and evidence that it has eliminated dry-weather flows from the 397 acres. (Tentative Order, Appendix 11, § IV.B.)

However, the implementation of a CBRP to demonstrate attainment of the current WLA for the dry summer condition is no longer an available pathway for compliance due to State Board precedent. Precedential Order 2015-0075 does not allow the use of a Watershed Management Plan (or under any other name) and its reasonable assurance analysis after the compliance date in the adopted TMDL has passed. (No RAA would be required for the dry-weather CBRP pursuant to Appendix 11, section II, since it is a management tool and it is not being used to determine compliance with WQBELs.) This approach was communicated to the City of Claremont as a part of the Staff Working Proposal transmitted on November 15, 2024. Finding O states “The final compliance date for the dry summer conditions WLA has passed and the TMDL called for the WLA to be achieved as soon as possible but no later than December 31, 2015. Therefore, this Order expresses the dry summer conditions WLA as a numeric effluent limitation to be complied with immediately.” After the extension of the compliance date for the WLA is approved, a CBRP may be used as a Watershed Management Plan to demonstrate attainment.

Waste load allocations that are expressed as water quality-based effluent limitations (WQBELs) are enforceable consistent with the Basin Plan and Order 2015-0075. Any BMP-based narrative WQBELs must meet standards for rigor, accountability, and transparency that apply to Watershed Management Plans, on “clear, specific, and measurable permit requirements and, where feasible, numeric effluent limitations in NPDES permits for stormwater discharges.” (State Water Board Order WQ 2015-0075). The current permit expresses the WQBELs as a narrative requirement to implement the CBRP. Although the requirement was BMP-based, the current permit still required Permittees to attain the WLA by December 31, 2015. The numeric WQBEL is a different way to express the requirement: to attain the WLA. The CBRP that was submitted in accordance with Order R8-2013-0043 contains a planning horizon that ended in 2015 and does not meet the standards that apply to Watershed Management Plans.

5.4. Comment: Comprehensive Bacterial Reduction Plan -

Appendix 11, Section II.A., requires Permittees to revise or amend the CBRP for dry-summer conditions to comply with the WQBELs. The concern is that the Regional Board has not acknowledged the City of Claremont's demonstrations of compliance with the WQBELs specified in Order No. RB-2013-0043, Section 111.2, namely that Claremont fully implemented the BMPs identified in its approved CBRP by December 31, 2015. Additionally, Claremont has documented ongoing visual observations indicating that no dry-weather flows originate from the City's single outfall, which is hydrologically connected to Chino Creek. Therefore, the City's ongoing compliance efforts demonstrate that the outfall does not cause or contribute to exceedances at the downstream compliance monitoring station WW-C7 for Chino Creek at Central Ave, some 4 miles south of the City.

There are concerns with the Response to Comments submitted for Staff Working Proposal Order RB-2025-0004, which does not recognize Claremont's CBRP as a legitimate mechanism for summer dry-weather conditions, because according to the opinion that was issued, eliminating dry-weather flows through the ongoing implementation of Claremont's CBRP does not demonstrate compliance with the dry-weather WQBELs. Staff writes, "The Basin Plan does not specifically mention the Comprehensive Bacteria Reduction Plan. But the Basin Plan references tasks and schedules to achieving compliance that indicate that a BMP-based approach to compliance with the TMDL is permissible prior to the compliance date. The Comprehensive Bacteria Reduction Plan appears in Orders RB-2013-0043. It is abundantly clear in the provisions of the Orders and the approving Resolutions for the CBRPs, that the CBRPs were to result in compliance with the waste load allocations by

the compliance date." Further, staff states, "For some Permittees, the CBRPs have not achieved compliance with the waste load allocation for dry weather by the compliance date. Consequently, it is difficult to justify continuing a BMP-based permitting strategy after the compliance date has passed... The Regional Board has not concluded that BMP-based compliance is the appropriate option and staff do not intend to allow a BMP-based approach after the deadline has passed."

Claremont's position is that it fully implemented elements of the approved CBRP, including ordinances, specific BMPs, source evaluation, and regional treatment, has successfully eliminated dry-weather discharges. The City has reported that it fully implemented the CBRP-prescribed BMPs by December 31, 2015, and that it began including results from visual observations at T2-CLARM in its annual reports to the Regional Board, starting with the 2019/2020 Annual Report.

The proposed Regional Permit must include provisions that require the Regional Board to provide feedback to Permittees regarding demonstrations of compliance and implemented programs effectiveness.

Response: The demonstration that the Permittees have eliminated dry-weather discharges remains a viable pathway for the City of Claremont to demonstrate compliance with Appendix 11 of the Revised Tentative Order.

See also [Response 5.3](#) and RTC#1 Responses 22.1 and 25.291 for further relevant discussion related to numeric WQBELs for MSAR Bacteria.

Staff disagrees that the Tentative Order should require the Regional Board or staff to provide feedback that a Permittee is complying or that its programs are effective. The Tentative Order establishes the Permittee's obligation to demonstrate compliance. Compliance with the Permit is an ongoing obligation of the Permittee that is evaluated based on all available information. Approval of a plan does not relieve the permittee of the responsibility to comply with all permit requirements. Statements regarding demonstrations of compliance or program effectiveness could be interpreted as limiting the Regional Board's ability to evaluate future information and exercise its enforcement discretion where appropriate. Accordingly, no revisions have been made.

5.5. Comment: Water Quality Based Effluent Limitations For Wet-Weather

Appendix 11.IV.E. provides a pathway to compliance by retaining all non-stormwater and stormwater runoff up to and including the volume equivalent to the 85th-percentile, 24-hour storm event for the drainage area tributary to the applicable receiving water.

However, the Permit offers this path only for runoff-retention practices prescribed in an approved Watershed Management Plan (WMP) under section XII of the Order. Section

IV.E. does not recognize the development and approval of a wet-weather CBRP as a mechanism to achieve the 85th-percentile stormwater-retention volume. The language should be clarified to state that Permittees may prepare a CBRP or, alternatively, develop or participate in a Watershed Management Plan (WMP) as a method of complying with WLAs expressed as WQBELs.

Response: If a modified CBRP were to function as a Watershed Management Plan for compliance purposes, it must meet the rigor, transparency, and accountability required by the Watershed Management Plan provisions in section XII. Nothing prevents the Permittees from submitting a CBRP that meets the standards of a Watershed Management Plan and using it for the compliance option in section IV.E.

5.7. Comment: Compliance Schedule for Wet Winter Conditions

Appendix 11, Section III, establishes a schedule for requirements that take effect on the effective date of the Basin Plan amendment. The City requests that language be added to clarify that Permittees may prepare the documents identified in Section III either individually or in conjunction with the MSAR TMDL Task Force.

Response: Section III.F has been added as follows:

F. The requirements of this Section III may be satisfied in whole or in part through the Permittees' collaborative efforts and participation in the Middle Santa Ana River Watershed TMDL Task Force. The Permittees should continue to cooperate with the Task Force to develop work products to comply with Sections III.A through III.E, as appropriate. Any monitoring programs must be expressly incorporated into the Program Monitoring and Reporting Plan (PMRP) as required by Attachment D, Monitoring and Reporting Program, section I.B. Each Permittee retains its responsibility for complying with the terms of this Order notwithstanding any agreement with the Task Force to perform work or submit reports on the Permittee's behalf. The Permittees must comply with the signatory requirements in Attachment F, section V.B. of this Order for any report, workplan or other information submitted to comply with this Order.

14.5. Comment: Support the wet-weather compliance schedule extension and request clear implementation milestones

Appendix 11 identifies the wet-weather or wet-winter compliance date as December 31, 2025, but states that upon the effective date of the Basin Plan amendment set forth in Resolution R8-2026-0014, the compliance date for wet-winter WQBELs will be extended to December 31, 2035. The City supports the extension because wet-weather bacteria compliance requires technically defensible watershed-scale monitoring, source identification, source prioritization, project evaluation, funding analysis, and implementation planning.

Appendix 11, Section III provides a structured compliance schedule for wet-winter conditions, including an early project work plan, a High Flow Suspension Study, a Study Plan, a Wet Weather Controllable Sources Report, a Wet Weather Source Prioritization Strategy, a Wet Weather CBRP, and a Work Plan for Implementation of the Wet Weather CBRP.

Requested revision or clarification:

The City requests that the final Order and Fact Sheet clearly state:

1. The effective date trigger for the wet-weather compliance schedule;
2. Whether deadlines in Appendix 11, Section III run from the effective date of Order R8-2026-0034 or from the effective date of Resolution R8-2026-0014;
3. Whether City of Pomona may participate jointly with other MSAR watershed stakeholders in developing required studies and plans;
4. How the Santa Ana Water Board will evaluate timely progress toward interim milestones; and
5. How existing MSAR Bacterial Indicator TMDL Task Force work products may be used to satisfy or support Appendix 11, Section III requirements.

Response:

For requests 1 and 2, the “effective date” in Appendix 11, section III refers to the effective date of the Basin Plan amendment, as stated in the introductory language in Section III.

For request 3, Permittees may participate jointly with other responsible parties and MSAR watershed stakeholders in developing the studies, plans, and other work products required by Appendix 11, see [Response 7.7](#).

For request 4, Watershed Management Plans include milestones and are a voluntary means to comply with certain permit requirements, including Receiving Water Limitations. The Tentative Order does not require a demonstration of timely progress toward meeting the milestones. Permittees are required to meet the milestones by their respective deadlines or develop and comply with an approved WMP. Milestones may be selected by Permittees, and may include but are not limited to, completion of targeted source investigations, construction initiations and completions, completed effectiveness evaluations, implementation of controls, etc.

For request 5, the Permittees may submit existing work products to comply with Section III, as long as the work products meet the requirements of the permit. The implementation schedule adopted through Resolution R8-2026-0014 recognizes that additional wet-weather monitoring, source identification, source prioritization, and implementation planning are necessary to support attainment of the wet-weather requirements. The need to complete this additional work is part of the basis for the extended wet-weather compliance schedule. Accordingly, existing Task Force work products may inform and support the required studies and plans, but the schedule itself reflects that additional work remains necessary.

14.6. Comment: Clarify applicability of the high-flow suspension provision to Pomona-related compliance determinations

Appendix 11, Section I.C adds a high-flow suspension provision for Santa Ana River Reach 3 when flow conditions preclude safe recreation. The provision states that WQBELs for E. coli are temporarily suspended when velocity, depth-velocity, or rainfall criteria are met. The Fact Sheet explains that the high-flow suspension provision is based on the Basin Plan amendment adopted through Resolution R8-2012-0001 and reflects that REC-1 use is not attained during certain unsafe high-flow conditions.

The City supports inclusion of this provision and requests clarification regarding how it will be applied to compliance determinations involving Pomona's MS4 discharges, including whether and how representative stream gauge data, rainfall data, or calibrated hydrograph information may be used.

Requested revision or clarification:

Clarify the data sources, locations, and documentation standards that may be used by the City of Pomona to support application of the high-flow suspension provision,

including whether regional watershed data may be used where outfall-specific flow information is unavailable.

Response: The purpose of the provision is to recognize periods when the REC-1 use is temporarily suspended in accordance with the Basin Plan because receiving-water conditions preclude safe recreational use. The city of Pomona is not required to prove the condition independently at each outfall. The provision only applies to the Santa Ana River, Reach 3, if representative receiving water information establishes that the Basin Plan's suspension criteria were met. The city of Pomona may rely on regional information to establish this condition in the receiving water. The Tentative Order does not prescribe a particular data source, monitoring location, or method that is sufficient to demonstrate that the conditions specified in Appendix 11 have occurred. These details may be proposed in the Program Monitoring and Reporting Plan.

14.7. Comment: Clarify cause/contribution demonstrations for commingled discharges and non-City sources

Order R8-2026-0034 provides a more detailed compliance framework for commingled MS4 discharges than the prior standalone order. Order Section VI.C-D and Section VII.B.3-4 recognize that permittees with commingled MS4 discharges may be jointly responsible but also provide that an individual permittee may demonstrate that its discharge did not cause or contribute to an exceedance. Appendix 11, Section IV similarly allows compliance demonstrations based on no exceedance, no discharge, no cause or contribution, or an exceedance attributable to authorized or exempt non-stormwater discharges.

The City requests that the Santa Ana Water Board clarify the type and level of technical information needed to support cause/contribution demonstrations for bacteria, particularly where exceedances may be influenced by upstream sources, wildlife, natural sources, agricultural sources, homeless encampments, illicit discharges, or other sources outside the City's ownership or control.

Requested revision or clarification:

Clarify that cause/contribution demonstrations may rely on multiple lines of evidence, including monitoring data, source-tracking data, rainfall/flow data, field observations, GIS drainage information, land-use information, special studies, and other relevant technical analyses approved through the PMRP, CBRP, WMP, or Executive Officer review process.

Response: This clarification is appropriate and aligns with the intention of the Tentative Order. However, instead of adding this clarification to section VI or Appendix 11, it has been added to Attachment C, section VI.6.

Since all methods proposed to be used to demonstrate compliance with the WQBELs (per the monitoring and reporting provisions in each appendix) and with receiving water limitations (per section VI.F) must be approved through the Program Monitoring and Reporting Plan, it is appropriate to include this language there. It is not necessary to include this clarification for Watershed Management Plans, whose implementation itself constitutes compliance.

14.8. Comment: Confirm that WMPs and CBRPs may be coordinated for wet-weather compliance

Appendix 11, Section IV.D provides that where the final compliance deadline has not passed, permittees may demonstrate compliance through an approved Watershed Management Plan addressing the waterbody-pollutant combination pursuant to Section XII of the Order. Appendix 11 further states that the CBRP may function as a wet-weather WMP if it meets the requirements of Section XII and is approved as a WMP, but that the CBRP cannot serve as an alternative means of compliance with the dry-weather WQBEL because the dry-weather compliance deadline has passed.

The City supports the ability to integrate the wet-weather CBRP and WMP processes. This integrated approach would reduce duplicative planning, improve watershed coordination, and allow technical and financial resources to be focused on bacteria source identification and effective BMP implementation.

Requested revision or clarification:

Confirm that the Wet Weather CBRP may be structured to satisfy WMP requirements for wet-weather bacteria compliance if it includes the required Section XII elements, including reasonable assurance, milestones, adaptive management, monitoring, and implementation schedules, and is approved by the Santa Ana Water Board or Executive Officer.

Response: Yes, the Wet Weather CBRP may be structured to satisfy Watershed Management Plan requirements and serve as an alternative approach to compliance prior to the compliance date. Section IV.D in Appendix 11 already states this. Section I.K of the Monitoring and Reporting Program R8-2026-0034 requires that reports submitted under the Permit must include a statement identifying the provision(s) the report is intended to comply with. Therefore, if a

CBRP (or any other name) is submitted with a statement that it is intended to comply with Watershed Management Plan requirements, it will be reviewed and considered accordingly. Submittals will be regarded as Watershed Management Plans if they meet the applicable standards and are approved, regardless of what the authors name the submittal.

14.10. Comment: Recognize the need for practical implementation timelines and funding coordination

Appendix 11's wet-weather compliance schedule contemplates multiple technical work products and implementation steps, including studies, source prioritization, a Wet Weather CBRP, and an implementation work plan. These steps may require coordination among multiple municipalities, watershed stakeholders, consultants, laboratories, and funding partners.

The City requests that the Santa Ana Water Board provide reasonable implementation flexibility, allow coordinated watershed submittals, and consider funding and procurement realities when evaluating interim milestone compliance.

Requested revision or clarification:

Clarify that coordinated regional or watershed group submittals may satisfy Appendix 11 requirements for Pomona where the submittal identifies Pomona's roles, responsibilities, drainage areas, BMP commitments, monitoring commitments, and funding approach.

Response: See RTC#1, Response 22.1. In addition, Order R8-2013-0043 already includes numeric WQBELs for wet weather conditions, effective January 1, 2026. The WLAs automatically became numeric WQBELs since the board has not adopted alternative final WQBELs. (Order R8-2013-0043, § III.2.) Claremont and Pomona have already been working with other MSAR dischargers to implement portions of the program. The requested implementation flexibility was provided under the existing orders.

17.20. Comment: Modify Section XII.B.4.f "Watershed Management Plan Contents – Reasonable Assurance Analysis" to include bacteria-specific provisions that reflect the latest science and implementation approaches.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Section XII.B.4.f.ii was modified in the RTO as follows:

B.4.f.ii The RAA must be supported, in part, by peer-reviewed mathematical models that where such models are in publicly available and predictive for the public domain unless waterbody, pollutant, and management actions being evaluated. Where a determination demonstration can be made, to the satisfaction of the Executive Officer, that an appropriate a predictive model and/or a suitable dataset for use in a model are not available or that an alternate model and dataset is available that provides a similar level of predictive performance, the RAA may rely on alternative quantitative methods.

Concern and Rationale

The County appreciates the modifications to the Reasonable Assurance Analysis (RAA) requirements to provide more flexibility for the quantification approaches that can be used to meet the RAA requirement. However, the language still presents challenges for developing a WMP for bacteria due to the difficulties in modeling bacteria. Additionally, the RAA requirements are not supportive of implementing strategies that focus on reducing risk to recreators because the RAA requires a demonstration of a reduction in fecal indicator bacteria concentration or loads to meet a fecal indicator bacteria water quality objective rather than a demonstration that risk has been reduced. The issue with this approach is that not all sources of fecal indicator bacteria pose the same risk to recreators. An implementation approach that is focused on addressing high risk sources and meets the intent of the Statewide Bacteria Provisions by reducing risk to recreators below the risk threshold of 32 excess gastrointestinal illnesses per 1000 recreators would not be able to be quantified using a model-based RAA approach.

In the Time Schedule Order (TSO) for the Newport Bay Fecal Coliform TMDL and through approval of the associated Pollution Prevention Plan (PPP), the Regional Board supported an approach to complying with the TSO requirements and attaining the TMDL through a targeted human fecal waste source identification and abatement program. The RTO also allows Permittees to demonstrate compliance with bacteria TMDLs through demonstrating that the illness risk threshold underlying the Statewide Bacteria Provisions is being achieved. These two actions by the Regional Water Board demonstrate that implementing a human waste source focused implementation approach is a viable pathway to compliance with bacteria TMDL requirements and that demonstration of meeting a risk-based threshold is appropriate for demonstrating compliance. However, it is unclear how this approach could be included in an approvable WMP given the current RAA requirements.

The County requests the RTO be modified to support a risk-based approach to addressing bacteria by making a finding that peer-reviewed mathematical models are not publicly available and predictive for bacteria and defining that reasonable assurance for bacteria may be demonstrated through an alternative quantification method, such as submittal of the number of areas where source investigation and abatement would need to occur to meet the receiving water limitations.

Response: The TSO that the commenter cites is not subject to the same standards as a Watershed Management Plan. So, the comparison is not valid. However, the commenter's concern that no mathematical model is sufficiently predictive to support program decisions is valid. No determination is being made here on the commenter's implied assertions that implementing a human waste source focused implementation approach is a viable pathway to compliance with bacteria TMDL requirements and that demonstration of meeting a risk-based threshold is appropriate for demonstrating compliance in a Watershed Management Plan. But the Permit provides a process to evaluate this as part of the RAA. In the event that this argument is accepted as part of an RAA for a Watershed Management Plan, the permit language has been clarified to allow a broader range of alternative quantitative methods.

Category 6 – Permittee Responsibilities

8.10. Comment: Section III.D, Legal Authority/Enforcement, requires Permittees to maintain adequate legal authority and update ordinances, plans, policies, and procedures as needed. The City supports maintaining adequate legal authority. However, ordinance updates require staff review, legal review, management review, public process, and City Council action. The City requests that the final permit allows a phased process. Permittees should be allowed to submit a legal authority gap assessment first, followed by ordinance or policy updates on an approved schedule if needed.

Response: The commenters are concerned that the Legal Authority Assessment report in section III.D.5 is to be submitted in the second annual report, but section III.D.1 requires permittees to review and update, as necessary, ordinances, plans, policies, and procedures within one year of the effective date of this Order and as needed thereafter. Most existing ordinances and policies already in place under previous permits should continue to meet requirements in this Tentative Order. The "as needed thereafter" language allows for ordinances and other

policies to be updated later, when inadequate authority to implement and enforce requirements is discovered after the fact as a part of the legal authority assessment report, and updates are then initiated.

17.3. Comment: Modify Section III.E.1.a “Notification Requirements” to reflect changes made in the RTC.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO modified Section III.E.1.a Notification Requirements as follows:

“a. Provide oral or electronic mail notification to the ~~Executive Officer of the~~ Santa Ana Water Board within 24 hours of discovery. A hazardous materials notification for a reportable incident provided to the California Office of Emergency Services State Warning Center may also be used to satisfy this requirement.”

Concern and Rationale

The Revised TO modified Notification Requirement III.E.1.a to state that a submission to the California Office of Emergency Services (Cal OES) State Warning Center may be used to satisfy the notification requirement for reportable incidents but did not remove the requirement to directly notify the Executive Officer as previously noted. The use of Cal OES notifications is an effective tool to notify multiple federal, state, and local regulatory agencies simultaneously in the midst of emergency responses.

However, RTC 35.21, stated that the changes requested within the July 2024 TCG comment letter were made, which is appreciated. Thus, the Revised TO text should also reflect these changes.

The County understands, from the July 16, 2026 public workshop that Regional Water Board staff are potentially supportive of this modification, which could allow various Regional Water Board staff to be the appropriate contact and not just the Executive Officer similar to the current MS4 permit.

Recommendation

Modify Section III.E.1.a to remove the Executive Officer notification requirement such that the language is consistent with the RTC:

“a. Provide oral or electronic mail notification to the ~~Executive Officer of the~~ Santa Ana Water Board within 24 hours of discovery. A hazardous materials notification for a

reportable incident provided to the California Office of Emergency Services State Warning Center can also be used to satisfy this requirement.”

Response: Staff agree with the clarification, the proposed change has been made.

2.2. Comment: Notification on Discharges from Non-MS4 Jurisdiction Properties.

Permittee Responsibilities III.E.2

“If, during the course of a site inspection or a complaint investigation, Permittees find evidence of a discharge in violation of applicable waste discharge requirements (e.g. Industrial or Construction General Permits, etc.) or of a known violation of local ordinances, the Permittee must include this information in the reports listed below. Permittees must submit a report on January 31 and July 31 of each calendar year concerning such facilities within their jurisdiction...”

The City respectfully requests revision of Section III.E.2. As written, the provision requires municipal staff to identify and report potential violations of other regulatory programs, such as the Industrial and Construction General Permits. Determining compliance with these permits often requires access to information, technical expertise, and regulatory authority that are not available to municipal inspectors, particularly in small communities with limited staff and resources.

The City recommends that its responsibility be limited to documenting and reporting observed illicit discharges, unauthorized non-stormwater discharges, and violations within its jurisdiction, while referring suspected violations of other permits to the appropriate regulatory agency. This approach would support interagency coordination without requiring municipalities to make compliance determinations for programs they do not administer.

Response: The intention of this provision is to require that Permittees report evidence observed during routine inspections to the Santa Ana Water Board. The provision does not to require Permittees to determine compliance with, interpret, or enforce the Industrial General Permit, Construction General Permit, or other waste discharge requirements. The provision requires reporting of observed evidence, not independent compliance determinations. Evaluation of compliance with another permit remains the responsibility of the permitting authority.

This approach is consistent with the commenter's existing permit, Order R8-2010-0033, section XI.A.7, which required Co-Permittees to notify Regional

Board staff of possible violations of the General Storm Water Permits and other permits issued by the State or Regional Board.

The Fact Sheet, Attachment D, section IV.D provides more information on this requirement, including that “these requirements are necessary to determine compliance with the requirement to prohibit illicit discharges, and are part of progressive enforcement that is expected from the Permittees. (See sections III.D.4. and III.E) Progressive enforcement includes procedures to coordinate enforcement between the Santa Ana Water Board and Permittees, particularly where violations identified by Permittees fall under the Santa Ana Water Board’s regulatory authority or require escalation beyond local jurisdiction. These requirements are consistent with Business and Professions Code sections 16000.3 and 16100.3.”

13.2. and 11.7 and 16.2. Comment: Notification on Discharges from Non-MS4 Jurisdiction Properties.

Permittee Responsibilities III.E.2

"If, during the course of a site inspection or a complaint investigation, Permittees find evidence of a discharge in violation of applicable waste discharge requirements (e.g. Industrial or Construction General Permits, etc.) or of a known violation of local ordinances, the Permittee must include this information in the reports listed below. Permittees must submit a report on January 31 and July 31 of each calendar year concerning such facilities within their jurisdiction ... "

Please clarify what the City would be accountable for. Is the City to report on other federal or state lands?

Response: See [Response 2.2.](#)

21.13. Comment: III.E.2 Permittee Responsibilities

Submitting 2 reports annually may require more administrative work without any improvement in water quality. We recommend that we keep all reports of these findings in the annual report unless it requires an immediate action/response from the regional board.

Recommendation: Please refer to the issue/concern.

Response: This provision does not create additional implementation obligations, it establishes a schedule for communicating information already collected during routine permit implementation. Semiannual reporting allows for timely awareness of potential compliance concerns and opportunities for follow-up. The Tentative Order does not assign a minimum level of effort for this communication, and the report may be extracted from existing inspection and enforcement action databases that are carried over from previous permits. No change has been made.

Category 7 – Trash Control

15.9. Comment: Section V.D.1.

As currently drafted, the Revised TO shortens the interim milestone timeline for trash amendments compliance from four years to one year from the effective date of the Order, and measures progress solely by whether Permittees have installed, operated, and maintained Full Capture Systems (Track 1) or equivalent measures (Track 2) for 50 percent or more of Priority Land Use and Equivalent Alternate Land Use areas. If a Permittee cannot meet this milestone, it has only 90 days from the effective date of the Order to submit a report proposing an alternate interim requirement, subject to Executive Officer approval.

The City believes this compressed timeline and single, inflexible metric do not provide Permittees adequate time or means to demonstrate genuine progress, particularly given that this is the first permit cycle in which the statewide trash requirements have been incorporated into the MS4 permit. The City requests that Section

V.D.1 be revised as follows:

- Extend the interim milestone timeline from 1 year to 2 years from the effective date of the Order; and
- Allow an alternative metric for demonstrating progress — such as other reasonable documentation of progress to date (e.g., funding allocation, procurement, or installation planning) — in addition to the 50 percent Priority Land Use / Equivalent Alternate Land Use threshold.

The City notes that this request is consistent with a similar comment submitted by the Riverside County Flood Control and Water Conservation District, which reflects a shared, region-wide concern that the current schedule and metric are not practical or achievable across the range of Permittees in the Santa Ana Region.

Recommendation: Modify section to revise the timelines for the Interim Milestone and Alternate Interim Requirement for Trash Amendments Compliance.

Response: The proposed changes have been made. The interim milestone shall be reported within 2 years from the effective date of the Tentative Order, and Permittees have 180 days to determine and report if they need to request an alternative interim milestone. Permittees are still responsible for meeting the final compliance date.

To allow another reasonable alternative milestone without needing a Permittee proposal and approval, a second interim milestone option has been added. Permittees may either achieve 50 percent or more installation as previously provided, or they may alternatively provide evidence of funding allocation, procurement, and/or installation planning sufficient to meet the final compliance by December 2, 2030.

7.1. Comment: Modify Section V.D.1. to Revise the Timelines for the Interim Milestone and Alternate Interim Requirement for Trash Amendments Compliance.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised Tentative Order (TO) changed the 50% interim milestone for compliance with the Statewide Trash Amendments to 2027 (within 1 year from the effective date of the Order) and requires Permittees who cannot meet this deadline to submit a report to propose an alternate timeline, which is subject to approval by the EO.

“Interim milestone - Within 4~~1~~ years from the effective date of this Order, Permittees shall install, operate, and maintain Full Capture Systems (Track 1) or equivalent measures (Track 2) for 50 percent or more of the ~~priority land use areas and equivalent alternate land use areas~~ Priority Land Use areas and Equivalent Alternate Land Use areas. If the Permittee does not expect to achieve this interim milestone, they must submit a report, within 90 days of the effective date of this Order, that proposes an alternate interim requirement, subject to the approval of the Executive Officer.”

Comment

The proposed timeframe is even sooner than proposed in the 2024 Tentative Order, which provided 4 years. The largest concern is the relatively short period for analysis and reporting will be challenging or costly for the city and other Copermitees. This is the first instance in which statewide trash requirements are being written into the MS4

permit, and even though certain City has made substantial progress on trash implementation, adequate time will be needed to perform or update milestone analyses to align with the specific provisions of this Revised TO.

Recommendation

Provide two (2) years from the effective date of the Order until the interim milestone reporting, and 180 days to prepare and submit a request for an alternate interim requirement. This would result in an interim milestone similar to the one originally proposed in the 2024 Tentative Order and allow enough time for Permittees to determine the need for an alternate interim requirement. Revise Section V.D.1 to the following:

“Interim milestone - Within 4 2 years from the effective date of this Order, Permittees shall install, operate, and maintain Full Capture Systems (Track 1) or equivalent measures (Track 2) for 50 percent or more of the Priority Land Use areas and or Equivalent Alternate Land Use areas. If the Permittee does not expect to achieve this interim milestone, they must submit a report, within 90 180 days of the effective date of this Order, that proposes an alternate interim requirement, subject to the approval of the Executive Officer.

Response: See [Response 15.9](#).

10.1. Comment: Given these significant financial and implementation challenges, the City respectfully requests that the Regional Board revise the implementation schedule for the Statewide Trash Amendments in Section V.D.1 of the Tentative Order to provide Permittees with a more practical and achievable pathway to compliance while continuing to advance the permit's water quality objectives.

Specifically, the City requests modifications to Section V.D.1, Implementation Schedule, to revise the interim milestone timeline, performance metric, and alternative interim compliance requirements associated with the Statewide Trash Amendments. The Tentative Order requires Permittees to achieve the 50 percent interim compliance milestone within one year of the effective date of the Order. Permittees unable to meet this deadline must submit a report proposing an alternative compliance schedule, subject to approval by the Executive Officer.

The City understands and supports the ultimate compliance deadline of 2030 established under the Statewide Trash Amendments. However, the revised one-year interim milestone is neither reasonable nor feasible and represents a substantial acceleration from the 2024 Tentative Order, which provided four years to achieve the

same interim milestone. Completing the necessary planning, analysis, coordination, and reporting within one year will be extremely challenging for many Permittees, including the City of Highland.

Accordingly, the City respectfully requests that the Tentative Order be revised to allow Permittees two (2) years from the effective date of the Order to complete the interim milestone reporting requirements. This modification would provide a more realistic and implementable timeframe while maintaining meaningful progress toward achieving the 2030 compliance deadline.

Response: See [Response 15.9.](#)

2.16. Comment: Trash Requirements – Implementation Schedule

V. D. 1 – Implementation Schedule

Interim milestone – Within 1 years from the effective date of this Order, Permittees shall install, operate, and maintain Full Capture Systems (Track 1) or equivalent measures (Track 2) for 50 percent or more of the Priority Land Use areas and Equivalent Alternate Land Use areas. If the Permittee does not expect to achieve this interim milestone, they must submit a report, within 90 days of the effective date of this Order, that proposes an alternate interim requirement, subject to the approval of the Executive Officer.

The City requests that the above be changed to:

“Interim milestone – Within 2 years from the effective date of this Order, Permittees shall provide documentation on trash program implementation status. Documentation may include an inventory of installed units, project municipal budget plan, or proposed installation plans, specifications and/or contract for Full Capture Systems (Track 1) or equivalent measures (Track 2) for 50 percent or more of the Priority Land Use areas and Equivalent Alternate Land Use areas. If the Permittee does not expect to achieve this interim milestone, the documentation must include an alternate interim plan, and will be subject to the approval of the Executive Officer.”

Response: See [Response 15.9.](#)

13.19. and 11.25 and 16.19 Comment: Trash Requirements - Implementation Schedule

V. D. 1 -Implementation Schedule

Interim milestone - Within 1 years from the effective date of this Order, Permittees shall install, operate, and maintain Full Capture Systems (Track 1) or equivalent measures (Track 2) for 50 percent or more of the Priority Land Use areas and Equivalent Alternate Land Use areas. If the Permittee does not expect to achieve this interim milestone, they must submit a report, within 90 days of the effective date of this Order, that proposes an alternate interim requirement, subject to the approval of the Executive Officer.

The Permittees are all in process of implementing these requirements. The staggering statewide number of orders has significantly slowed down the process for installation. There are not enough approved contractors, and those contractors are having issues with staffing. This requirement is not mandated anywhere in the Trash Order. Holding the Permittees to an unrealistic threshold, that was never previously required, must be removed.

Recommended language is as follows:

Interim milestone - Within 2_years from the effective date of this Order, Permittees shall provide documentation on trash program implementation status. Documentation may include an inventory of installed units, project municipal budget plan, or proposed installation plans, specifications and/or contract for Full Capture Systems (Track 1) or equivalent measures (Track 2) for 50 percent or more of the Priority Land Use areas and Equivalent Alternate Land Use areas. If the Permittee does not expect to achieve this interim milestone, the documentation must include an alternate interim plan and will be subject to the approval of the Executive Officer.

Response: See [Response 15.9](#).

21.16. Comment: V.D.1 Trash Control

“Interim milestone – Within 1 years from the effective date of this Order, Permittees shall install, operate, and maintain Full Capture Systems (Track 1) or equivalent measures (Track 2) for 50 percent or more of the Priority Land Use areas and Equivalent Alternate Land Use areas. If the Permittee does not expect to achieve this interim milestone, they must submit a report, within 90 days of the effective date of this Order, that proposes an alternate interim requirement, subject to the approval of the Executive Officer.”

This does not match the original state requirements. There were no interim milestones in the original letter from the state. 50% completion in a single year is too quick. It is not feasible for many agencies to schedule something like that in such a short time. 90 days to respond was also not part of the state mandate.

Please keep to the state mandate.

Recommendation: Please refer to the issue/concern.

Respectfully request more realistic and reasonable criteria. If possible, remove the interim milestone or provide an option to submit a fiscal interim milestone that allows permittees to show progress for total installation prior to deadline of December 2030.

Response: See [Response 15.9](#). The Tentative Order is required to have an interim milestone in accordance with the Statewide Trash Provisions. Flexibility for how this interim milestone may be achieved has been provided through revision to the language.

19.4. Comment: Modify Section V.D.1. to Revise the Timelines for the Interim Milestone and Alternate Interim Requirement for Trash Amendments Compliance.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO changed the 50% interim milestone for compliance with the Statewide Trash Amendments to 2027 (within 1 year from the effective date of the Order) and requires Permittees who cannot meet this deadline to submit a report to propose an alternate timeline, which is subject to approval by the Executive Officer (EO).

"Interim milestone - Within 41 years from the effective date of this Order, Permittees shall install, operate, and maintain Full Capture Systems (Track 1) or equivalent measures (Track 2) for 50 percent or more of the ~~priority land-use areas and equivalent alternate land-use areas~~ Priority Land Use areas and Equivalent Alternate Land Use areas. If the Permittee does not expect to achieve this interim milestone, they must submit a report, within 90 days of the effective date of this Order, that proposes an alternate interim requirement, subject to the approval of the Executive Officer."

This new interim milestone timeline is of significant concern. The proposed timeframe is even sooner than proposed in the 2024 TO, which provided 4 years. The relatively short period for analysis and reporting will be challenging or infeasible for many Permittees to meet. This is the first instance in which statewide trash requirements are being written into the MS4 permit and even though certain Permittees have made substantial progress on trash implementation, adequate time will be needed to perform or update milestone analyses to align with the specific provisions of this Revised TO.

Recommendation

Provide two (2) years from the effective date of the Order until the interim milestone reporting. This would result in an interim milestone similar to the one originally proposed in the 2024 Tentative Order and allow enough time for Permittees to determine the need for an alternate interim requirement. Revise Section V.D.1 to the following:

"Interim milestone - Within ~~4~~ 2 years from the effective date of this Order, Permittees shall provide documentation on trash program implementation status. Documentation may include an inventory of installed units, project municipal budget plan, or proposed installation plans, specifications and/or contract for install, operate, and maintain Full Capture Systems (Track 1) or equivalent measures (Track 2) for 50 percent or more of the Priority Land Use areas and or Equivalent Alternate Land Use areas. If the Permittee does not expect to achieve this interim milestone, they must submit a report, within 90 days of the effective date of this Order, that proposes an alternate interim requirement, subject to the approval of the Executive Officer.

Response: See [Response 15.9](#).

17..4. Comment: Modify Section V.D.1. "Implementation Schedule" to revise the Interim Milestone timeline, metric, and alternate Interim Requirement for Trash Amendments compliance.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The RTO changed the 50% interim milestone for compliance with the Statewide Trash Amendments to 2027 (within 1 year from the effective date of the Order) and requires Permittees who cannot meet this deadline to submit a report to propose an alternate timeline, which is subject to approval by the Executive Officer (EO). This section states:

"Interim milestone - Within ~~41~~ 2 years from the effective date of this Order, Permittees shall install, operate, and maintain Full Capture Systems (Track 1) or equivalent measures (Track 2) for 50 percent or more of the ~~priority land use areas and equivalent alternate land use areas~~ Priority Land Use areas and Equivalent Alternate Land Use areas. If the Permittee does not expect to achieve this interim milestone, they must submit a report, within 90 days of the effective date of this Order, that proposes an alternate interim requirement, subject to the approval of the Executive Officer."

Concern and Rationale

There are several concerns related to this modification within the RTO.

- Revised Interim Milestone timeline – the timeline for achieving the interim milestone is of significant concern because it accelerates the original timeframe proposed in the 2024 Tentative Order (which provided 4 years). Only allowing one year for analysis and reporting will be challenging or infeasible for many Permittees to meet. In addition, since this is the first instance in which the statewide trash requirements are being incorporated into the MS4 permit, and although certain Permittees have made substantial progress on trash implementation, adequate time is needed to perform or update milestone analyses to align with the specific provisions of the RTO.

The County requests that the RTO provide Permittees two (2) years from the effective date of the Order until the interim milestone reporting.

- Metric for Demonstrating Progress – the RTO specifies only one metric for demonstrating progress as “50 percent or more of the PLUs and Equivalent Alternate Land Use areas.” However, the Statewide Trash Amendments did not limit the type of metric that may be used to demonstrate progress. Rather, the Amendments state [emphasis added] “The permit shall also require these permittees to demonstrate achievement of interim milestones such as average load reductions of ten percent (10%) per year or other progress to full implementation.”

The County requests that the RTO include an alternative metric for demonstrating progress in lieu of the 50% or more of PLUs and Equivalent Land Use areas.

- Revised Alternate Interim Requirement Timeline – the RTO specifies that, if a Permittee does not expect to achieve the interim milestone, the Permittee must submit a report within 90 days of the effective date of the Order that proposes an alternate interim requirement. This timeline occurs very quickly after the effective date of the Order and does not provide the Permittees sufficient time to conduct the analysis necessary to determine whether the interim milestone can be achieved.

The County requests that the RTO provide 180 days from the effective date of the Order to prepare and submit a request for an alternate interim requirement.

Recommendation

Revise Section V.D.1 to the following:

“Interim milestone - Within 4 2 years from the effective date of this Order, Permittees shall ~~install, operate, and maintain~~ demonstrate progress towards installing Full Capture Systems (Track 1) or equivalent measures (Track 2) for: 50 percent or more of the Priority Land Use areas ~~and~~ or Equivalent Alternate Land Use

- areas; Or other reasonable demonstration of progress completed to date (e.g., funding allocation,
- proposed installation plans/contracts). If the Permittee does not expect to achieve this interim milestone, they must submit a report, within ~~90~~ 180 days of the effective date of this Order, that proposes an alternate interim requirement, subject to the approval of the Executive Officer.

Response: See [Response 15.9](#).

17..5. Comment: Modify Section V.D.2 “Implementation Schedule” so that the language is consistent within the Revised Tentative Order.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO Section V.D.2 was modified as follows:

“2. Final compliance – By December 2, 2030, Permittees shall install, operate, and maintain Full Capture Systems (Track 1) or equivalent measures (Track 2) for 100 percent of the ~~priority land use~~ Priority Land Use areas, ~~designated land use~~ Designated Land Use areas, and ~~equivalent alternate land use~~ Equivalent Alternate Land Use areas, except for those designated land use areas that have been issued a ~~time schedule~~ separate compliance date by the Santa Ana Water Board. In no case may the final compliance date in a time schedule for a designated land use areas be longer than ten years from the ~~determination by date~~ the Santa Ana Water Board to designate Executive Officer designates a land use or location as a ~~designated~~ significant trash generating land use.”

Concern and Rationale

The Revised TO modified the Final Compliance paragraph to recognize that additional land uses that may be designated in the future by the Executive Officer would have a separate compliance date (not a time schedule or time schedule order, which could create confusion with other regulatory processes included in the permit). The language in this Section should reflect this approach and be consistent throughout the full paragraph (note: the term “time schedule” was struck in one place but not the other within this paragraph).

Recommendation

Modify Section V.D.2 so that the term “time schedule” is removed so that the approach within this Section is consistent:

2. Final compliance – By December 2, 2030, Permittees shall install, operate, and maintain Full Capture Systems (Track 1) or equivalent measures (Track 2) for 100 percent of the Priority Land Use areas, Designated Land Use areas, and Equivalent Alternate Land Use areas, except for those designated land use areas that have been issued a separate compliance date by the Santa Ana Water Board. In no case may the final compliance date ~~in a time schedule~~ for a designated land use areas be longer than ten years from the date the Executive Officer designates a land use or location as a significant trash generating land use.

Response: Commenters are correct that the term “time schedule” was removed to avoid confusion. The proposed change has been made to remove the remaining term.

Category 8 – Effluent Limitations and Discharge Prohibitions

21.14. Comment: IV.A.2.d Discharge Prohibitions

“Discharges from landscape irrigation, provided that any discharge must be minimized through the implementation of an ordinance specifying water efficient landscaping standards, as well as an outreach and education program focusing on water conservation and landscape water use efficiency. Permittees must implement BMPs to minimize runoff and prevent introduction of pollutants to the MS4 and receiving water, including landscape water use efficiency requirements for existing landscaping, use of drought tolerant, native vegetation, and the use of less toxic options for pest control and landscape management.”

The permittees are not responsible for private property and if discharges from properties are a problem it should be classified as an IC/ID under the IDDE Program.

Recommendation: Please refer to the issue/concern.

Please change the language to previous version, where it stated:

“BMPs must be implemented”.

Response: Staff disagrees. The phrase "Permittees must implement BMPs" was adopted in response to previous comments to clarify that the obligation rests with the Permittee to implement the required BMPs within its authority, such as through implementation of ordinances and public education. It does not impose responsibility for activities occurring on private property. Revisions have been made to this provision to better clarify the intent, including more specific requirements and a statement that this does not require Permittees to implement BMPs on private property.

This provision, which discusses authorized non-stormwater discharges, does not alter the applicability of the Illicit Discharge Detection and Elimination Program for unauthorized non-stormwater discharges.

Category 9 – New Development and Significant Redevelopment

19.2. Comment: Modify Section VIII.L.1.a to Clarify Hydromodification Requirements for Small Projects <1 acre to Align with Past Orders and Regional Precedent.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026).

The Revised TO added an alternate hydromodification compliance pathway for small projects (less than one acre), but appears to require retention of the design capture volume for these sites as the only option for qualifying, rather than the broader satisfaction of the water quality and LID treatment controls requirements (e.g., retention or biotreatment).

Section VIII.L.1(c) adds an alternative pathway:

"The project disturbs less than one acre and is not part of a larger common plan of development. Instead, such projects may comply with hydromodification requirements through implementation of water quality and LID requirements in Section VIII, including retention of the 85th percentile, 24-hour storm event."

The reference to retention Best Management Practices (BMP) only is inconsistent with regional precedent and the other pathways in VIII.L. The Los Angeles Regional MS4 Permit allows sites less than one acre to comply with hydromodification standards via satisfaction of water quality and LID criteria, including maximizing retention (if feasible), but allowing lower priority Low Impact Development/Water Quality (LID/WQ) BMPs

(e.g., biotreatment) if full retention is not feasible. Additionally, the Revised TO Section VIII.L.2.iii acknowledges the need for an alternate pathway based on detention and release if retention is not feasible. As documented in the previous comments, small projects represent a very low risk for cumulative hydromodification impacts and require relief from more detailed analyses and onerous requirements.

Per the Response to Comments (RTC) (Comment 13.5), the addition of the exemption was meant to allow these projects to follow the typical water quality/LID requirements:

"Section VIII.L.1 of the Tentative Order has been modified to provide a simplified hydromodification compliance option for development and redevelopment projects that disturb less than one acre, provided they are not part of a larger common plan of development. These projects may satisfy hydromodification requirements through compliance with the water quality/LID provisions of the Permit."

However, based on the way the Revised TO is currently written, it could be interpreted to mean that this exemption is limited to use of retention BMPs only, which would substantially undermine this provision. Therefore, this language must be modified for clarity and consistency.

Recommendation

Since the intent of this modification is to allow small projects to follow and satisfy requirements for water quality and LID, remove this clause from the Revised Tentative Order and edit section to say:

"The project disturbs less than one acre and is not part of a larger common plan of development. Instead, such projects may comply with hydromodification requirements through implementation of water quality and LID requirements (e.g., 85th percentile, 24-hour storm event), ~~including retention of the 85th percentile, 24-hour storm event~~ according to the standards and BMP hierarchy described in Sections VIII.D and VIII.G of this Order."

Response: The one-acre exemption was restored as shown in RTC#1 Response 13.5. The existing language cites all of Section VIII, which includes Sections VIII.D, VIII.G, and the opportunity to demonstrate that retention LID treatment control measures are not feasible, and therefore may consider biotreatment or other control measures.

The proposed change has been made for clarity.

20.3. Comment: Request that the existing one-acre hydromodification exemption for small projects should be carried forward into the new TO consistent with California's Housing Goals. Riverside County must deliver over 40,647 housing units in unincorporated areas while many disadvantaged communities continue to lack basic infrastructure—streets, drainage, wastewater systems—and funding for these improvements remains limited. The TO's proposed hydromodification requirements for projects disturbing less than one acre would add substantial new costs to areas already struggling to meet essential infrastructure needs and statewide housing mandates.

These requirements also run counter to California's housing affordability goals. Families are facing increasing housing costs, and the State has emphasized small projects, ADUs, and infill development as more attainable options. Yet mandating retention of the 85th percentile, 24-hour storm for sub-one-acre projects would unintentionally make these housing types more expensive and less feasible. Independent analysis indicates the requirement could increase the cost of a new single-family home by up to \$26,000 per unit and impose an unworkable inspection burden on municipalities. Restoring the one-acre exemption as follows is necessary to prevent the TO from further limiting affordable housing options for California families:

Section VIII.L.1.c:

The project disturbs less than one acre and is not part of a larger common plan of development. Instead, such projects may comply with hydromodification requirements through implementation of water quality and LID requirement, ~~including retention of the 85th percentile, 24-hour storm event~~ according to the standards and BMP hierarchy described in Section VIII.D and VIII.G of this Order.

Response: See [Response 19.2](#).

12.4. Comment: Hydromodification Applicability Threshold for Small Projects
Previously submitted comment (Attachment B) not addressed in the June 5, 2026,
Response to Comments:

"The Tentative Order significantly modifies the Hydromodification Management threshold and applicability area definition that are currently implemented. The City currently complies with the one-acre or more of land disturbance applicability threshold per the current MS4 Permit. The Tentative Order does not exempt those projects under one-acre. The reduced threshold places significant cost increases and other burdens on small improvement projects to the degree that a project may not be feasible. This modification will also significantly increase the City's inventory of post-construction

treatment controls that are required to be inspected and monitored, increasing program implementation costs. Understanding the minor hydromodification risk these projects present, the City requests to maintain this exemption in the Tentative Order." Revised comment in response to the

Revised Tentative Order:

The City acknowledges that the Revised Tentative Order adds an alternate hydromodification compliance pathway (Section VIII.L.1(c)) for small projects (less than one acre). However, the revised language now appears to require retention of the design capture volume as the only qualifying option, rather than the broader satisfaction of water quality and LID treatment control requirements.

The reference to "retention" of the 85th percentile, 24-hour storm event is inconsistent with regional precedent, with the other compliance pathways in Section VIII.L, and critically for the City of Moreno Valley, with the physical site conditions that govern small-project stormwater design across much of the city. Under the current Riverside County MS4 Permit, Moreno Valley Priority Development Projects and smaller sites already follow a tiered LID/BMP hierarchy that requires infiltration where feasible and allows biofiltration or biotreatment where infiltration is not. Revised Tentative Order Section VIII.L.2.iii likewise acknowledges the need for a detention-and-release pathway where retention is infeasible.

Moreno Valley small projects will be significantly impacted for three main reasons:

1. Documented infiltration infeasibility on typical Moreno Valley sites. Locally recorded infiltration rates are frequently too low to support retention-only compliance. A retention-only reading of Section VIII.L.1(c) would effectively strand these sites without a workable small project pathway.
2. Small-parcel infill is the dominant sub-one-acre development pattern in Moreno Valley. The City's actively reviewed small commercial and infill projects routinely fall under the one threshold and rely on underground detention, biotreatment, and biofiltration precisely because retention alone cannot meet the design storm on these soils. Restricting Section VIII.L.1(c) to retention BMPs would either force redesigns that are technically infeasible or push these projects into the more onerous full hydromodification analysis, contrary to the Revised Tentative Order's stated intent.
3. Moreno Valley is a long-standing Santa Ana Region MS4 co-permittee. Moreno Valley has been named in the Riverside County MS4 Permit continuously, including the 2002 and 2010 orders and every predecessor going back to the earliest area-wide NPDES MS4 permit. The consolidated regional structure under Order R8-2026-0034 preserves

the City's role as a copermittee. Ambiguity that narrows the small-project pathway would therefore land on jurisdiction that has already built more than a decade of WQMP practice around the tiered LID hierarchy the Board is trying to preserve.

Recommendation: The City supports the recommendation outlined in Comment 2 of the a RCFC&WCD comment letter (Attachment A).

Response: See [Response 19.2](#).

17..16. Comment: Modify Section VIII.L.1.c “Hydrologic Conditions of Concern” to clarify that hydromodification requirements for small projects <1 acre to align with past orders and regional precedent.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The RTO added an alternate hydromodification compliance pathway for small projects (less than one acre), but the RTO appears to require retention of the design capture volume for these sites as the only option for qualifying, rather than the broader satisfaction of the water quality and low impact development treatment controls requirements (e.g., retention or biotreatment).

Section VIII.L.1.c adds an alternative pathway:

“The project disturbs less than one acre and is not part of a larger common plan of development. Instead, such projects may comply with hydromodification requirements through implementation of water quality and LID requirements in Section VIII, including retention of the 85th percentile, 24-hour storm event.”

Concern and Rationale

The reference to retention BMPs only is inconsistent with regional precedent and the other pathways in VIII.L. The Los Angeles Regional MS4 Permit allows sites less than 1 acre to comply with hydromodification standards via satisfaction of water quality and LID criteria, including maximizing retention (if feasible), but allowing lower priority LID/water quality BMPs (e.g., biotreatment) if full retention is not feasible. Additionally, RTO Section VIII.L.2.iii acknowledges the need for an alternate pathway based on detention and release if retention is not feasible. As documented in the previous comments, small projects represent a very low risk for cumulative hydromodification impacts and require relief from more detailed analyses and onerous requirements.

Per RTC 13.5, the addition of the exemption was meant to allow these projects to follow the typical water quality/LID requirements:

“Section VIII.L.1 of the Tentative Order has been modified to provide a simplified hydromodification compliance option for development and redevelopment projects that disturb less than one acre, provided they are not part of a larger common plan of development. These projects may satisfy hydromodification requirements through compliance with the water quality/LID provisions of the Permit.”

However, based on the way the RTO is currently written, it could be interpreted to mean that this exemption is limited to use of retention BMPs only, which would substantially undermine this provision. Therefore, this language must be modified for clarity and consistency.

Recommendation

Modify Section VIII.L.1.c to allow small projects to follow and satisfy requirements for water quality and LID:

“The project disturbs less than one acre and is not part of a larger common plan of development. Instead, such projects may comply with hydromodification requirements through implementation of water quality and LID requirements (e.g., 85th percentile, 24-hour storm event), including retention of the 85th percentile, 24-hour storm event according to the standards and BMP hierarchy described in Section VIII.D and VIII.G of this Order.”

Response: See [Response 19.2](#).

21.33. Comment: VIII.K.c New Development

“The project disturbs less than one acre and is not part of a larger common plan of development. Instead, such projects may comply with hydromodification requirements through implementation of water quality and LID requirements in Section VIII, including retention of the 85th percentile, 24-hour storm event.”

Recommendation: This should not state “retention” as in some cases retention will be infeasible for LID requirements and a flow based BMP will be in compliance. Please modify language to remove retention.

Response: See [Response 19.2](#).

19.19. Comment: Modify Section VIII.L.2.d and Attachment C, Section II.A.6.

The Hydromodification Management Plan (HMP) evaluation completed in 2022 found no evidence of significant downstream impacts. The Permittees have therefore fulfilled the applicable HMP requirements. The Final HMP Report, summarizing the five-year evaluation effort, was submitted with the FY 2022–2023 Annual Progress Report (Appendix K – HMP Evaluation Program).

Based on these findings, HMP monitoring is unlikely to generate new or meaningful information absent significant changes in site conditions or watershed characteristics. Ongoing regional bioassessment programs already incorporate HMP-related observations and provide an appropriate mechanism to identify and respond to any emerging hydromodification-related impacts.

Regional Water Board Modification from the Tentative Order to the Revised Tentative Order

The Revised Tentative Order updates Section VIII.L.2.d to require Permittees to:

"A representative monitoring program must be carried out for vulnerable channels as part of the Monitoring and Reporting Program to demonstrate the effectiveness of the Permittees' hydromodification controls. A vulnerable channel in this context means one which is susceptible to physical, chemical, or biological changes that may impact beneficial uses."

The Revised TO updates Attachment C, Section II.A.6 to require Permittees to:

"Demonstrate the effectiveness of the Permittees' hydromodification controls to preserve the physical, chemical, and biological integrity of vulnerable channels (See section VIII.L.2.b)."

The added requirements effectively establish an ongoing or indefinite monitoring obligation without consideration of the completed HMP evaluation and ongoing bioassessments, which demonstrate no significant impacts. Requiring continued monitoring at the same locations, without a defined trigger or nexus to changing conditions, is not supported by the available data and is unlikely to improve understanding of hydromodification effects.

Recommendation

- Remove Section VIII.L.2.D.
- Delete the following from Attachment C, Section II.A.6:

- *"Identify those receiving waters which, without additional action to control pollution from runoff, cannot reasonably be expected to attain or maintain applicable water quality standards. ~~Demonstrate the effectiveness of the Permittees' hydromodification controls to preserve the physical, chemical, and biological integrity of vulnerable channels (See section VIII.L.2.b)~~"*

Response: The purpose of Section VIII.L.2.d and Attachment C, Section II.A.6 is to provide a mechanism for Permittees to continue demonstrating the long-term effectiveness of their hydromodification controls during the permit term. The Tentative Order does not prescribe a specific monitoring methodology, frequency, duration, or level of effort for representative monitoring. Permittees may rely on existing information, including the completed Hydromodification Management Plan evaluation, ongoing regional bioassessment programs, and other available technical information, to demonstrate compliance. Similarly, the monitoring goal in Attachment C, section II.A.6 is an objective and does not assign specific methods.

Where hydromodification controls remain effective and conditions have not materially changed, Permittees may propose a monitoring approach tailored to that demonstration, including reliance on existing data, through the Program Monitoring and Reporting Plan. No change has been made.

17.17. Comment: Modify Section VIII.L.1.d and Section VIII.L.2.d. "Hydrologic Conditions of Concern" to clarify the requirement for hydromodification monitoring program and restrict to only channels where there this monitoring fulfills a Need.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The RTO includes the requirements for monitoring, both for engineered facilities and for vulnerable channels that will be subject to hydromodification requirements.

Section VIII.L.1.d reads [emphasis added]:

"All conveyance channels and retention or detention facilities downstream from the priority project are engineered, maintained, **and monitored** so that the and are not otherwise vulnerable to cumulative changes in hydrology ~~will not~~ that may adversely affect the channels' physical, chemical, or biological integrity. ~~Related~~ Existing or proposed assessments of downstream conveyance channels and facilities must be substantiated using published and generally accepted methods and documented.

Section VIII.L.2.d reads:

“A representative monitoring program must be carried out for vulnerable channels as part of the Monitoring and Reporting Program to demonstrate the effectiveness of the Permittees’ hydromodification controls. A vulnerable channel in this context means one which is susceptible to physical, chemical, or biological changes that may impact beneficial uses.”

Concern and Rationale

This requirement is not well defined and would ultimately be redundant and unnecessary.

In Section VIII.L.1.d, for channels that are engineered, maintained, and are not vulnerable, the presence of ongoing maintenance serves the role of monitoring for this type of channel. If erosion is detected, it will be repaired to return the channel to its engineered state. It is unnecessary to also have a hydromodification monitoring program. Adding geomorphic monitoring for these channels does not serve a purpose and would be costly.

Regarding Section VIII.L.2.d, vulnerable channels are not eligible to be exempted from hydromodification standards unless a waiver is granted by the Executive Officer. Monitoring these channels to assess the effectiveness of hydromodification stations is unnecessary, costly, and unlikely to produce actionable information:

- Permittees require projects to meet hydromodification standards if they drain to these channels. It is unnecessary and redundant to require both upland hydromodification standards in addition to monitoring. The County is unaware of observed issues with existing standards that suggest a need to evaluate effectiveness.
- In nearly all watersheds in the RTO region, channels receive runoff from both historical development (without hydromodification standards) and modern development (with hydromodification standards). Additionally, historical impacts such as road crossings and floodplain modification have also occurred in most watersheds. Each of these factors can contribute to geomorphic impacts to the channels. It is not practical to isolate the effect of new development with hydromodification controls from historical development without hydromodification controls and other stream impacts.
- The requirement for a monitoring program in addition to requiring upland hydromodification controls would create a redundant, complex, and expensive program that is very unlikely to produce meaningful results.

If the Executive Officer grants a waiver or alternate standard for hydromodification control for a channel or stream that is potentially vulnerable, then this waiver could include requirements for monitoring that are specific to the conditions in that channel or stream to assess adverse effects. In this case, we agree that monitoring may be justified.

Recommendation

Modify Section VIII.L.1.d and VIII.L.2.d to remove monitoring requirements for engineered and maintained channels; the presence of a maintenance program serves this purpose.

Edit Section VIII.L.1.d as follows:

“All conveyance channels and retention or detention facilities downstream from the priority project are engineered, maintained, ~~monitored~~ and are not otherwise vulnerable to cumulative changes in hydrology that may adversely affect the channels’ physical, chemical, or biological integrity...”

Limit hydromodification effectiveness monitoring to only those channels that are susceptible to impacts and for which a waiver or alteration of standard upland hydromodification controls is granted.

Edit Section VIII.L.2.d as follows: “If hydromodification requirements are waived or altered for projects draining to a vulnerable channel reach, a representative monitoring program must be carried out for the affected vulnerable channels as part of the Monitoring and Reporting Program to demonstrate the effectiveness of the Permittees’ hydromodification controls. A vulnerable channel in this context means one which is susceptible to physical, chemical, or biological changes that may impact beneficial uses and for which a waiver or alteration of hydromodification controls has been granted.”

Response: Regarding provision VIII.L.1.d, staff agree that maintenance serves the role of monitoring in this case, ensuring that engineered channels are observed and repaired as appropriate. The word “monitored” has been removed.

Regarding provision VIII.L.2.d, see Response [19.19](#). Compliance with design standards for controls and demonstration of program effectiveness serve different purposes. While compliance with hydromodification control requirements is expected to minimize impacts, representative monitoring provides a means to confirm that the controls continue to function as intended under actual watershed conditions. The Tentative Order requires a representative monitoring program, not project specific monitoring of every vulnerable channel or every

hydromodification control. The monitoring requirement is already limited to vulnerable channels, rather than all receiving waters or engineered conveyances, and therefore targets those locations where hydromodification impacts are most likely to occur.

21.34. Comment: VIII.K.d New Development

“All conveyance channels and retention or detention facilities downstream from the priority project are engineered, maintained, monitored and are not otherwise vulnerable to cumulative changes in hydrology that may adversely affect the channels’ physical, chemical, or biological integrity. Existing or proposed assessments of downstream conveyance channels and facilities must be substantiated using published and generally accepted methods and documented.”

Monitoring a hardened system is unnecessary, maintaining them should insinuate that they are assessed.

Recommendation: Revise language.

Response: See [Response 17.17](#).

21.31. Comment: VIII.L.2.d New Development

“A representative monitoring program must be carried out for vulnerable channels as part of the Monitoring and Reporting Program to demonstrate the effectiveness of the Permittees’ hydromodification controls. A vulnerable channel in this context means one which is susceptible to physical, chemical, or biological changes that may impact beneficial uses.”

Provide reasoning for this requirement and clarification on what is involved. For example, what is a representative monitoring program? How do we determine what a vulnerable channel is?

Recommendation: Provide reasoning for this requirement. Provide more information for clarity or remove requirements.

Response: See [Response 17.17](#).

1.1. Comment: Explicitly Recognize and Acknowledge Existing Hardened Channel

Exemptions Granted by the Regional Board Previously for Hydrologic Conditions of Concern (See Section VIII. L)

We support comments made previously by the Tri-County Group, concerning loss of channel exemptions which have been granted in the past by the Regional Board and contained within existing permits. These exemptions include the following existing documents: Orange County Technical Guidance Document (December 20, 2013); Riverside County Watershed Action Plan Santa Ana Region (January 18, 2017); and San Bernardino County Technical Guidance Document for Water Quality Management Plans (June 7, 2013).

Regional Board staff have insisted in the Response to Comment Document that these documents are more than a decade old but have not demonstrated with evidence that they are not still protective of channel integrity or do not protect water quality. Forcing the permittees to re-submit the documents (as is, exemptions already granted) or do ANY additional studies, analysis or monitoring (again, of already granted channel exemptions) is a waste of limited resources and funding permittees could use elsewhere in their respective programs.

Response: Staff disagree that the cited documents constitute previously approved exemptions that the Tentative Order is requiring them to re-submit. Those documents are technical guidance documents and action plans that contain methodologies and implementation approaches. They are not permits and they do not grant exemptions from hydromodification requirements. Under the Tentative Order, methodologies and implementation approaches can continue to be proposed through the Uniform Technical Guidance Documents and Program Monitoring and Reporting Plans.

Section VIII.L.1.d continues to support exemptions where downstream channels are engineered, maintained, and not otherwise vulnerable to cumulative changes in hydrology that may affect their physical, chemical, or biological integrity. The provision requires that such determinations be substantiated using published and generally accepted methods but does not require that existing technical evaluations be repeated solely because they were developed under a previous permit. Existing technical support may continue to be used where it remains applicable. Where existing information no longer reflects current conditions or is otherwise insufficient, additional information may be necessary. No changes have been made.

21.35. Comment: VIII.L.2.b New Development

“A representative monitoring program must be carried out for vulnerable channels as part of the Monitoring and Reporting Program to demonstrate the effectiveness of the Permittees’ hydromodification controls. A vulnerable channel in this context means one which is susceptible to physical, chemical, or biological changes that may impact beneficial uses.”

What is the purpose, and what is involved in this “representative monitoring program” for vulnerable channels? Is this necessary and what is the benefit.

Recommendation: Provide more clarity on what the purpose and benefit of this monitoring program. Remove this language if no reason or clarity is provided.

Response: See Response [19.19](#).

15.7. Comment: Hydrologic Conditions of Concern (HCOC) – Increased Documentation Requirements

The City recognizes the importance of minimizing downstream hydromodification impacts and supports maintaining appropriate Hydrologic Conditions of Concern (HCOC) requirements. However, the proposed permit significantly expands the documentation necessary to demonstrate compliance or qualify for an exemption.

Under the existing program, Permittees have developed watershed-specific procedures, downstream susceptibility mapping, and technical guidance that have been successfully implemented for many years. The proposed permit requires downstream determinations and exemptions to be supported by additional published methodologies, documented analyses, or representative monitoring information. As a result, applicants may be required to prepare project-specific technical analyses for downstream conditions that have previously been addressed through regional watershed studies and approved County guidance.

These additional requirements increase engineering effort, reduce consistency between jurisdictions, and create uncertainty regarding when existing watershed analyses remain sufficient. For many private development projects, particularly infill sites with limited downstream influence, the additional documentation requirements provide little measurable water quality benefit while increasing both project cost and review time.

The City is also concerned that the proposed permit introduces additional Executive Officer involvement in certain HCOC determinations and waivers. While regional oversight is appropriate for broad program implementation, project-specific hydrologic

determinations are most effectively evaluated by local agencies familiar with watershed conditions and previously approved technical guidance.

Recommendation: Continue recognizing existing County-approved HCOC guidance, watershed studies, and downstream susceptibility analyses as sufficient technical justification where site conditions have not materially changed. Project-specific downstream analyses should only be required where existing regional studies clearly identify a potential hydromodification concern.

Response: See [Response 19.19](#) and [Response 17.17](#).

19.1. Comment: Provide Clarification that Flood Control Districts Lack Zoning and Land Use Approval Authority and are not subject to Section VIII of the Order.

Despite requesting this in the Response to Comments document, a formal response was not provided to the District's comment. Below, we have reiterated the comment but have also provided alternative language revisions based on the June 18, 2026 workshop discussion.

The Revised TO added language to the opening of Section VIII in response to comments by the Permittees to allow a certification pathway for Flood Control Districts that do not have the authority to approve projects. The following edit was added to Section VIII of the Revised TO:

"To reduce the discharge of stormwater pollutants, effectively prohibit non-stormwater discharges, and protect receiving waters, the water quality impacts of development that is subject to a Permittee's authority need to be addressed during each of the three major phases of planning, construction, and use. Accordingly, each Permittee must adopt and implement policies and procedures that are effective at integrating source control and treatment control measures as early in the land-use planning and development process as practicable. Flood control districts without authority to approve projects subject to this section VIII may comply by certifying in the first Annual Report after the effective date of this Order that some or all of the following requirements are inapplicable. The certification must consider all projects for which the flood control district is or may be lead agency and specify which of the following requirements are inapplicable. The Executive Officer may reject the certification at any time based on Substantial Evidence."

The revised language does not provide the clarity requested in the Tri County Group July 2024 comment letter. Instead, it establishes a new process and certification requirement that is unnecessary and impractical.

First, Flood Control Districts do not have land use planning or zoning authority. They do not own or operate any public streets, roads, or highways and they do not have planning, zoning, development permitting or other land use authority over industrial or commercial facilities, or new developments or re-development projects located in any incorporated or unincorporated areas within their service area. Land use and planning authority is specifically reserved to counties and cities under their state constitutional police powers who review and approve projects pursuant to the permitting processes in their respective municipal codes. In fact, the District does not adopt any ordinances and does not maintain any laws or regulations governing land use planning.

Section VIII of the Order describes the requirements related to how Permittees implement their land use planning and project approval process. So, these requirements cannot be implemented by Permittees that do not have land use planning authority. Providing a clean clarification is necessary to avoid confusion. This clarification is also supported by precedent. The Los Angeles Regional MS4 Permit provides the clear statement that:

"This Part VIII.F (Development Planning) is applicable to all Permittees except LACFCD and VCWPD. Each Permittee except LACFCD and VCWPD must use their land use and planning authorities to implement a Planning and Land Development Program."

In the Fact Sheet, it states:

"Unlike other Permittees, including the counties of Los Angeles and Ventura, LACFCD and VCWPD do not own or operate any municipal sanitary sewer systems, public streets, roads, or highways. LACFCD and VCWPD also have no planning, zoning, development permitting or other land use authority over industrial or commercial facilities, or new developments or re-development projects located in any incorporated or unincorporated areas within their service area."

Flood Control Districts require regional consistency to implement their projects; watershed boundaries that dictate different requirements based on the region make long-term planning for flood control projects extremely challenging.

Second, the new clause requires identification of "all projects" for which the Flood Control District is the lead agency. However, this information cannot be known at the time of the first annual report. Additionally, the term "lead agency" in the California Environmental Quality Act (CEQA) is not the same as having land-use planning authority.

Therefore, the Revised TO edits do not address the legal fact that Flood Control District Permittees do not have land use or planning authority and cannot be required to make the required certification.

Recommendation

Remove redlines from Section VIII and include language that is consistent with the Los Angeles Regional MS4 Permit:

To reduce the discharge of stormwater pollutants, effectively prohibit non-stormwater discharges and protect receiving waters, the water quality impacts of development that is subject to a Permittee's authority, need to be addressed during each of the three major phases of planning, construction and use. Accordingly, each Permittee with land use and project approval authority must adopt and implement policies and procedures that are effective at integrating source control and treatment control measures as early in the land-use planning and development process as practicable. Section VIII is not applicable to Flood Control Districts (OCFCD, RCFCWCD and SBCFCD) as they do not own or operate any public streets, roads, or highways and they do not have planning, zoning, development permitting or other land use authority over industrial or commercial facilities, or new developments or re-development projects.

During the June 18, 2026 workshop discussion, Regional Water Board staff stated an outright exemption could not be provided. If this is true, then we provide the following alternate solution:

The addition to Section VIII of the Revised TO establishes a new certification process that is outside of, and in addition to, the Uniform Technical Guidance (UTG) update process. The requirement to identify "all projects" for which the District is the lead agency as part of the annual report certification process would be impractical to follow because it is on a different submittal schedule than the UTG and not "all projects" would be known at the time of the first annual report.

Combining the annual certification process with the UTG submittal would provide consistency and transparency for the Regional Water Board, the public and the Permittees. Flood Control Districts have a primary responsibility to protect the public, and therefore, the District relies on a consistent application of Section VIII requirements when planning, funding and implementing drainage improvements that impact the public. It is problematic that the Revised TO annual certification language is contradictory to the UTG submittal process by undermining the certainty and transparency that Flood Control Districts and the public need to rely on the EO potentially rejecting, at any time, "all projects" submitted.

Recommendation

Modify Section VIII as follows to unify the Flood Control District certification process with the Uniform Technical Guidance process:

To reduce the discharge of stormwater pollutants, effectively prohibit non-stormwater discharges and protect receiving waters, the water quality impacts of development that is subject to a Permittee's authority, need to be addressed during each of the three major phases of planning, construction and use. Accordingly, each Permittee with land use and project approval authority must adopt and implement policies and procedures that are effective at integrating source control and treatment control measures as early in the land-use planning and development process as practicable. Flood Control Districts without authority to approve projects subject to this Section VIII may develop Uniform Technical Guidance, per Sections VIII.C.5 and VIII.C.7, that describe the specific policies and procedures that will be implemented for the types of projects for which the Flood Control District is the lead agency.

Response: Staff notes that, while the Los Angeles Regional MS4 Permit takes a different approach, permit requirements are developed based on the structure and implementation framework of the individual permit, and the Santa Ana Water Board is not required to adopt identical provisions. Staff also believe it is more appropriate for Flood Control Districts to identify the extent of their authority under the Permit than for the Santa Ana Water Board to make categorical determinations regarding the applicability of Section VIII on their behalf.

Staff did not adopt the proposed revision to limit the provision to Permittees "with land use and project approval authority." The opening paragraph of Section VIII already limits its applicability to "development that is subject to a Permittee's authority," which encompasses the applicable authority exercised by each Permittee under this Order. Adding the requested language could unnecessarily narrow the applicability of Section VIII and create ambiguity regarding other authorities that may be relevant to implementation of these provisions.

However, incorporating this determination where Flood Control Districts are the lead agency into the Uniform Technical Guidance Document process is consistent with the intent of the Tentative Order. The opening paragraph of Section VIII has been revised to allow Flood Control Districts to identify the applicable policies and procedures through Executive Officer approved Uniform Technical Guidance Documents instead of requiring a separate certification in the Annual Report.

20.2. Comment: Request that Flood Control Projects be exempted from the TO development requirements consistent with the intent of California's Climate Resiliency and Disadvantaged Community Goals. As emphasized in our original letter, Riverside County is home to numerous disadvantaged and severely disadvantaged communities, many historically subdivided without paved streets, sidewalks, gutters, flood protection, or adequate water and wastewater systems. Delivery of basic infrastructure and public safety measures to these communities is a top priority of the Board of Supervisors, especially considering the many natural disasters our County has faced.

The TO's treatment of public works road and flood control projects as private development—removing long standing flood control exemptions, does not reflect on the ground conditions. These projects are essential for reducing climate vulnerability, improving public safety, facilitating emergency access, and supporting economic stability. Treating them like discretionary greenfield development will make many retrofit projects impractical or prohibitively expensive, undermining statewide goals for equitable climate resilience.

To preserve consistency with California's Climate Resiliency and Disadvantaged Community goals, and with the model used in the 2021 Los Angeles Regional MS4 Permit, we request incorporation of language clarifying that Section VIII does not apply to flood control districts without land use authority:

VIII. NEW DEVELOPMENT (INCLUDING SIGNIFICANT REDEVELOPMENT)

To reduce the discharge of stormwater pollutants, effectively prohibit non-stormwater discharges, and protect receiving waters, the water quality impacts of development that is subject to a Permittee's authority need to be addressed during each of the three major phases of planning, construction, and use. Accordingly, each Permittee with land use and project approval authority must adopt and implement policies and procedures that are effective at integrating source control and treatment control measures as early in the land-use planning and development process as practicable. ~~Flood control districts without authority to approve projects subject to this section VIII may comply by certifying in the first Annual Report after the effective date of this Order that some or all of the following requirements are inapplicable. The certification must consider all projects for which the flood control district is or may be lead agency and specify which of the following requirements are inapplicable. The Executive Officer may reject the certification at any time based on Substantial Evidence.~~

The requirements of Section VIII are only applicable to those Permittees which have established land use authority or planning and building authority. Section VIII is not applicable to flood control districts (OCFCD, RCFCWCD, and SBCFCD) as they do not own or operate any public streets, roads, or highways, and they do not have planning, zoning, development permitting or other land use authority over industrial or commercial facilities, or new developments or re-development projects.

This request would be consistent with the Flood Control Exemption in the Los Angeles MS4 Permit (Order R4-2021-0105) which states:

F. Planning and Land Development

This Part VIII.F is applicable to all Permittees except LACFCD and VCWPD. Each Permittee except LACFCD and VCWPD must use their land use and planning authorities to implement Planning and Land Use Development Program.

Response: See [Response 19.1](#).

17..7. Comment: Modify Section VIII (opening paragraph) to clarify that Flood Control Districts may develop specific criteria and processes as part of the Uniform Technical Guidance

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO added language to the opening of Section VIII to allow a certification pathway for Flood Control Districts that do not have authority to approve projects. Section VIII was modified as follows:

“To reduce the discharge of stormwater pollutants, effectively prohibit non-stormwater discharges, and protect receiving waters, the water quality impacts of development that is subject to a Permittee’s authority need to be addressed during each of the three major phases of planning, construction, and use. Accordingly, each Permittee must adopt and implement policies and procedures that are effective at integrating source control and treatment control measures as early in the land-use planning and development process as practicable. Flood control districts without authority to approve projects subject to this section VIII may comply by certifying in the first Annual Report after the effective date of this Order that some or all of the following requirements are inapplicable. The certification must consider all projects for which the flood control district is or may be lead agency and specify which of the following requirements are inapplicable. The Executive Officer may reject the certification at any time based on Substantial Evidence.”

Concern and Rationale

The County appreciates that the RTO recognizes the specific nature of flood control districts, which do not have land use planning or zoning authority and that some or all of the provisions of Section VIII may not apply to flood control districts.

However, the County is concerned that the language that was added in the RTO establishes a new certification process that will be impractical to follow, given that the new clause requires identification of “all projects” for which the Flood Control District is the lead agency. This information cannot be known at the time of the first annual report. Additionally, the potential for Executive Officer rejection at any time undermines the certainty and clarity that is desired.

Flood control districts need the ability to define policies and procedures that are specific to the unique aspects of the projects they lead, and the different roles and authorities of flood control districts compared to traditional municipal permittees. The most efficient method for this is within the Uniform Technical Guidance, as this would not require a separate submittal process and would provide an appropriate vehicle to define policies and procedures.

Recommendation

To reduce the discharge of stormwater pollutants, effectively prohibit non-stormwater discharges, and protect receiving waters, the water quality impacts of development that is subject to a Permittee’s authority need to be addressed during each of the three major phases of planning, construction, and use. Accordingly, each Permittee with land use and project approval authority must adopt and implement policies and procedures that are effective at integrating source control and treatment control measures as early in the land-use planning and development process as practicable. Flood control districts without authority to approve projects subject to this Section VIII may develop Uniform Technical Guidance, per Section VIII.C.5 and VIII.C.7, that describes the specific policies and procedures that will be implemented for the types of projects for which the flood control district is the lead agency.

The commensurate changes proposed for VIII.C.5 and VIII.C.7 (see Comment 10) are compatible with this recommendation.

Response: See [Response 19.1](#).

21.21. Comment: VIII New Development

“Flood control districts without authority to approve projects subject to this section VIII may comply by certifying in the first Annual Report after the effective date of this Order that some or all of the following requirements are inapplicable.”

“The certification must consider all projects for which the flood control district is or may be lead agency and specify which of the following requirements are inapplicable.”

This language contradicts itself, if the flood control district is the lead agency on a project it would have approval authority. Please clarify how the flood control district can comply.

Recommendation: Please refer to the issue/ concern.

Response: See [Response 19.1](#).

2.6. and 11.11 and 16.6. Comment: Revised New Development Requirement Timeline

New Development VIII.B.2:

“ The requirements of this section VIII pertaining to priority projects apply to initial project applications received by the Permittees at least 90 days after the Executive Officer’s approval of Uniform Technical Guidance Documents pursuant to section VIII.C.4. The requirements apply to Permittees’ projects where design has been initiated at least 90 days after the Executive Officer’s approval of the Uniform Technical Guidance Documents pursuant to section VIII.C.4. The relevant requirements of Order R8-2009-0030 for Orange County, Order R8-2010-0033 for Riverside County, and R8-2010-0036 for San Bernardino County shall apply to initial project applications received by Permittees until 90 days following the Executive Officer’s approval of Uniform Technical Guidance Documents pursuant to sections VIII.C.4 and 5. All other requirements of section VIII pertaining to the general management of approved WQMPs are effective on the effective date of this Order.”

The City is requesting 12 months instead of 90 days, because the Planning Department must have adequate time for internal transitions and for adoption of this policy. The second statement “apply to Permittees’ projects where design has been initiated at least 90 days after the Executive Officer’s approval” is not practical for the actual process. Most projects are smaller and the owner will provide very basic site design at the initial application. The applicant may have already spent a considerable amount of money on the design before they ever even submit a new application to the Community Development Department. By only giving 90 days of lead time, there will be many projects affected by change they could not prepare for. The reason we have a 12-month period is to prepare the City staff, property owners, design teams and the members of Planning Commission and City Council.

We are requesting 12-month transition period.

Response: The 90-day period for private development projects is the same as what was provided in the current Orders R8-2009-0030, R8-2010-0036, and R8-2010-0033. The gravity of the changes made under these permits were substantially larger (e.g. the introduction of low-impact development BMPs) than the expected changes under the Tentative Order. As the authors of the updated Uniform Technical Guidance Documents, Permittees will be well aware of the proposed changes in advance of the Documents' approval and able to begin preparing themselves prior to the start of the 90-day period. Updates to the Uniform Technical Guidance Documents are not expected to change the feasibility criteria for pollution controls or the range of structural treatment controls. So, outcomes are not expected to be significantly different for projects that comply with either set of guidance documents. However, changes are expected that clarify terminology and that use different documentation that better discloses the design rationales and streamlines the processes. Delays to these changes may cause projects to use the older, less efficient processes. The commenter has not identified any specific need for the additional time that outweighs the benefits of using updated Uniform Technical Guidance Documents.

13.6. Comment: Revised New Development Requirement Timeline

New Development VIII.B.2:

"The requirements of this section VIII pertaining to priority projects apply to initial project applications received by the Permittees at least 90 days after the Executive Officer's approval of Uniform Technical Guidance Documents pursuant to section VIII.C.4. The requirements apply to Permittees' projects where design has been initiated at least 90 days after the Executive Officer's

The relevant requirements of Order RS-2009-0030 for Orange County, Order RS-2010-0033 for Riverside County, and RS-2010-0036 for San Bernardino County shall apply to initial project applications received by Permittees until 90 days following the Executive Officer's approval of Uniform Technical Guidance Documents pursuant to sections VIII.C.4 and 5. All other requirements of section VIII pertaining to the general management of approved WQMPs are effective on the effective date of this Order."

The City's prior comment on this requirement was not accepted and the underlined provisions remain a concern. The City requested a 12-month transition period because planning departments must provide adequate time for internal transitions and for adoption of policy. "90 days from the Executive Officer's approval" depending on the

time of year could be detrimental to many city processes. Additionally, applying the requirement to projects where design has been initiated at least 90 days after the Executive Officer's approval is not practical for the actual process. Most projects are smaller and the owner will provide very basic site design at the initial application. The applicant may have already spent a considerable amount of money on the design before they ever talk to the city. By only giving 90 days of lead time, there will be many projects affected by changes for which they could not reasonably prepare. A 12-month period would allow city staff, project owners, design teams, and the members of planning commissions and city councils sufficient time to prepare for implementation.

We are requesting 12-month transition period.

Response: See [Response 2.6](#).

21.22. Comment: VIII.A.1 New Development

“Permittees must provide written notice to the Santa Ana Water Board when a Permittee initiates an amendment or update of their General Plan which may directly or cumulatively impact beneficial uses, consistent with the requirements of Government Code section 65350 et seq. This written notice shall include a description of the proposed amendment or update, a summary of potential water quality or beneficial use impacts, and a schedule for public review and adoption. This requirement is separate from, and in addition to, any other obligations of the Permittees to provide notice to the Santa Ana Water Board as a Responsible Agency pursuant to CEQA with respect to planning, land use, development, construction, or site cleanup.”

All General Plans are required to go through CEQA and can be viewed by the regional board. Why would it be a requirement for regional board to have a separate submittal?

Recommendation: Please refer to the issue/concern.

Please remove requirement of separate submittal.

Response: It is unclear what the commenter means by “separate submittal.” The provision requires a written notice, such as an email, with a summary of potential beneficial use impacts and schedule for public review and adoption. This targeted notification facilitates coordination on matters relevant to implementation of this Order and is separate from any CEQA notice requirements. No change has been made.

21.23. Comment: VIII.B.5 New Development

The proposed low-impact development (LID) retention requirements for public roadway "significant redevelopments" are logistically and financially unworkable. Municipal public rights-of-way are severely space-constrained, heavily burdened with existing utility corridors, and frequently plagued by poor soil infiltration rates common to urban centers. Requiring the retention or biotreatment of the 85th percentile storm event for standard road widening or rehabilitation projects will effectively stall critical municipal Capital Improvement Projects (CIPs).

Recommendation: Respectfully requests for the permit to be amended to increase the "Significant Redevelopment" threshold for public roadway projects from the tentative square footage to a minimum of 50,000 square feet of newly created or replaced impervious surface and explicitly clarify that routine municipal maintenance, including asphalt overlaying, lane reconfiguration within existing curbs and utility trenching to be fully exempt from post-construction BMP requirements.

Response: It appears that the commenter is referring to section VIII.B.5.i, which discusses that improvement of existing streets, roads, highways, and freeways adding or replacing 5,000 contiguous square feet or more of impervious surface, excluding routine maintenance, shall constitute a priority project. The Tentative Order does not require that road widening or rehabilitation projects "retention or biotreatment of the 85th percentile storm event." Instead, there is a BMP prioritization hierarchy for priority projects, which includes the ability to demonstrate that retention-based treatment controls and biotreatment controls are infeasible. Where infeasible, other treatment control options are available. Additionally, the Uniform Technical Guidance Documents provisions in section VIII, provisions C.5 and C.6, allow for standardized and streamlined considerations for these types of road projects. Where certain types of road projects can be categorically determined to generally qualify for a waiver of treatment control measures, there is an option added to section VIII.E to allow the Executive Officer to issue a waiver for categories of projects, which is still available for individual projects where appropriate.

Asphalt overlays are already exempt in section VIII.B.a.i and VIII.B.i where they are used to restore a surface to its original condition. Lane reconfiguration within existing curbs is also already exempt where it changes how the existing pavement is used without widening the roadway or disturbing the underlying grade. Where these projects do constitute a priority project and there is an opportunity within these projects to install green infrastructure or similar retrofits,

the Tentative Order allows “Green Streets” style guidance to be proposed and implemented through the Uniform Technical Guidance Documents. Utility trenching is already exempt in provision VIII.B.5.a.ii.

21.24. Comment: VIII.B.5.i New Development

“Improvement of existing streets, roads, highways, and freeways adding or replacing 5,000 contiguous square feet or more of impervious surface used by transportation vehicles. This category excludes routine maintenance projects associated with operations and maintenance activities that are conducted on existing lines and facilities and within existing right-of-way or easements.”

Recommendation: Requirement of 5,000 contiguous square feet or more of impervious surface for transportation type projects such as improvements of streets, roads, highways, and freeways is not practical. Remove this requirement and allow us to continue using the criteria described in our Transportation WQMP, which is length based.

Response: The provision quoted by the commenter is not a requirement, it is part of the criteria that triggers priority project considerations. Requirements for priority projects, including the use of technical guidance documents for streets and roads, is found in section VIII.C. This includes flexibility for Permittee proposal of implementation methods equivalent to the “Transportation WQMP”.

21.25. Comment: VIII.C.1.a New Development

“A waiver is granted for the requirement for treatment controls according to section VIII.E.”

Recommendation: Shouldn’t this be Section VIII.F.?

Response: The waiver of treatment controls provisions are found in Section VIII.E. No change has been made.

21.26. Comment: VIII.C.6 New Development

Green Streets is currently March 2021 not 2008. Please see updated guidance.

Recommendation: Please refer to the issue/concern.

Response: The 2021 “Green Streets Handbook” has been added, but the 2021 handbook includes a reference to the 2008 “Managing Wet Weather with Green Infrastructure: Green Streets” document, so both have been retained as available guidance.

21.30. Comment: VIII.L.1.d New Development

Water Board is now using the term “Chemical integrity”. What does this mean?

Term is not appropriate for HCOC analysis.

Recommendation: Refer to the issue/concern, and provide clarification or remove this language.

Response: The term "physical, chemical, and biological integrity" is consistent with the terminology used throughout water quality regulation. The provision recognizes that cumulative changes in hydrology may affect multiple aspects of receiving waters relevant to the protection of beneficial uses. Accordingly, no revisions have been made.

21.32. Comment: VIII.K.1.a.i&ii New Development

i. The calculated runoff volume from the site increases by not more than 5 percent over the pre-project condition or

ii. The calculated time of concentration for runoff from the site decreases by not more than 5 percent over the pre-project condition.

Recommendation: Please change the percentage from 5% to 10%.

Response: The proposed change has been made.

21.28. Comment: VIII.F.1.c New Development

“Collectively, the Permittees approve no more than two-percent (2%) of each county’s total WQMP approvals with non-conforming treatment control measures in total in each county within the Santa Ana Region during the term of this Order.”

Recommendation: Collectively in each county this requirement is not practical. In addition, item 4 puts this under the responsibility of the principle permittee which is an uncontrollable for the Principal Permittee.

Response: Staff disagrees that the collective countywide cap should be removed. The purpose of the cap is to ensure that use of non-conforming treatment control measures remains an exception rather than a routine compliance pathway while still providing flexibility for projects with site-specific constraints. In response to comments, the numerical cap was revised to a countywide cap of two percent (2%) of approved WQMPs during the permit term to account for differences in development activity among counties. In addition, an exceptional circumstances waiver has been added, allowing a Permittee to request Executive Officer approval for a non-conforming treatment control in excess of the cap where justified.

The Principal Permittee's role under this provision is administrative and limited to facilitating coordination and reporting. The Principal Permittee is not responsible for approving, denying, or otherwise regulating WQMPs submitted by other Permittees and does not assume responsibility for ensuring compliance by other Permittees. Each Permittee remains responsible for determining whether a proposed treatment control complies with the requirements of this Order and for its own project approvals. No changes have been made.

13.9. and 11.14 and 16.9 Comment: Demonstration Gardens

New Development VIII.F.I.c

"Collectively, the Permittees approve no more than (2%) of each county's total WQMP approvals with non-conforming treatment control measures in total in each county within the Santa Ana Region during the term of this Order."

Applying the cap for this requirement to all Permittees collectively seems impractical because individual Permittees have no mechanism to track or control the number of non-conforming treatment controls approved by other agencies. A regional cap could prevent one Permittee from approving innovative treatment control based solely on approvals issued by other jurisdictions. If a cap is retained, it should be applied on a per-Permittee basis.

Response: See [Response 21.28](#).

17.12. Comment: Clarify Section V.III.D.7 “General Requirements for Treatment Control Measures” for BMP types where physical operations and maintenance indicator mechanisms are not applicable.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (April 2026)

Section V.III.D.7 was modified in the RTO as follows:

“Permittees must require ~~practical and durable~~ mechanisms designed to indicate the need for maintenance of the treatment control measures. The mechanisms must also be designed to benefit the party responsible for long-term maintenance. The mechanism(s) must be readily identifiable and located on, within, or in close proximity to treatment control measures; such mechanisms must be documented in the related approved project WQMP”.

Concern and Rationale

The County understands and accepts the underlying intent of this provision, which is to include physical operations and maintenance (O&M) indicators in BMP design that make it easier for maintenance personnel and inspectors to determine condition. However, the County is concerned that a physical indicator is not always applicable, and the language in the RTO could result in “performative” elements that incur additional cost and aesthetic impacts without water quality benefit.

Features such as sediment depth markers in forebays and inspection ports are practical and common sense. However, some treatment control measures lack a readily identifiable physical condition or operational trigger that reliably indicates when maintenance is needed. For example, bioretention facilities, vegetated systems, infiltration practices, and proprietary treatment devices often require periodic inspections by trained personnel to assess vegetation health, hydraulic performance, or structural integrity. The need for maintenance cannot always be determined through a physical indicator or marker located on or near the treatment control measure.

In some cases, such as permeable pavement, there is no applicable physical indicator that could be included in the design that would add value to inspectors or O&M crews. For small scale bioretention basins, adding a depth stake to each would be an aesthetic impact, potentially interfere with O&M, and have little added value. In the case of proprietary treatment devices, these products do not consistently have physical O&M indicators that comply with this provision and it is not practical to retrofit these with

maintenance indicators. It is also unnecessary as there are well-defined O&M protocols that have been successfully developed and applied.

Recommendation

Revise Section V.III.D.7 to allow Permittees flexibility to determine appropriate methods for identifying maintenance needs based on the type of treatment control measure, rather than requiring physical indicators or mechanisms to be installed on or near every treatment control measure. Permittees must require mechanisms designed to indicate the need for maintenance of the treatment control measures. The mechanisms must also be designed to benefit the party responsible for long-term maintenance. The mechanism(s) must be readily identifiable and located on, within, or in close proximity to treatment control measures; such mechanisms must be documented in the related approved project WQMP. For BMP types and conditions where physical O&M indicators are determined by the Permittee to be not applicable or unnecessary, the O&M plan included in the WQMP shall describe alternate methods to assess condition and determine the need for maintenance.

Response: The provision does not require a “physical indicator,” it requires a “mechanism.” The provision intentionally does not prescribe any specific mechanism. However, the language stating that the mechanism(s) must be “located on, within, or in close proximity to” may be unintentionally confusing. The quoted language has been changed to “and associated with the treatment control measures.”

7.4. **Comment:** Clarify Provisions for Incorporation of Legacy WQMPs into Electronic Database (Section VIII.C.16)

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO includes requirements to maintain an electronic database of WQMP sites approved after the effective date of this order. Within this provision, there is a provision that applies to

VIII.C.16: Permittees must maintain an electronic database adequate to identify sites affected by a Final WQMP that was approved after the effective date of this Order.

...

VIII.C.16.b: Information in sections VIII.C.16.a.i, iv, vi, and vii for Final WQMPs that were approved prior to the effective date of this Order should be added to the database within the term of this Order as it becomes available or known.

Comment

The provision relating to WQMPs approved under prior permit terms could offer a very large undertaking. Older WQMPs were not subject to record keeping at the time of approval and/or may be beyond the term of record retention policies. Additionally, the statement “as it becomes available or known” is subject to interpretation. Lastly, older WQMPs are less likely to include BMPs that would be as effective in contributing to watershed improvement, meaning the knowledge of these BMPs is less important for the Permittees and Water Board than newer BMPs.

Based on the June 18, 2026 workshop, Water Board staff clarified that the intent of this provision is not to require review of all available records, but rather to add BMPs and WQMPs to the electronic database if they are discovered as part of other routine municipal program activities, such as site inspections.

Recommendations

Modify the Order to clarify the intent of this provision:

VIII.C.16.b: Information in sections VIII.C.16.a.i, iv, vi, and vii for Final WQMPs that were approved prior to the effective date of this Order should be added to the database within the term of this Order, ~~as it becomes available or known~~ is discovered in the course of normal municipal program activities.

Modify the Fact Sheet (D.X):

“This Order requires expansion of the Permittees’ existing electronic databases for tracking sites affected by an approved WQMP in section VIII.C.11. Treatment control measures that were installed prior to the previous term MS4 Permits were not required to be tracked in an electronic database. However, treatment controls measures were being installed under the MS4 permits adopted almost two decades ago. The performance of these older facilities is also of interest to the stormwater program and may provide practical insights to the Permittees and the Santa Ana Water Board. Consequently, section VIII.C.16 ~~requires~~ states that these older facilities should be tracked as they are discovered in the course of ~~through~~ the Permittees’ normal inspection programs or with other opportunities. The inventory of legacy sites is for the benefit of Permittees in watershed

planning. The identification of a legacy facility through the inventory process does not, by itself, trigger an obligation to inspect, upgrade, rehabilitate, retrofit, or redesign the facility to current standards. Standards and conditions applicable at the time of the WQMP approval would apply to legacy facilities.

Response: Staff agree that the intent of this provision is reflected in the proposed changes. The proposed changes have been made for clarity.

19.9. Comment: Clarify Provisions for Incorporation of Legacy WQMPs into Electronic Database (Section VIII.C.16)

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO includes requirements to maintain an electronic database of WQMP sites approved after the effective date of this order. Within this provision, there is a provision that applies to:

VIII.C.16: Permittees must maintain an electronic database adequate to identify sites affected by a Final WQMP that was approved after the effective date of this Order.

VIII.C.16.b: Information in sections VIII.C.16.a.i, iv, vi and vii for Final WQMPs that were approved prior to the effective date of this Order should be added to the database within the term of this Order as it becomes available or known.

The provision pertaining to WQMPs approved under prior permit terms could present a very large undertaking. Older WQMPs were not subject to record keeping at the time of approval and/or may be beyond the term of record retention policies. Additionally, the statement "as it becomes available or known" is subject to various interpretations. Lastly, older WQMPs are less likely to include BMPs that would be effective in contributing to watershed improvement, therefore knowledge of these BMPs is less important for the Permittees and Water Board than newer BMPs.

Based on the June 18, 2026 workshop, Water Board staff clarified that the intent of this provision is not to require review of all available records, but rather to add BMPs and WQMPs to the electronic database if they are discovered as part of other routine municipal program activities, such as site inspections.

Recommendations

Modify the Order to clarify the intent of this provision:

VIII.C.16.b: Information in sections VIII.C.16.a.i, iv, vi, and vii for Final WQMPs that were approved prior to the effective date of this Order should be added to the database within the term of this Order, as it ~~becomes available or known~~ is discovered in the course of normal municipal program activities.

Modify the Fact Sheet (D.X):

"This Order requires expansion of the Permittees' existing electronic databases for tracking sites affected by an approved WQMP in section VIII.C.11. Treatment control measures that were installed prior to the previous term MS4 Permits were not required to be tracked in an electronic database. However, treatment controls measures were being installed under the MS4 permits adopted almost two decades ago. The performance of these older facilities is also of interest to the stormwater program and may provide practical insights to the Permittees and the Santa Ana Water Board. Consequently, section VIII.C.16 ~~requires~~ states that these older facilities should be tracked as they are discovered in the course of through the Permittees' normal inspection programs or with other opportunities. The inventory of legacy sites is for the benefit of Permittees in watershed planning. The identification of a legacy facility through the inventory process does not, by itself, trigger an obligation to inspect, upgrade, rehabilitate, retrofit, or redesign the facility to current standards. Standards and conditions applicable at the time of the WQMP approval would apply to legacy facilities.

Response: See [Response 7.4](#).

17.11. Comment: Modify Section VIII.C.16 "General Requirements for Discretionary Priority Projects" to clarify provisions for incorporation of legacy WQMPs into electronic database

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The RTO includes requirements to maintain an electronic database of WQMP sites approved after the effective date of this order. There is a provision that applies to:

VIII.C.16: Permittees must maintain an electronic database adequate to identify sites affected by a Final WQMP that was approved after the effective date of this Order.

VIII.C.16.b: Information in sections VIII.C.16.a.i, iv, vi, and vii for Final WQMPs that were approved prior to the effective date of this Order should be added to the database within the term of this Order as it becomes available or known.

Concern and Rationale

The provision pertaining to WQMPs approved under prior permit terms could present a very large undertaking. Older WQMPs were not subject to record keeping at the time of approval and/or may be beyond the term of record retention policies. Additionally, the statement “as it becomes available or known” is subject to various interpretations. Lastly, older WQMPs are less likely to include BMPs that would be effective in contributing to watershed improvement, therefore knowledge of these BMPs is less important for the Permittees and Regional Water Board than newer BMPs.

Based on the June 18, 2026 workshop, Regional Water Board staff clarified that the intent of this provision is not to require review of all available records, but rather to add BMPs and WQMPs to the electronic database if they are discovered as part of other routine municipal program activities, such as site inspections.

Recommendations

Modify Section VIII.C.16.b to clarify the intent of this provision:

Information in sections VIII.C.16.a.i, iv, vi, and vii for Final WQMPs that were approved prior to the effective date of this Order should be added to the database within the term of this Order, as it ~~becomes available or known~~ is discovered in the course of normal municipal program activities. Modify the Fact Sheet (D.X): “This Order requires expansion of the Permittees’ existing electronic databases for tracking sites affected by an approved WQMP in section VIII.C.11. Treatment control measures that were installed prior to the previous term MS4 Permits were not required to be tracked in an electronic database. However, treatment controls measures were being installed under the MS4 permits adopted almost two decades ago. The performance of these older facilities is also of interest to the stormwater program and may provide practical insights to the Permittees and the Santa Ana Water Board. Consequently, section VIII.C.16 ~~requires~~ states that these older facilities should be tracked as they are discovered in the course of through the Permittees’ normal inspection programs or with other opportunities. The inventory of legacy sites is for the benefit of Permittees in watershed planning. The identification of a legacy facility through the inventory process does not, by itself, trigger an obligation to inspect, upgrade, rehabilitate, retrofit, or redesign the facility to current standards. Standards and conditions applicable at the time of the WQMP approval would apply to legacy facilities.

Response: See [Response 7.4](#).

Category 10 – Illicit Discharge and Elimination Program

19.11. Comment: Modify Section IX (Illicit Discharge Detection and Elimination), Section A.5

Section IX.A.5 describes that "*Where illicit connections or illicit discharges are known to originated outside of the Permittee's jurisdiction, the Permittees shall notify the responsible party and the Executive Officer of the discharge.*" From a practical standpoint, the EO may receive numerous emails a week from the District. Frequently, we find drainage pipes that extend into our facilities from residential neighborhoods, which constitute illicit connections. We collaborate with the municipality's code enforcement departments to bring the resident into compliance. However, this may become a nuisance for the EO to receive numerous emails a week regarding illicit drainage pipes that connect into a flood control facility.

Recommendation

- Revise text to clarify illicit connections that are known to originate outside of the Permittee's jurisdiction should be reported to the Responsible Party, while illicit discharges should be reported to both the responsible party and the EO.

Response: The proposed change has been made, with minor clarification that illicit connections "are outside of" instead of "originate outside of".

21.36. Comment: IX.A.5 Illicit Discharge Detection and Elimination Program

"Where illicit connections or illicit discharges are known to originate outside of the Permittee's jurisdiction, the Permittees shall notify the responsible party and the Executive Officer of the discharge."

Why is this required if it's outside of the permittee's jurisdiction? Permittees don't feel this requirement is appropriate as the permittee's focus is what is within their jurisdiction.

Recommendation: Please remove requirement.

Response: The provision does not require Permittees to investigate, enforce, or otherwise take responsibility for illicit connections or illicit discharges outside their jurisdiction. Illicit discharges originating outside a Permittee's jurisdiction may nevertheless impact waters within or downstream of the Permittee's jurisdiction. The notification requirement is consistent with the cooperative nature of watershed management and imposes a minimal administrative burden while improving the ability of the appropriate agency to respond.

Category 11 – Public Education and Outreach

17.18. Comment: Modify Section X.C.1. “Public Education Campaign” to reflect changes made in the RTC.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Section X.C.1 Public Education Campaign was modified in the RTO as follows:

“1. Identify three (3) specific pollution goals and related measurable objectives of the public education campaign(s). Issues may be identified for the entire permit area, for each watershed, or for each city;”

Concern and Rationale

The RTO modified the Public Education Campaign (Section X.C.1) to state that three specific pollution goals must be identified. However, RTC 35.476 stated that the requirement for three goals was removed and that the RTO does not specify a number of goals (which was requested in the TCG July 2024 comment letter). The language in the RTO should reflect this change to match the RTC.

Recommendation

Modify Section X.C.1 to remove the three pollution goals requirement such that the language is consistent with the RTC:

“1. Identify ~~three (3)~~ specific pollution goals and related measurable objectives of the public education campaign(s). Issues may be identified for the entire permit area, for each watershed, or for each city;”

Response: The proposed change has been made.

Category 12 – Training Programs

21.38. Comment: XI. Training Programs

“Each Permittee must have an effective training program for their staff, contractors, and vendors whose duties or responsibilities impact the Permittee’s capacity to satisfy the requirements of this Order (collectively, personnel). While Permittees are required to directly train their own staff, they are also ultimately responsible for duties performed by contractors and vendors to support compliance. Permittees must establish a process to verify the training of all personnel involved in activities covered by this Permit. The training program should be developed to address the following:”

This contradicts Section XIV. Rationale for Training Programs, which states:

“The scope of personnel requiring training has been expanded to include staff, contractors, and vendors whose duties or responsibilities directly or indirectly affect the Permittees’ capacity to satisfy the requirements of this Order. For some Permittees, this may mean that additional personnel will require training. It does not mean that Permittees are responsible for providing training to contractors and vendors. But it does mean that contractors and vendors must have the requisite knowledge, skills, and abilities to perform their duties without conflicts with the requirements of this Order. The purpose of this expansion is to better harmonize the Permittees’ internal departments and increase participation in the effort to reduce or eliminate pollution.”

Does not seem appropriate for permittees to train contractors/consultants and vendors.

Recommendation: Please refer to the issue/concern.

Please remove language requiring permittees to train their contractors and vendors.

Response: Staff agrees that Section XI should more clearly reflect the intent described in the Rationale. The intent is not to require Permittees to directly train contractors or vendors. Rather, contractors and vendors performing activities that may affect Permit compliance should possess the requisite knowledge, skills, and abilities to perform those activities consistent with the requirements of this Order. Changes have been made to section XI to better describe the requirements.

21.39. Comment: XI.C.2 Training Programs

“Training records may be maintained for staff and contract vendors as a part of a regionwide training registry to facilitate the transferability of records, or through another mechanism acceptable to the Executive Officer.”

Typical municipal contracts require contracted staff to be adequately trained. During the RFP process, the vendor provides the qualifications of key members of their team. Requiring training records from the vendor’s staff would be a huge undertaking and burden on the permittees.

Recommendation: Remove record keeping requirement of vendor’s training records.

Response: A provision has been added to section XI.A to clarify the intention of this requirement that provides “Permittees shall reasonably verify that contractors and vendors performing activities covered by this Order possess the requisite training or qualifications.” The RFP process described by the commenter would be a reasonable verification effort.

Additionally, the language “individual training records for contractor or vendor personnel are not required” has been added to provision XI.C.1 to avoid an unnecessary level of effort.

4.1. Comment: Section XI Training Programs A. Target Audience, B. Frequency of Training, and C. Record Keeping

The City appreciates the revisions made regarding the training requirements for contractors and vendors (outside entities). However, the current language still requires Permittees to establish a process to verify the training of all personnel involved in activities covered by the Revised TO, which includes contractors and vendors. This requirement significantly increases costs since it requires additional staff and creates an unnecessary burden on resources by requiring that Permittee staff be responsible for establishing processes for outside entities to verify, track training, maintain training records, and report training.

Recommendation: Modify Section XI Training Programs A. Target Audience, B. Frequency of Training, and C. Reporting The City requests that the Santa Ana RWQCB modify the language to remove the requirement for Permittee staff to establish a process to verify, track, maintain records, and report training for outside entities. Permittee staff should only be responsible for tracking, maintaining records, and reporting training for personnel within their agency that directly affects the Permittee's compliance with the Revised TO.

Response: See Responses [21.38](#) and [21.39](#).

Category 13 – Watershed Management Plans

3.7. and 9.7. Comment: The Watershed Management Plan And Reasonable Assurance Analysis Provisions Do Not Provide A Reliable Compliance Pathway

The Watershed Management Plan provisions are presented as a flexible compliance alternative. In practice, they require extensive modeling, planning, monitoring, public process, infrastructure commitments, and continuing adaptive management, while leaving critical determinations to the Executive Officer.

The final Permit must provide objective standards for approval of a Watershed Management Plan and reasonable assurance analysis. Terms such as “reasonable assurance,” “acceptable,” “effective,” “promptly,” “as soon as possible,” and “other actions” must be accompanied by ascertainable criteria.

A City should not lose a compliance pathway or face immediate exposure to enforcement because of delay in agency review, disagreement over modeling assumptions, immaterial noncompliance, or an issue that can reasonably be corrected. The Permit should provide notice, a meaningful opportunity to cure, a written statement of reasons, an administrative appeal to the Regional Board, and continued deemed compliance while a timely submitted plan or amendment is under review.

Substantive changes to a permittee’s obligations, compliance deadlines, monitoring locations, required capital facilities, or approved compliance method should be made by the Regional Board through a noticed public process. Such changes should not be imposed solely through an Executive Officer’s approval, conditional approval, rejection, rescission, or modification of a plan.

Water Code section 13223 permits the Regional Board to delegate certain powers and duties to its Executive Officer, but it does not authorize the delegation of fundamental policy decisions or material amendments to an NPDES permit without the procedural protections required for Board action.

The Permit should also provide that full implementation of an approved Watershed Management Plan constitutes compliance with the provisions it is intended to address during the approved implementation period. A voluntary alternative that requires enormous expenditures while preserving strict liability for the same receiving-water condition is not a meaningful compliance option.

Response: The Tentative Order undergoes a thorough and rigorous review process by the Board Members, who scrutinize and question all action items

before granting approval. Only after this detailed evaluation and adoption of the Tentative Order does the Executive Officer receive the authority to implement the designated policies outlined in the permit language. The Tentative Order gives the Executive Officer broad latitude to establish deadlines to respond to dates to respond to requests for more information. If not met, Permittees will lose 'deemed compliance status'. Given the gravity, the Santa Ana Water Board expects that this latitude will be exercised with input from the Permittees on what constitutes a reasonable time to respond. This process also includes a 30-day public review period prior to acceptance of the Notice of Intent as specified in section XII.A.6.

7.6. and 19.16. Comment: Section XII.E – The Language in this Section Should be Consistent with the Language in Other Parts of Section XII., which States that the WMPs may be used to Comply with the Receiving Water Limitations and WQBELs where the Final Compliance Deadline has not Passed.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The following language was modified from the March 2024 TO:

1. WMPs may only be used to comply with receiving water limitations and/or WLAs expressed as WQBELs where the final compliance deadline has not passed or where no final compliance deadline has been specified in the TMDL.

Comment

This language is inconsistent with the introductory language in the Revised TO WMP section XII, which states [emphasis added]:

“Participation in a Watershed Management Plan (WMP) is a voluntary, alternative compliance option for Permittees that gives them the flexibility to implement the requirements of this Order through watershed-specific strategies, control measures, and BMPs. Specifically, the development and implementation of, and the Permittees' compliance with, WMPs **will serve as an alternate method to comply with receiving water limitations in section VI (Receiving Water Limitations)** and/or with WLAs that are expressed as WQBELs in section VII (Effluent Limitations and Discharge Specifications) according to this section. WMPs may only be used for WQBELs whose final compliance deadlines have not yet passed or where no final compliance deadline is specified.”

Recommendation

Revised Section XII.E to read as follows:

1. WMPs may only be used to comply with receiving water limitations and/or WLAs expressed as WQBELs where the final compliance deadline has not passed or where no final compliance deadline has been specified in the TMDL.

Response: The word “only” was inadvertently kept when the receiving water limitations provisions were moved from section XII.E.1 to section XII.E.2. The word “only” has been removed here to accurately reflect that Watershed Management Plans are available for receiving water limitations and/or WQBELs, not only for WQBELs.

17.23. Comment: Modify Section XII.E “Time Schedule Order Applicability” so that the language in this section is consistent with the language in other parts of Section XII., which states that the WMPs may be used to comply with the Receiving Water Limitations and WQBELs where the final compliance deadline has not passed.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The following language was modified in the RTO as follows:

“1. WMPs may only be used to comply with ~~receiving water limitations and/or~~ WLAs expressed as WQBELs where the final compliance deadline has not passed or where no final compliance deadline has been specified in the TMDL...”

Concern and Rationale

This language is inconsistent with the introductory language in the Revised TO WMP section XII, which states [emphasis added]:

“Participation in a Watershed Management Plan (WMP) is a voluntary, alternative compliance option for Permittees that gives them the flexibility to implement the requirements of this Order through watershed-specific strategies, control measures, and BMPs. Specifically, the development and implementation of, and the Permittees’ compliance with, WMPs will serve as an alternate method to comply with receiving water limitations in section VI (Receiving Water Limitations) and/or with WLAs that are expressed as WQBELs in section VII (Effluent Limitations and Discharge Specifications) according to this section. WMPs may only be used for WQBELs whose final compliance deadlines have not yet passed or where no final compliance deadline is specified.”

Recommendation

Revise Section XII.E to read as follows:

1. WMPs may only be used to comply with receiving water limitations and/or WLAs expressed as WQBELs where the final compliance deadline has not passed or where no final compliance deadline has been specified in the TMDL...

Response: See Response [7.6/19.16](#).

19.13. Comment:

Section XII.A.8. – Deemed Compliance Time Frame Should be Extended to Account for Regional Water Board Review of WMPs and to Add Time for Permittees to Address Comments from the Regional Water Board.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

A.8 "For proactive preparation of WMPs, Permittees in compliance with section XII.A will be deemed in compliance with section VI (Receiving Water Limitations) and section VII (Effluent Limitations and Discharge Specifications) for the subject waterbody-pollutant combination(s) until approval of the WMP. ~~However,~~ Compliance is demonstrated only where the approved WMP is being designed and implemented to achieve applicable receiving water limitations and WQBELs. However, (i) if the final WMP submittal deadline is extended beyond 24 months from the date of the NOI pursuant to section XII.A.7.a, the Permittee shall not be deemed in compliance during the period of extension until approval of the WMP; and (ii) in no event shall a Permittee without an approved WMP be deemed in compliance for more than 27 months from the date the Permittee submitted the NOI."

C.6 "The Executive Officer will approve or deny approval of a final WMP within three (3) months of its submission, except where additional information has been requested pursuant to Section XII.C.5. In that case, the 3-month period begins when the Permittee submits the requested information. If the final proactive WMP is not approved by the applicable deadline, the Permittee will no longer be deemed in compliance with receiving water limitations in section VI (Receiving Water Limitations) and WQBELs in section VII (Effluent Limitations and Discharge Specifications) for those waterbody-pollutant combinations that are the subject of the WMP during any extension period, even if the Executive Officer authorizes

additional time to complete the WMP. In no event shall the Permittee be deemed in compliance beyond the date set forth in section XII.A.8 if the WMP is not approved by that date."

The added language (ii) limits the amount of time that the Permittee can be deemed in compliance with the WMP to 27 months from the submittal of the NOI. This time frame is the amount of time provided to develop the WMP (24 months), plus the three months for the Regional Water Board to approve or disapprove a WMP per Section XII.C.6. However, this time frame does not provide sufficient time for the Regional Water Board to review the WMP, provide comments to the Permittee to revise the WMP if needed, and the Regional Water Board to review the revised WMP.

Section XII.C.6 notes that if the Regional Water Board staff requests additional information from the Permittee, the three months to approve or disapprove the WMP starts after receipt of the additional information. However, limiting the deemed compliance period to 27 months would result in the Permittees losing deemed compliance status during the period of time while they are providing the information and the Regional Water Board is reviewing the revised information.

The proposed timeframe of 27 months is also much shorter than the time frame allowed in other permits for deemed compliance status during the development of their first WMP. In the 2012 Los Angeles County MS4 Permit (Order No. R4-2012-0175), deemed compliance status was provided for up to 40 months, including 30 months to develop the WMP, 4 months for the Regional Water Board to review the WMP, 3 months for the Permittees to respond to comments on the WMP and 3 months for the Regional Water Board to review the revised WMP. In the 2021 Los Angeles Regional Permit (Order No. R4-2021-0105), the Ventura County Permittees were able maintain deemed compliance status until approval or disapproval of the WMPs by the Regional Water Board EO, with no limitation on the amount of time the Regional Water Board would take to make that determination.

The Permittees appreciate the need to limit the amount of time-deemed compliance is provided during the WMP development period. However, the Permittees should not lose deemed compliance status if they are in good faith addressing comments provided by the Regional Water Board on the time frame allowed by the Permit and the Regional Water Board. Therefore, the Permittees request that Section XII.A.8 be changed to allow deemed compliance status to be maintained for up to 33 months. This would allow three months for the Regional Water Board staff to review the WMP, three months for the Permittees to respond to comments from the Regional Water Board staff on the WMP and three months for the Regional Water Board Executive Officer to approve or disapprove the WMP.

Recommendation

Revise Section XII.A.8 as identified below:

A.8 "For proactive preparation of WMPs, Permittees in compliance with section XII.A will be deemed in compliance with section VI (Receiving Water Limitations) and section VII (Effluent Limitations and Discharge Specifications) for the subject waterbody-pollutant combination(s) until approval of the WMP. Compliance is demonstrated only where the approved WMP is being designed and implemented to achieve applicable receiving water limitations and WQBELs. However, (i) if the final WMP submittal deadline is extended beyond 24 months from the date of the NOI pursuant to section XII.A.7.a, the Permittee shall not be deemed in compliance during the period of extension until approval of the WMP; and (ii) in no event shall a Permittee without an approved WMP be deemed in compliance for more than ~~27~~33 months from the date the Permittee submitted the NOI."

Response: The commenter identifies that the 27-month limitation does not fully account for the review process. As written, a Permittee that timely submits a WMP and timely responds to a request for additional information could therefore lose deemed compliance while the WMP remains under review through no failure to meet an applicable deadline.

Section XII.A.8 has therefore been revised to extend the maximum period of deemed compliance to 33 months from submittal of the NOI. This period accommodates up to 24 months for WMP development, three months for initial review, three months for the Permittee to address requested information, and three months for final review, while retaining a defined outer limit on deemed compliance prior to WMP approval.

17.19. Comment: Modify Section XII.A.8. "Watershed Management Plan Development" to extend the deemed compliance time frame to account for Regional Water Board review of the WMPs and to add time for Permittees to address comments from the Regional Water Board.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Sections XII.A.8 and XII.C.6 were modified in the RTO as follows [emphasis added]:

A.8 "For proactive preparation of WMPs, Permittees in compliance with section XII.A will be deemed in compliance with section VI (Receiving Water Limitations) and section VII

(Effluent Limitations and Discharge Specifications) for the subject waterbody-pollutant combination(s) until approval of the WMP. ~~However,~~ Compliance is demonstrated only where the approved WMP is being designed and implemented to achieve applicable receiving water limitations and WQBELs. However, (i) if the final WMP submittal deadline is extended beyond 24 months from the date of the NOI pursuant to section XII.A.7.a, the Permittee shall not be deemed in compliance during the period of extension until approval of the WMP; and (ii) in no event shall a Permittee without an approved WMP be deemed in compliance for more than 27 months from the date the Permittee submitted the NOI.”

C.6 “The Executive Officer will approve or deny approval of a final WMP within three (3) months of its submission, except where additional information has been requested pursuant to Section XII.C.5. In that case, the 3-month period begins when the Permittee submits the requested information. If the final proactive WMP is not approved by the applicable deadline, the Permittee will no longer be deemed in compliance with receiving water limitations in section VI (Receiving Water Limitations) and WQBELs in section VII (Effluent Limitations and Discharge Specifications) for those waterbody-pollutant combinations that are the subject of the WMP during any extension period, even if the Executive Officer authorizes additional time to complete the WMP. In no event shall the Permittee be deemed in compliance beyond the date set forth in section XII.A.8 if the WMP is not approved by that date.”

Concern and Rationale

The added language in Section XII.A.8.(ii) (in bold above) limits the amount of time that the Permittees can be deemed in compliance with the WMP to 27 months from the submittal of the NOI. This time frame (the 27 months) is the amount of time provided to develop the WMP (24 months), plus the three (3) months for the Regional Water Board to approve or disapprove a WMP per Section XII.C.6. Thus, the total timeframe currently provided is:

- 24 months for the Permittees to develop and submit the WMP,
- 3 months for the Regional Water Board staff to review the WMP and provide comments to the Permittees, • 0 months for the Permittees to respond to comments from the Regional Water Board staff, and
- 0 months for the Regional Water Board Executive Officer to approve or disapprove the WMP.

This time frame does not provide sufficient time for the Regional Water Board to review the WMP, provide comments to the Permittee to revise the WMP if needed, and the Regional Water Board to review the revised WMP.

Section XII.C.6 notes that if the Regional Water Board staff requests additional information from the Permittee, the three months to approve or disapprove the WMP starts after the receipt of the additional information. However, limiting the deemed compliance period to 27 months would result in the Permittees losing deemed compliance status during the period of time while they are providing the information and the Regional Water Board is reviewing the revised information.

The proposed timeframe of 27 months is also much shorter than the time frame allowed in other permits for deemed compliance status during the development of their first WMP.

In the 2012 Los Angeles County MS4 Permit (Order No. R4-2012-0175), deemed compliance status was provided for up to 40 months, including:

- 30 months to develop the WMP,
- 4 months for the Regional Water Board to review the WMP,
- 3 months for the Permittees to respond to comments on the WMP, and
- 3 months for the Regional Water Board to review the revised WMP.

In the 2021 Los Angeles Regional Permit (Order No. R4-2021-0105), the Ventura County Permittees were able to maintain deemed compliance status until approval or disapproval of the WMPs by the Regional Water Board Executive Officer, with no limitation on the amount of time the Regional Water Board would take to make that determination.

The Permittees appreciate the need to limit the amount of time deemed compliance is provided during the WMP development period. However, the Permittees should not lose deemed compliance status if they are, in good faith, addressing comments provided by the Regional Water Board on the time frame allowed by the Permit and the Regional Water Board.

Therefore, the Permittees request that Section XII.A.8 be modified to allow deemed compliance status to be maintained for up to 33 months. This would allow:

- 24 months for the Permittees to develop and submit the WMP,

- 3 months for the Regional Water Board staff to review the WMP,
- 3 months for the Permittees to respond to comments from the Regional Water Board staff, and
- 3 months for the Regional Water Board Executive Officer to approve or disapprove the WMP.

Recommendation

Revise Section XII.A.8 as identified below:

A.8 “For proactive preparation of WMPs, Permittees in compliance with section XII.A will be deemed in compliance with section VI (Receiving Water Limitations) and section VII (Effluent Limitations and Discharge Specifications) for the subject waterbody-pollutant combination(s) until approval of the WMP. Compliance is demonstrated only where the approved WMP is being designed and implemented to achieve applicable receiving water limitations and WQBELs. However, (i) if the final WMP submittal deadline is extended beyond 24 months from the date of the NOI pursuant to section XII.A.7.a, the Permittee shall not be deemed in compliance during the period of extension until approval of the WMP; and (ii) in no event shall a Permittee without an approved WMP be deemed in compliance for more than ~~27~~ 33 months from the date the Permittee submitted the NOI.”

Response: See Response [19.13](#).

19.14. Comment: Section XII.B.4.b.ii.2. – New or Modified Watershed Control Measures as part of WMPs are Inappropriately Linked to and Constrained by New Development BMP Requirements.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO modified Section XII.B.4.b.ii.2 to clarify that new or modified structural controls measures are subject to the new development requirements identified in Sections VIII.D, VIII.I, and VIII.J.

"Where regional and sub-regional structural treatment control measures (see Glossary) are proposed in the WMPs and such facilities are not subject to requirements pertaining to project WQMPs, the responsible Permittees must provide that regional and sub-regional structural treatment control measures

comply with the requirements of section VIII.D (General Requirements for Treatment Control Measures of this Order and, if applicable, sections VIII.I (Specific Requirements for Infiltration LID Treatment Control Measures) and section VIII.J (Specific Requirements for Harvest and Use LID Treatment Control Measures)."

RTC 35.125 stated:

"The requirements in the cited sections are intended to address hazards to the communities and to provide quality controls to assure their treatment performance and that the facilities meet other community objectives. As stated in the Glossary, structural treatment controls are a subset of treatment control measures that treat design capture volume or flow requirements of the Tentative Order. The requested change has not been made. However, section XII.B.4.b.ii has been changed to apply to structural treatment controls instead of treatment controls to address the commenters' concerns."

The modifications in the Revised TO and the RTC do not alleviate the concern about linking structural treatment control measures in the WMPs to the new development requirements in Sections VIII.D, VIII.I, and VIII.J, the RTC does not provide adequate justification for this linkage and the Fact Sheet is silent regarding this requirement. This requirement puts constraints on the sizing and configuration of treatment control BMPs for the watershed control measures in WMPs to align with treatment control BMPs for WQMPs. Such linkage is not appropriate for watershed control measures or treatment control BMPs in a WMP.

New or modified structural watershed control measures proposed as part of WMPs will be retrofit BMPs, which are subject to site constraints for their implementation and therefore, are sized according to those constraints. For example, a retrofit BMP being utilized as a new structural watershed control measure for a WMP may not be able to be sized for the full design capture volume identified in Section VIII.D.2. due to site constraints and space available of the retrofit location, but there is still value to the retrofit BMP as it will be part of an overall approach to achieve the volume capture needed as identified in the RAA of WMP. Additionally, it may not be necessary to capture the design capture volume identified in Section VIII.D.2. based on the results of the RAA. Also, tying watershed control measures to the requirements of the new development section does not allow for innovative BMPs focused on specific pollutants of concern.

Additionally, linking the WMP structural controls measure requirements to the new development BMP requirements does not allow the Permittees to take credit for existing

structural treatment control measures that do not meet the new development BMP requirements but yet assist in WMP implementation and improving water quality. Furthermore, other Regional MS4 Permits in Southern California do not have this type of requirement including the San Diego Regional MS4 Permit (Order No. R9-2013-0001 as amended by Order No. R9-2015-0001 and Order No. R9-2015-0100) in the Water Quality Improvement Plan requirements, nor the Los Angeles Regional MS4 Permit (Order No. R4-2021-0105) in the Watershed Management Programs requirements.

Linking the evaluation of structural watershed control measures to re-evaluation of the RAA is a more appropriate approach to evaluate the structural watershed controls measures implemented as part of WMPs than requiring structural watershed control measures of WMPs to meet new development BMP requirements.

Recommendation

Revise Section XII.B.4.b.ii.2. as identified below:

"Where regional and sub-regional structural treatment control measures (see Glossary) are proposed in the WMPs and such facilities are not subject to requirements pertaining to project WQMPs, the responsible Permittees must ~~provide that evaluate the regional and sub-regional structural treatment control measures through the Reasonable Assurance Analysis reevaluation process identified in Section XII.C.11. comply with the requirements of section VIII.D (General Requirements for Treatment Control Measures of this Order and, if applicable, sections VIII.I (Specific Requirements for Infiltration LID Treatment Control Measures) and section VIII.J (Specific Requirements for Harvest and Use LID Treatment Control Measures).~~"

Response: Staff do not agree that structural treatment controls implemented through a WMP should be exempt from otherwise applicable design and performance requirements simply because they are implemented as part of a watershed-scale strategy. The referenced provisions include requirements intended to ensure that structural controls are appropriately designed, maintainable, protective of groundwater and public safety, and capable of providing the treatment performance relied upon by the WMP. These considerations remain relevant to retrofit facilities.

Staff acknowledge that section VIII.D establishes design and sizing requirements for structural treatment controls. However, it does not require every WMP retrofit facility to capture the entirety of the design capture volume without regard to site constraints. Some flexibility is provided. Section VIII.D.1.d expressly requires treatment of the design capture volume or flow "to the maximum extent

practicable” from the tributary area. Section VIII.D.1.e requires substantial conformance but allows necessary deviations from published and generally accepted standards and methods. Section VIII.D provides multiple methods for determining the applicable design capture volume or flow. The terms “design capture volume” and “design capture flow” are defined in the Glossary in Attachment A. The structural treatment control standards in section VIII.D also apply to “a single or set of treatment controls,” allowing multiple treatment controls to be used together as necessary to accommodate site constraints and collectively meet the applicable treatment requirements.

The commenter’s concern regarding existing structural controls does not apply to this provision, which establishes requirements for new or modified watershed control measures that are being proposed, rather than existing facilities. Existing facilities are separately addressed in XII.B.4.a.

The Reasonable Assurance Analysis serves a different purpose. It evaluates whether the combination of control measures is reasonably expected to achieve water quality standards. Reevaluation of the RAA may determine whether a WMP strategy should be modified, but it is not a substitute for appropriate design requirements. No change has been made.

17.21. Comment: Modify Section XII.B.4.b.ii.2. “Watershed Management Plan Contents – New or Modified Watershed Control Measures” so that the WMPs control measure requirements are not linked to and constrained by New Development BMP requirements.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The RTO modified Section XII.B.4.b.ii.2 to clarify that new or modified structural controls measures are subject to the new development requirements identified in Sections VIII.D, VIII.I, and VIII.J.

“Where regional and sub-regional structural treatment control measures (see Glossary) are proposed in the WMPs and such facilities are not subject to requirements pertaining to project WQMPs, the responsible Permittees must provide that regional and sub-regional structural treatment control measures comply with the requirements of section VIII.D (General Requirements for Treatment Control Measures of this Order and, if applicable, sections VIII.I (Specific Requirements for Infiltration LID Treatment Control Measures) and section VIII.J (Specific Requirements for Harvest and Use LID Treatment Control Measures).”

The RTC 35.125 stated:

“The requirements in the cited sections are intended to address hazards to the communities and to provide quality controls to assure their treatment performance and that the facilities meet other community objectives. As stated in the Glossary, structural treatment controls are a subset of treatment control measures that treat design capture volume or flow requirements of the Tentative Order. The requested change has not been made. However, section XII.B.4.b.ii has been changed to apply to structural treatment controls instead of treatment controls to address the commenters’ concerns.”

Concern and Rationale

The modifications in the RTO and the RTC do not alleviate the concern about linking structural treatment control measures in the WMPs to the new development requirements in Sections VIII.D, VIII.I, and VIII.J, the RTC does not provide adequate justification for this linkage, and the Fact Sheet is silent regarding this requirement. This requirement puts constraints on the sizing and configuration of treatment control BMPs for the watershed control measures in WMPs to align with treatment control BMPs for WQMPs. Such linkage is not appropriate for watershed control measures or treatment control BMPs in a WMP.

New or modified structural watershed control measures proposed as part of WMPs will be retrofit BMPs, which are subject to site constraints for their implementation and therefore are sized according to those constraints. For example, a retrofit BMP being utilized as a new structural watershed control measure for a WMP may not be able to be sized for the full design capture volume identified in section VIII.D.2. due to site constraints and space available of the retrofit location, but there is still value to the retrofit BMP as it will be part of an overall approach to achieve the volume capture needed as identified in the RAA of WMP. Additionally, it may not be necessary to capture the design capture volume identified in section VIII.D.2. based on the results of the RAA. Also, tying watershed control measures to the requirements of the new development section does not allow for innovative BMPs focused on specific pollutants of concern.

Additionally, linking the WMP structural controls measure requirements to the new development BMP requirements does not allow the Permittees to take credit for existing structural treatment control measures that do not meet the new development BMP requirements but yet assist in WMP implementation and improving water quality. Furthermore, other regional MS4 permits in Southern California do not have this type of requirement including the San Diego Regional MS4 Permit (Order No. R9-2013-0001 as amended by Order No. R9-2015-0001 and Order No. R9-2015-0100) in the Water

Quality Improvement Plan requirements, nor the Los Angeles Regional MS4 Permit (Order No. R4-2021-0105) in the Watershed Management Programs requirements. Linking the evaluation of structural watershed control measures to re-evaluation of the RAA is a more appropriate approach to evaluate the structural watershed controls measures implemented as part of WMPs than requiring structural watershed control measures of WMPs to meet new development BMP requirements.

Recommendation

Revise Section XII.B.4.b.ii.2. as identified below:

“Where regional and sub-regional structural treatment control measures (see Glossary) are proposed in the WMPs and such facilities are not subject to requirements pertaining to project WQMPs, the responsible Permittees must ~~provide that evaluate the~~ regional and sub-regional structural treatment control measures through the Reasonable Assurance Analysis reevaluation process identified in Section XII.C.11. comply with the requirements of section VIII.D (General Requirements for Treatment Control Measures of this Order and, if applicable, sections VIII.I (Specific Requirements for Infiltration LID Treatment Control Measures) and section VIII.J (Specific Requirements for Harvest and Use LID Treatment Control Measures).”

Response: See [Response 19.14.](#)

19.15. Comment: Section XII.C.11 – The RAA re-Evaluation Timeframe Should be Aligned with Approaches Implemented in Other Regions Based on their Direct Experience with WMPs.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The following language was modified from the March 2024 TO:

"11. After a final WMP is approved, responsible Permittees must reevaluate the conclusions of Reasonable Assurance Analyses ~~biennially~~ based on new information, information that was previously unknown, and the degree of progress in implementing the WMP. The reevaluation schedule must be included as part of the WMP NOI. Reevaluations shall occur as soon as possible, but no more than thirty-six (36) months after initial WMP approval, and within thirty-six (36) months after each subsequent reevaluation thereafter. The Executive Officer is authorized to waive this requirement for ~~biennial~~ subsequent reevaluations

based on factors such as the absence of new information that would substantially alter conclusions and insufficient time to implement activities that may affect the conclusions of the reevaluation. If the reevaluation indicates that modifications are needed to the WMP, the Permittees shall propose a schedule for amending the WMP subject to the approval of the Executive Officer. The WMP shall be amended according to the approved schedule."

The Regional Board should reconsider the frequency that RAAs require re-evaluation based on existing requirements found in other regions by including revisions to the RAA in the adaptive management process which would coincide with the Report of Waste Discharge.

Section XII.C.11 of the Revised TO requires Permittees who choose to enter into a WMP *"must reevaluate the conclusions of Reasonable Assurance Analyses based on new information, information that was previously unknown, and the degree of progress in implementing the WMP"..."Reevaluations shall occur as soon as possible, but no more than thirty-six (36) months after initial WMP approval..."*.

This requirement will result in a significant expenditure of resources without providing significant benefit for implementation. The amount of data collected during a three-year period would not provide sufficient new data or information to alter an RAA analysis. Additionally, implementation of the WMP will take place over multiple years and any significant structural BMPs will take more than three years to construct. Any resulting water quality improvements will take time to observe in the monitoring data, after BMPs have been implemented. Finally, depending on the model selected for the RAA, reevaluation of the RAA can be a costly process. As a result, reviews of the RAA will involve significant effort, but are unlikely to result in any meaningful changes to the RAA conclusions.

In fact, the frequency proposed within the Revised TO is wholly inconsistent with other regions that have permits that allow for the development of WMPs (or similar document), require RAAs as part of the process, and have direct experience in using the WMPs – two examples are below:

1) Los Angeles Region MS4 Permit Order R4-2021-0105 – **Evaluate need for revisions every 5 years**

Outside of providing updates per the State Board Order and conformance with their MS4 Permit, the 2021 Los Angeles MS4 Permit requires Permittees to initiate an adaptive management process as part of their Report of Waste Discharge, or every five years.

Section IX.E.4 Reporting on the Adaptive Management Process Results

"The results of the adaptive management process shall be submitted with the Permittees' ROWD. Permittees shall report the following information to the Los Angeles Water Board concurrently with the submittal of the ROWD (180 days before Order expiration date) required pursuant to Part II.B of Attachment D (Standard Provisions): [excerpt]

d. Comparison of the effectiveness of the control measures to the results projected by the RAA;

e. Assessment of the appropriateness of the assumptions used in the RAA (e.g. nonstructural BMP implementation and corresponding reductions, rates of redevelopment, etc.);"

Attachment F – Fact Sheet [emphasis added] [pg F-247-248]

"H. Adaptive Management Process Permittees in each Watershed Management Program must implement an adaptive management process, which is a periodic, comprehensive program evaluation, including re-analysis of data and/or modeling, and modification process to determine progress toward achieving WQBELs and receiving water limitations and to adapt the Watershed Management Program to become more effective at achieving WQBELs and receiving water limitations. Permittees shall submit the results in conjunction with their ROWD....

...Note that in the 2012 Los Angeles County Permit and the 2014 City of Long Beach MS4 Permit, the adaptive management process was required to be implemented every 2 years and the results were submitted in conjunction with the Annual Report and the ROWD. **Many Permittees in their ROWDs requested to decrease the adaptive management results submittal frequency. This is a reasonable request because requiring Permittees to implement the adaptive management process every 2 years is unnecessary given the multi-year nature of many projects and programs where the design, construction, and implementation often span more than 2 years...."**

2) Central Valley Region MS4 Permit Order No. R5-2016-0040 – **Evaluate the need for revisions every 10 years**

The Central Valley's 2016 Regional MS4 Permit requires their Permittees to revise their RAA at least once every 10 years.

Section V.C.10

"A comprehensive audit of the RAA is required **at least once every 10 years**. If the audit finds that the RAA is no longer current or accurate, then the Permittee shall revise the RAA and submit it to the Central Valley Water Board for approval consistent with the schedule in Part V.F.2, Steps 3.a through 4.d."

Recommendations

Modify the RAA timeframe to coincide with the ROWD (similar to the LA Regional Permit)

11. After a final WMP is approved, responsible Permittees must reevaluate the conclusions of Reasonable Assurance Analyses based on new information, information that was previously unknown and the degree of progress in implementing the WMP. The reevaluation schedule must be included as part of the WMP NOI. Reevaluations shall occur as soon as possible, but no more than five (5) years ~~thirty-six (36) months~~ after initial WMP approval and within five (5) years ~~thirty-six (36) months~~ after each subsequent reevaluation thereafter. The Executive Officer is authorized to waive this requirement for subsequent reevaluations based on factors such as the absence of new information that would substantially alter conclusions and insufficient time to implement activities that may affect the conclusions of the reevaluation. If the reevaluation indicates that modifications are needed to the WMP, the Permittees shall propose a schedule for amending the WMP subject to the approval of the Executive Officer. The WMP shall be amended according to the approved schedule.

Response: The reevaluation considers new information, information that was previously unknown, and the degrees of progress in implementation. The purpose of the reevaluation is not limited to determining whether completed structural BMPs have produced measurable improvements in receiving water quality. The RAA supports the WMP's overall implementation strategy and relies on assumptions and information that may change substantially during implementation. The reevaluation can also be waived by the Executive Officer where circumstances provided by the commenter occur, where little relevant information has changed.

The Los Angeles permit provisions cited by the commenter require reporting on the adaptive management process in conjunction with the ROWD, generally every five years. In contrast, the Tentative Order does not assign the same five-year reporting schedule to its adaptive management process. That requirement is not directly equivalent to the RAA reevaluation required by section XII.C.11.

The Central Valley permit provision cited by the commenter requires a “comprehensive audit” of the RAA at least every ten years. In contrast, the Tentative Order requires a more limited reevaluation of the RAA's conclusions based on new information and implementation progress within 36 months. This initial reevaluation at 36 months is the only evaluation on a fixed, certain schedule. The Permit authorizes the Executive Officer to waive subsequent reevaluations where appropriate.

Reevaluating the conclusions of the RAA does not require re-running the selected model or repeating the RAA itself. The scope of the reevaluation should be proportional to the information and circumstances that have changed. This can be useful in circumstances where a sufficiently predictive model was not available, and the RAA relied on alternative methods, which may include assumptions and expected BMP performances. Within a 3-year period, Permittees may obtain new source identification information, obtain new information about BMP effectiveness, experience changes in project schedules or implementation priorities, and/or identify significant changes in available funding. The feasibility of, and degree of progress towards, Watershed Management Plan milestones may become clearer well before construction of major structural projects is complete. No changes have been made.

17.22. Comment: Modify Section XII.C.11 “Watershed Management Plan Approval and Implementation Process” to that the RAA re-evaluation timeframe is aligned with approaches implemented in other regions based on their direct experience with WMPs.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The following language was modified in the RTO:

“11. After a final WMP is approved, responsible Permittees must reevaluate the conclusions of Reasonable Assurance Analyses ~~biennially~~ based on new information, information that was previously unknown, and the degree of progress in implementing the WMP. The reevaluation schedule must be included as part of the WMP NOI. Reevaluations shall occur as soon as possible, but no more than thirty-six (36) months after initial WMP approval, and within thirty-six (36) months after each subsequent reevaluation thereafter. The Executive Officer is authorized to waive this requirement for ~~biennial~~ subsequent reevaluations based on factors such as the absence of new information that would substantially alter conclusions and insufficient time to implement activities that may affect the conclusions of the reevaluation. If the reevaluation

indicates that modifications are needed to the WMP, the Permittees shall propose a schedule for amending the WMP subject to the approval of the Executive Officer. The WMP shall be amended according to the approved schedule.”

Concern and Rationale

The Regional Water Board should reconsider the frequency that RAAs require re-evaluation based on existing requirements found in other regions by including revisions to the RAA in the adaptive management process which would coincide with the Report of Waste Discharge (ROWD).

Section XII.C.11 of the RTO requires Permittees who choose to enter into a WMP “*must reevaluate the conclusions of Reasonable Assurance Analyses based on new information, information that was previously unknown, and the degree of progress in implementing the WMP...Reevaluations shall occur as soon as possible, but no more than thirty-six (36) months after initial WMP approval...*”.

This requirement will result in a significant expenditure of resources without providing significant benefit for implementation.

The amount of data collected during a three-year period would not provide sufficient new data or information to alter an RAA analysis. Additionally, implementation of the WMP will take place over multiple years and any significant structural BMPs will take more than three years to construct. Any resulting water quality improvements will take time to observe in the monitoring data, after BMPs have been implemented. Finally, depending on the model selected for the RAA, reevaluation of the RAA can be a costly process. As a result, reviews of the RAA will involve significant effort, but are unlikely to result in any meaningful changes to the RAA conclusions.

In fact, the frequency proposed within the RTO is wholly inconsistent with other regions that have permits that allow for the development of WMPs (or similar document), require RAAs as part of the process, and have direct experience in using the WMPs – two examples are below:

1) Los Angeles Region MS4 Permit Order R4-2021-0105 – Evaluate need for revisions every 5 years

Outside of providing updates per the State Water Board Order and conformance with their MS4 Permit, the 2021 Los Angeles MS4 Permit requires Permittees to initiate an adaptive management process as part of their Report of Waste Discharge, or every five years.

Section IX.E.4 Reporting on the Adaptive Management Process Results

“The results of the adaptive management process shall be submitted with the Permittees’ ROWD. Permittees shall report the following information to the Los Angeles Water Board concurrently with the submittal of the ROWD (180 days before Order expiration date) required pursuant to Part II.B of Attachment D (Standard Provisions):
[excerpt]

d. Comparison of the effectiveness of the control measures to the results projected by the RAA;

e. Assessment of the appropriateness of the assumptions used in the RAA (e.g. nonstructural BMP implementation and corresponding reductions, rates of redevelopment, etc.);”

Attachment F – Fact Sheet [emphasis added] [pg F-247-248]

“H. Adaptive Management Process Permittees in each Watershed Management Program must implement an adaptive management process, which is a periodic, comprehensive program evaluation, including re-analysis of data and/or modeling, and modification process to determine progress toward achieving WQBELs and receiving water limitations and to adapt the Watershed Management Program to become more effective at achieving WQBELs and receiving water limitations. Permittees shall submit the results in conjunction with their ROWD....

...Note that in the 2012 Los Angeles County Permit and the 2014 City of Long Beach MS4 Permit, the adaptive management process was required to be implemented every 2 years and the results were submitted in conjunction with the Annual Report and the ROWD. Many Permittees in their ROWDs requested to decrease the adaptive management results submittal frequency. This is a reasonable request because requiring Permittees to implement the adaptive management process every 2 years is unnecessary given the multi-year nature of many projects and programs where the design, construction, and implementation often span more than 2 years....”

2) Central Valley Region MS4 Permit Order No. R5-2016-0040 – Evaluate the need for revisions every 10 years

The Central Valley’s 2016 Regional MS4 Permit requires their Permittees to revise their RAA at least once every 10 years.

Section V.C.10

“A comprehensive audit of the RAA is required at least once every 10 years. If the audit finds that the RAA is no longer current or accurate, then the Permittee shall revise the RAA and submit it to the Central Valley Water Board for approval consistent with the schedule in Part V.F.2, Steps 3.a through 4.d.”

Recommendations

Modify the RAA timeframe to coincide with the ROWD (similar to the LA Regional Permit)

11. After a final WMP is approved, responsible Permittees must reevaluate the conclusions of Reasonable Assurance Analyses based on new information, information that was previously unknown, and the degree of progress in implementing the WMP. The reevaluation schedule must be included as part of the WMP NOI. Reevaluations shall occur as soon as possible, but no more than five (5) years ~~thirty-six (36) months~~ after initial WMP approval, and within five (5) years ~~thirty-six (36) months~~ after each subsequent reevaluation thereafter. The Executive Officer is authorized to waive this requirement for subsequent reevaluations based on factors such as the absence of new information that would substantially alter conclusions and insufficient time to implement activities that may affect the conclusions of the reevaluation. If the reevaluation indicates that modifications are needed to the WMP, the Permittees shall propose a schedule for amending the WMP subject to the approval of the Executive Officer. The WMP shall be amended according to the approved schedule.

Response: See [Response 19.15.](#)

17.24. Comment: Modify Section XII.E “Time Schedule Order Applicability” to Align with Applicable Statutes

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The following language was modified in the RTO:

E.1.b. “The request for a TSO must be given to the Executive Officer for public review not less than 90 days prior to the final compliance deadline for the WQBEL.”

Concern and Rationale

Addition XII.E.1.b to the Revised TO should be deleted in its entirety, on the same basis that Permittees previously requested modifications to Section E.1, in comments submitted July 3, 2004 (in response to R8-2004-0001): The California Water Code does

not limit when a TSO can be requested or otherwise condition the issuance of TSOs based on deadlines in a permit. The Permit may not seek to modify state law. O.

Recommendation

Delete Section XII.E.1.b

~~The request for a TSO must be given to the Executive Officer for public review not less than 90 days prior to the final compliance deadline for the WQBEL.~~

Response: The proposed change has been made.

7.7. Comment: Section XII.E – Time Schedule Order Requirements Not Required by the California Water Code Should be Removed

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The following language was changed from the March 2024 TO:

Technical Comments

E.1.b. The request for a TSO must be given to the Executive Officer for public review not less than 90 days prior to the final compliance deadline for the WQBEL.

Comment

The California Water Code does not limit when a TSO can be requested. The Permittees should be allowed to request a TSO at any time. However, if the TSO request is not submitted with sufficient time for it to be adopted prior to the final compliance deadline, the TSO may not be in effect when the deadline is passed.

Recommendation

Delete Section XII.E.1.b

~~The request for a TSO must be given to the Executive Officer for public review not less than 90 days prior to the final compliance deadline for the WQBEL.~~

Response: The proposed change has been made.

19.17. Comment: Section XII.E – Time Schedule Order Requests Cannot Contain Time limits On Per the California Water Code and Should be Removed

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The following language was modified from the March 2024 TO:

E.1.b. The request for a TSO must be given to the Executive Officer for public review not less than 90 days prior to the final compliance deadline for the WQBEL.

The California Water Code does not limit when a TSO can be requested or that there is a time limit or that a TSO is conditional on a compliance deadline.⁸ In addition, the State Water Board's Water Quality Enforcement Policy is the controlling guidance document that must be followed by the Regional Water Board and does not contain any such limitations or interpretations of the Water Code.⁹ The Regional Board has no authority to impose a time limit or deadline on when a TSO can be requested. The Permittees are able to request a TSO at any time. We recognize that if the TSO request is not submitted with sufficient time for it to be adopted prior to the final compliance deadline, then the TSO may not be in effect when the deadline is passed.

Recommendation

Delete Section XII.E.1.b

~~*b. The request for a TSO must be given to the Executive Officer for public review not less than 90 days prior to the final compliance deadline for the WQBEL.*~~

Response: The proposed change has been made.

Category 14 – Inspection Programs

2.12. and 13.15. and 11.21 and 16.15 Comment: Construction Inspections

Municipal Inspections XIII.B.4.b.ii

ii. Verified that the onsite pollution controls are appropriate to control erosion and sediments for the phase of construction;

iii. Identified through visual observation of any non-stormwater discharges, and associated pollutant sources;

iv. Verified that pollution controls have been properly implemented and maintained at the site;.

Use of the word “verified” is not legally appropriate for these tasks. The word “observe” is appropriate. Verify implies the inspector is approving the use and implementation. That is not within the jurisdictional ordinances. Verification is for the QSD/QSP. We request this change in the text.

Response: The proposed change has been made.

21.41. Comment: XIII.B.4.b.i Municipal Inspections

“Verified that the site has obtained coverage under the Construction General Permit, if applicable, during the initial inspection and if a change in ownership occurs;”

It is not the permittee’s responsibility to “verify” other ordinances, such as the Construction General Permit (CGP). They can only, “observe” that there is coverage.

Recommendation: Please change the word, “Verify”, to the word “Observe”.

Response: The proposed change has been made.

Category 15– Appendices, Excluding Appendix 11 and Appendix 14

18.5. Comment: Exemption from TMDL WLA Violations Caused by Authorized Non-Stormwater Discharges is Nonsensical and Illegal

The 2026 Permit prohibits non-stormwater discharges to and from the MS4 [as required by Section 402(p)], 2026 Permit at p. 24, with the exception of those listed at pp. 25-26. Non-stormwater discharges in Table 3 are authorized, “unless such discharges are identified by the Permittee(s) or the Executive Officer as a significant source of pollutants.” Id.

Despite the limitation on Table 3 non-stormwater discharges, every appendix to the 2026 Permit addressing TMDL compliance allows a discharger to exempt itself from sampling documenting violations of WQBELs by demonstrating that authorized non-stormwater discharges cause the violation. Cf. 2026 Permit at p. 105-106. Coastkeeper submits that an authorized non-stormwater discharge that causes a violation of a WQBEL is by definition “a significant source of pollutants.” As such, none of the non-

stormwater discharges listed in Table 3 are authorized where the discharger demonstrates WQBEL violations caused by the discharge as required the compliance determinations in the appendices. In any event, the 2026 Permit provides no legal basis for authorizing any discharges causing violations of WQBELs or WQS.

Coastkeeper requests that staff remove compliance determination permit terms IIIC, at pp. 105 and 109; IIB, at p. 114; IVC, at pp.119 and 124; VIIC, at p.135; IVE, at p.143; IIIC, at p. 149; IVC, at p.156; IIC, at p. 176; and IIC, at p.181.

Response: This compliance demonstration option does not exempt authorized non-stormwater discharges from compliance with water quality standards. Instead, it provides a mechanism for a Permittee to demonstrate that its MS4 discharge did not cause or contribute to a specific WQBEL exceedance, in the case of authorized or exempt discharges, or relieves the Permittee of liability for previously conditionally exempt discharges that the Permittee was not required to prohibit or control under the Tentative Order. Once a conditionally exempt discharge is identified as a significant source and loses its exemption, the Permittee becomes fully responsible for any future exceedances.

Authorized non-stormwater discharges include discharges that are subject to separate regulatory programs, including other NPDES permits, or Waste Discharge Requirements for irrigated agriculture. Conditionally exempt non-stormwater discharges listed in Table 3 are authorized only because they are presumed not to be significant sources of pollutants when the conditions of the exemption are satisfied. If the Executive Officer or a permittee identifies a conditionally exempt discharge as a significant source of pollutants, section IV.A.2.e provides that the Executive Officer may use evidence to remove types of discharges from Table 3. If a conditionally exempt discharge is the cause of a WQBEL exceedance, that provides a basis for the Executive Officer to remove the conditional exemption. In addition, the Executive Officer may pursue enforcement on the source of the exceedances according to their NPDES permit or Waste Discharge Requirements. It would be inappropriate to hold a Permittee responsible for failing to prohibit or control a discharge that the Order expressly authorized or conditionally exempted at the time of the sampling event. This does not mean that there is no method for the Santa Ana Water Board to address the exceedance; the exceedance can be remedied through other regulatory measures, not just the Tentative Order. No changes have been made.

3.6. and 9.6. Comment: The Lake Elsinore/Canyon Lake Tmdl Provisions Require Clear, Individualized, And Feasible Implementation Requirement

Appendix 1 identifies [Canyon Lake/Hemet] as subject to the Lake Elsinore/Canyon Lake nutrient TMDLs, and Appendix 12 contains associated water-quality-based effluent limitations and implementation requirements.

The City does not, through this letter, challenge the underlying validity of an adopted TMDL to the extent the Regional Board has excluded that issue from this proceeding. The City expressly challenges whether and how the Tentative Order implements the TMDL as to [Canyon Lake/Hemet].

The final Permit must clearly identify: (i) the particular waste-load allocation assigned to discharges from [Canyon Lake/Hemet]'s MS4; (ii) the factual and technical basis for that allocation; (iii) the method by which Canyon Lake's compliance will be measured; (iv) the monitoring location or locations attributable to [Canyon Lake/Hemet]; (v) how upstream, downstream, natural, internal lake, agricultural, atmospheric, septic, groundwater, and other non-[Canyon Lake/Hemet] loads will be accounted for; (vi) how long-term averages, hydrologic variability, drought, extraordinary storms, and changes in lake management will be treated; (vii) the credit [Canyon Lake/Hemet] will receive for existing programs, regional projects, source controls, and prior expenditures; (viii) the process for revising allocations when underlying assumptions prove inaccurate; (ix) the individual financial responsibility of [Canyon Lake/Hemet] as distinguished from collective watershed obligations; and (x) a compliance schedule that is technically and financially achievable.

A collective MS4 load limit cannot lawfully be converted into undifferentiated liability against each participating municipality. Regional cooperation may be desirable, but it cannot substitute for an enforceable and rational allocation of responsibility.

The Permit should include an express right to obtain credits, offsets, alternative compliance measures, and revised allocations when monitoring or scientific information demonstrates that [Canyon Lake/Hemet]'s discharge is not causing or materially contributing to the condition addressed by a limitation. It should also provide that participation in a regional program does not constitute an admission regarding causation, allocation, or legal responsibility.

Response: The information requested by the commenter is found in the Basin Plan amendments and associated TMDL documents. An MS4 permit implements the Basin Plan. An MS4 permit does not establish or revise the underlying TMDL analysis, waste load allocations, or other technical assumptions that were already decided through the Basin Plan amendment process. Where the commenter requests revision of waste load allocations, allocation methodology,

or other elements of the adopted Basin Plan amendment, those matters are outside the scope of this proceeding.

Where the Tentative Order provides implementation flexibility, including with compliance demonstrations, monitoring plan submittals, alternative compliance through Watershed Management Plans, and credit trading programs as authorized in Appendix 12, those provisions are described in the Tentative Order.

Tentative Order section VII.B.3 provides that Permittees are responsible only for discharges from the MS4s they own or operate. Where multiple MS4 discharges are commingled, compliance is evaluated at the applicable receiving water or discharge location because individual discharges cannot always be physically separated prior to entering the receiving water. Section VII.B.4 and the applicable TMDL appendices allow an individual Permittee to demonstrate that its discharge did not cause or contribute to an exceedance. Accordingly, the Order does not presume that every Permittee is individually responsible for every exceedance. No changes have been made.

19.18. Comment: Appendix 12, Section IV.F – Ensure the deadline for submitting an offset program is consistent with the Basin Plan Amendment to Revise the Lake Elsinore/Canyon Lake TMDLs.

Appendix 12, Section IV.F describes the requirements for Offset Program(s) under the Lake Elsinore/Canyon Lake TMDLs, which currently include the Lake Elsinore Aeration and Mixing System (LEAMS) in Lake Elsinore and alum application in Canyon Lake. Section IV.F contains the following language:

"Within one year from the effective date of this Order, plans for these offset programs or alternative programs must be submitted for review and approval by the Executive Officer."

This timeline is inconsistent with Table 12.4 in Appendix 12, which describes the tasks that Permittees must implement. Task 2 includes reviewing and reauthorizing existing in-lake projects for Canyon Lake and/or approve new in-lake projects, with a schedule of *"within one (1) year of the effective date of the 2025 Revised TMDLs."* Similarly, Task 3 is to evaluate in-lake project options to improve water quality in Lake Elsinore, which also provides a timeline of within one (1) year of the effective date of the Revised TMDLs.

Recommendation

Keep the timelines consistent for when offset programs are due, which is within one (1) year of the effective date of the Revised TMDLs.

Response: This was an oversight and has been corrected.

17.26. Comment: Modify Section I. “WQBELs for Nitrogen, Total” so that the Winter Effluent Limitation language is consistent with the Basin Plan regarding where flows should be measured.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Winter Effluent Limitation language (Section I.C) was modified in the RTO as follows [emphasis added]:

“3. Flows must be measured in San Diego Creek at Culver Drive.”

Concern and Rationale

Basin Plan Table 6-1b: Seasonal Load Allocations of Total Nitrogen for Newport Bay Watershed includes the following footnote #7 for the 2012 Winter Allocation for Urban Runoff (55,442 lbs/season TN) [emphasis added]:

“Total nitrogen winter loading limit applies between October 1 and March 31 when the mean daily flow rate at San Diego Creek at Campus Drive is below 50 cubic feet per second (cfs), and when the mean daily flow rate in San Diego Creek at Campus Drive is above 50 cubic feet per second (cfs), but not as the result of precipitation.”

In the July 2024 comment letter, the County requested that a sentence be added to Section 1.C (new item #3)

“Flows must be measured in San Diego Creek at Campus Drive”.

In the RTC 35.197 the Water Board stated “The requested changes have been made”. The County realizes that this is likely a typo that needs to be corrected.

Recommendation

Modify the sentence so that the correct location is included:

3. Flows must be measured in San Diego Creek at ~~Culver Drive~~ Campus Drive.

Response: The proposed correction has been made.

17.27. Comment: Modify Table 2.1 Summary of Nutrients Effluent Limitations for San Diego Creek and Newport Bay Watershed so that the Total Nitrogen Allocation time period is consistent with the Basin Plan.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The column header for the lbs/day of Total Nitrogen value in Table 2.1 was modified in the RTO as follows:

“lbs/day for San Diego Creek (monthly average).”

Concern and Rationale

In the July 2024 comment letter, the County requested that the header in Table 2.1 be modified to Santa Ana Region-wide Phase I Municipal

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explicitly specify that the averaging period is annual.

In the RTC 35.200 the Water Board stated, “Annual, average lbs/day is incomplete, not sufficiently instructive and may result in misinterpretation for a reader who may regard its appearance in Table 2.1 as fully instructive. Table 2.1 is intended as a summary and intentionally does not fully instruct the reader. The full set of requirements controls over the summary table. No changes have been made.”

The County respectfully disagrees and submits that it is important that the summary table be consistent with the Basin Plan as well as Section I.B.

The Basin Plan distinguishes between the monthly average loading target applicable to Newport Bay (Table 6-1b) and the annual Total Nitrogen waste load allocation applicable to urban runoff in San Diego Creek Reach 2 during non-storm conditions (Table 6-1d). Per Table 6-1b Footnotes 6 and 10, the monthly average loading target applies to Newport Bay as the receiving water and should not be attributed to urban runoff, which is represented as an estimated seasonal annual average. For Total Nitrogen, the column header “lbs/day for San Diego Creek (monthly average)” is not consistent with the Basin Plan or Section I.B.

Basin Plan Table 6-1d: Annual Total Nitrogen Load Allocations for San Diego Creek, Reach 2 During Non-Storm Conditions clearly identifies that the Total Nitrogen Waste Load Allocation for Urban Runoff:

- a) Is annual (as specified in the table title); and
- b) Applies during non-storm conditions (as specified in the table title and footnote vi.)

In addition, the Revised TO reflects these two conditions in Section I.B.1 and I.B.3.

As such, the header for this column must be updated so that it provides the necessary information so that the value is assessed as intended.

Recommendation

Modify the header in Table 2.1 for Total Nitrogen so that the two applicable conditions are specified:

lbs/day for San Diego Creek ~~(monthly average)~~ (annual average) during Non-Storm Conditions

Response: The header above the 5.5 Total Nitrogen allocation has been replaced, consistent with the title of Basin Plan Chapter 6, Table 6-1d.

17.28. Comment: Modify Table 2.1 Summary of Nutrients Effluent Limitations for San Diego Creek and Newport Bay Watershed so that the language is consistent with the Basin Plan and the corresponding seasons.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The column header for the Total Nitrogen Summer and Winter allocations in Table 2.1 were modified in the RTO as follows:

“Summer Allocation for Newport Bay Watershed lbs/season Oct 1 – Mar 31” and

“Winter Allocation for Newport Bay Watershed lbs/season Apr 1 – Sep 30”

Concern and Rationale

For Total Nitrogen, the column headers “Summer Allocation for Newport Bay Watershed...” and “Winter Allocation for Newport Bay Watershed...” have the wrong timeframes specified for the seasons and are not consistent with the Basin Plan.

Basin Plan Table 6-1b: Seasonal Load Allocations of Total Nitrogen for Newport Bay Watershed specifies the following timeframes for each season:

a) Summer Allocation (April – September); and

b) Winter Allocation (Oct – Mar)

As such, the headers for these columns should be updated to reflect the correct timeframe for each season. The County realizes that this is likely a typo that needs to be corrected.

Recommendation

Modify the headers for Total Nitrogen so that the correct seasons are specified:

Summer Allocation for Newport Bay Watershed lbs/season (April 1 – Sep 30) ~~(Oct 1 – Mar 31)~~

Winter Allocation for Newport Bay Watershed lbs/season (Oct 1 – Mar 31) ~~(April 1 – Sep 30)~~

Response: The proposed correction has been made.

17.29. Comment: Modify Section I “WQBELs for Fecal Coliform for REC1” to clarify inconsistencies in the assessment methods created by the new language.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The language in Section I. WQBELs for Fecal Coliform for REC-1 was modified in the RTO as follows:

“I. WQBELs for Fecal Coliform for REC1

A. The geometric mean concentration of fecal coliform at representative locations in Newport Bay must not exceed 200 organisms/100 milliliters (mL).

B. The geometric mean concentration of fecal coliform in Newport Bay must be calculated using a minimum of 5 representative samples of runoff taken per calendar month. The geometric mean concentration must be calculated for each monitored location.”

Concern and Rationale

The added language requires the geometric mean to be calculated for each monitored location and implies that compliance must be determined at each monitoring location.

The RTC 35.521 states that the WLAs for REC1 in the Basin Plan requires the calculation of the geometric mean at each monitoring location. However, the County could not find any location in the Basin Plan that specifies that geometric means must be calculated at each monitoring location. The Basin Plan also does not specify the method for evaluating attainment of the WLAs. Instead, the Basin Plan states the Permittees “shall propose a plan for routine monitoring to determine compliance with the bacterial quality objectives in the Bay” and an “annual report summarizing the data collected for the year and evaluating compliance with the water quality objectives shall be submitted.” However, neither of these provisions state that the method for determining compliance is based on evaluations at each individual monitoring location. It is consistent with the Basin Plan to allow the Permittees to propose the method for assessing compliance in the PMRP, as stated in Section III.

Additionally, evaluating compliance at each individual monitoring location is inconsistent with methods used to evaluate impairments under the State’s Listing Policy and with the methods for assessing compliance with the Fecal Coliform Time Schedule Order. The State Listing Policy consolidates the monitoring locations in Upper and Lower Newport Bay. Therefore, the waterbody can be delisted even if some exceedances occur at an individual location. Therefore, evaluating the geometric mean at each individual monitoring location could result in exceedances of the permit even if the waterbody is no longer impaired.

It is not necessary to include language about where to calculate geometric means in the WQBEL section because the PMRP is required to include the methods for evaluating data and determining compliance. Section III. Compliance Determination specifies that the methods for determining compliance should be included in the PMRP and approved by the Executive Officer. The PMRP approval process provides the mechanism to discuss how and where to calculate geometric means to provide the Regional Water Board staff the ability to review the data and evaluate compliance with the WQBELs. Including language in the WQBELs section of the permit about the calculation process for the geometric means is not necessary and could create confusion and potential conflicts with Section III requirements. The County requests that the language requiring the geometric mean to be calculated at each monitored location be removed and the methods for evaluating compliance be determined through the PMRP process.

Recommendation

Remove the sentence referencing the calculation of geometric means in I.B

B. The geometric mean concentration of fecal coliform in Newport Bay must be calculated using a minimum of 5 representative samples of runoff taken per calendar month. The geometric mean concentration must be calculated for each monitored location.

Response: While the Basin Plan does not specify that the geometric mean must be calculated at each monitoring location, it also does not authorize pooling all monitoring locations together. The absence of an express calculation method in the Basin Plan does not preclude the Tentative Order from specifying an appropriate method for implementing the WQBEL. The purpose of the added sentence is to clarify how compliance with the WQBEL is calculated and avoid masking hot spots in waterbodies at locations where human health risk is elevated and the waste load allocation is exceeded.

17.30. Comment: Modify Section III. “Compliance Determination” to remove or modify the new language added to compliance Option F to provide more flexibility to use advancing science.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The compliance pathway III.F was modified as follows:

“F. Demonstrate that an alternative indicator (e.g., enterococci) in the Permittee’s ~~MS4 discharge~~ receiving water is below levels that are equivalent to a risk to human health less than 32 illnesses/1000 people. The use of an alternative indicator must incorporate the applicable indicator, geometric means, statistical threshold values, averaging period, and exceedance frequency as in section III.E of the Bacteria Provisions. This compliance method only applies to the REC1 WQBELs in section I of this Appendix 3.”

Concern and Rationale

The County appreciates the inclusion of two risk-based options for demonstrating compliance with the Fecal Coliform TMDL WQBELs. Natural sources of bacteria pose a lesser risk of illness than human sources of bacteria. Therefore, exceedances that are primarily caused by less risky sources of bacteria are unlikely to be impairing beneficial uses. Providing options to demonstrate compliance through measurements of risk, rather than solely fecal coliform concentrations, addresses this concern by focusing implementation and demonstration of compliance on the sources that pose the most risk to human health.

In the RTO, language was added to Option F that requires an alternative indicator to be consistent with the Statewide Bacteria Provisions. This mirrors the approach being used currently for Provision 23 through the existing TSO. While the County believes the Provision 23 approach is effectively being implemented and following compliance Option F, this language effectively eliminates the flexibility provided by the previous language that would allow Permittees to provide documentation that another alternative indicator provides the same level of risk protection. Science is rapidly evolving and alternative indicators and associated risk thresholds for those indicators are under development. The language also limits the ability to use new, more rapid methods for measuring indicator bacteria, such as ddPCR, that would require alternative thresholds for evaluation. The language in compliance Option F should remain flexible to allow for the use of the best available science and understanding of the risk to human health in the future.

Recommendation

Remove the sentence referencing the Statewide Bacteria Provisions from compliance Option F

F. Demonstrate that an alternative indicator (e.g., enterococci) in the Permittee's receiving water is below levels that are equivalent to a risk to human health less than 32 illnesses/1000 people. The use of an alternative indicator must incorporate the applicable indicator, geometric means, statistical threshold values, averaging period, and exceedance frequency as in section III.E of the Bacteria Provisions. This compliance method only applies to the REC1 WQBELs in section I of this Appendix 3.

Response: The proposed change has been made.

17.32. Comment: Modify several sections of Appendix 4 to align with and reflect the BMP-based approach for the WQBELs.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

In the July 2024 comment letter, the County requested that Appendix 4 be removed since the TMDL incorporates a nonpoint source approach for managing sediment. In the RTC 35.221, the Board stated (in part):

"The WQBELs for sediment in Appendix 4 have been modified to include BMP-based WQBELs to ensure the receiving waters continue to meet TMDL targets and allocations. WQBELs may consist of pollution controls and best management practices..."

In the RTO, the Fact Sheet was updated to state that the Sediment TMDL includes BMP-based WQBELs (in part):

~~“The WLAs from requirements implementing the Nutrient-Sediment TMDL are expressed as numeric BMP-based WQBELs that and are effective on the effective date of the Order. The compliance deadline of April 17, 2009 (10 years from the date of USEPA’s approval of the sediment TMDL), specified in the Basin Plan, has passed. A BMP-based compliance option~~ The BMPs are based on tasks that are assigned to the Permittees in the TMDL’s implementation plan. The BMP-based approach is appropriate for this TMDL since actions by Permittees and other stakeholders have resulted in attainment of the TMDLs, presumably through non-point source controls, land use changes and climate change-driven reductions in sediment loading.¹⁰”

Concern and Rationale

Although the County still submits that the Sediment TMDL should be removed from the RTO, the County appreciates that the Regional Water Board modified Appendix 4 to reflect that the TMDL incorporates a BMP-based approach and that the WQBELs are BMP-based. However, there are several places where the language in Appendix 4 needs to be revised to fully incorporate and convey the BMP-based approach. Each of these areas are described below.

Introduction

In the RTO, the Introduction states:

“The following water quality-based effluent limitations (WQBELs) apply to discharges of runoff from MS4s owned or operated by Permittees discharging into Upper Newport Bay as indicated in Appendix 1. The WQBELs in this Appendix are based on and consistent with the assumptions and requirements of the Sediment TMDLs for Upper Newport Bay/San Diego Creek Watershed. The compliance deadline of April 16, 2009 (10 years from the date of sediment TMDL approval by USEPA) specified in the Basin Plan has passed.”

The transition from the numeric WQBELs to the BMP-based WQBELs is significant enough that the introduction should recognize this up front so that the approach is clear and consistent with the RTC and Fact Sheet.

Recommendation

Modify the Introduction as follows:

“The following water quality-based effluent limitations (WQBELs) apply to discharges of runoff from MS4s owned or operated by Permittees discharging into Upper Newport Bay as indicated in Appendix 1. The WQBELs in this Appendix are BMP-based and are based on and consistent with the assumptions and requirements of the Sediment TMDLs for Upper Newport Bay/San Diego Creek Watershed...”

Response: The requested change has been made.

17.32. Comment: Section I.A “WQBELs for Sediment”

In the RTO, Section I.A removed two of the numeric WQBELs, but kept a numeric target under the header “WQBELs for Sediment”. Despite the RTC and Fact Sheet acknowledging that Appendix 4 incorporates BMP-based WQBELs, within the RTO, Section I still includes numeric WQBELs and the Compliance Demonstration section includes pathways that directly apply to numeric WQBELs:

I. “WQBELs for Sediment

A. Permittees must achieve all the following:

1. Sediment in discharges from the Permittees’ MS4s must not alter the distribution of habitat types in the 700-acre Upper Newport Bay Ecological Reserve identified in Table 4.1 below by more than 1 percent.

Table 4.1: Baseline Distribution of Habitat Types in the Upper Newport Bay Ecological Reserve

Habitat Type	Acres	Permissible Change (acres)
Marine aquatic	210	2.1
Mudflat	214	2.14
Salt marsh	277	2.77
Riparian	31	0.31

2. A minimum depth of 7 feet below mean sea level shall be maintained in the Unit 1 and 2 Sediment Basins in Upper Newport Bay.
3. All in-channel and foothill sediment control basins throughout the drainages in the watershed shall be maintained to have at least 50 percent of design capacity available prior to November 15 of each year. The Permittees shall submit a report by November 15 of each year certifying whether the sediment

basins in the watershed have at least 50 percent capacity.”

The use of this sediment target as a numeric WQBEL that has to be met through one of the compliance pathways is not consistent with either the approach for these values in the Sediment TMDL or consistent with how BMP-based WQBELs are expressed.

Further, the fundamental concern is that the Regional Board is referring to the WQBELs as BMP-based, but is actually incorporating numeric WQBELs with the current structure, naming, and compliance pathways in Appendix 4.

The Sediment TMDL in the Basin Plan Established Habitat Values as a Target to Measure the Success of the TMDL for all sources, not as an Urban Runoff Waste Load Allocation. USEPA defines a TMDL target as “a quantitative value used to measure whether or not the applicable water quality standard is attained”¹¹.

The Basin Plan [pgs 6-8 through 6-9] describes the sediment habitat numeric target for the sediment TMDL (in part, emphasis added):

“The Total Maximum Daily Load for sediment in the Newport Bay/San Diego Creek Watershed includes the following quantifiable targets and Load Allocations that shall be implemented by the Cities (Irvine, Tustin, Lake Forest, Costa Mesa, Santa Ana and Newport Beach) and County responsible for the sediment discharged into stormwater and flood control conveyances under their control which discharge into San Diego Creek and/or Newport Bay.

1. Sediment control measures shall be implemented and maintained to ensure that sediment discharges into Newport Bay will not significantly change the existing acreages of aquatic, wildlife, and rare and endangered species habitat, and to maintain the navigational and non-contact recreational beneficial uses of the bay...this quantifiable target will be used as the primary measurement of the success of the TMDL.”

Thus, the habitat types and sediment basin depths are designed and clearly articulated in the TMDL as targets, not load allocations or waste load allocations for MS4 discharges that would be incorporated into an NPDES permit as a WQBEL. Rather, these targets would be met through the actions required of all the responsible parties named in the TMDL.

Recommendation

Modify Section I.A as follows:

- I. ~~WQBELs for~~ Sediment Targets

A. Permittees must achieve all the following:

1. Sediment in discharges from the Permittees' MS4s must not alter the distribution of habitat types in the 700-acre Upper Newport Bay Ecological Reserve identified in Table 4.1 below by more than 1 percent.

Table 4.1: Baseline Distribution of Habitat Types in the Upper Newport Bay Ecological Reserve

Habitat Type	Acres	Permissible Change (acres)
Marine aquatic	210	2.1
Mudflat	214	2.14
Salt marsh	277	2.77
Riparian	31	0.31

2. A minimum depth of 7 feet below mean sea level shall be maintained in the Unit 1 and 2 Sediment Basins in Upper Newport Bay.
3. All in-channel and foothill sediment control basins throughout the drainages in the watershed shall be maintained to have at least 50 percent of design capacity available prior to November 15 of each year. The Permittees shall submit a report by November 15 of each year certifying whether the sediment basins in the watershed have at least 50 percent capacity.

Response: If a target or other quantifiable objective is used as an effluent limitation, it is an effluent limitation, in this case, it is a water quality-based effluent limitation. A quantifiable objective can be a BMP-based WQBEL as the commenter is aware when they cite the November 26, 2014 USEPA Memo elsewhere and in 17.32 below. A BMP-based WQBEL can have measurable elements. The values in Table 4.1 are those measurable elements.

17.32. Comment: Section I.B "WQBELs for Sediment"

USEPA Supports the use of BMP-based WQBELs as long as they have Clear, Specific, and Measurable Elements. In the November 26, 2014 USEPA Memo, Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Waste load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs' (pg 6), USEPA stated (emphasis added):

"The permitting authority's decision as to how to express the WQBEL(s), either as numeric effluent limitations or as BMPs, with clear, specific, and measurable elements, should be based on an analysis of the specific facts and circumstances surrounding the permit, and/or the underlying WLA, including the

nature of the stormwater discharge, available data, modeling results, and other relevant information Permits should also include milestones or other mechanisms where needed to ensure that the progress of implementing BMPs can be tracked.”

In the RTO, Section I.B includes actions that must be taken to comply with the WQBELs in Section I.A. However, as recommended below, these actions should be re-named and identified as the BMP-based WQBELs that would assist in achieving the Sediment Target.

In fact, the actions below meet USEPA’s guidance that BMP-based WQBELs contain clear, specific, and measurable elements, especially when used to holistically assess if the targets are being met.

B. “Permittees may comply with the above WQBELs for Sediment as follows:

1. Conduct bathymetric and vegetation surveys of Newport Bay. This information will be used to evaluate compliance with the acreage and depth targets.
2. Conduct topographic and vegetation surveys of Upper Newport Bay. If monitoring for total sediment load in San Diego Creek at Jamboree Boulevard and Campus Drive (Site ID: SDMF05) shows that more than 62,500 tons of sediment were discharged to the Bay, the topographic and vegetation surveys shall be conducted to determine the amount of sediment deposition in the two in-Bay basins and the other marine aquatic habitat areas and to determine changes in the areal extent of the existing aquatic wildlife and endangered species habitat areas.
3. Demonstration of compliance with the WQBELs for Sediment shall occur according to an approved PMRP (see MRP 2026-00XX). Demonstrations shall be consistent with the Monitoring and Reporting Program No. 99-74 (As amended on February 14, 2014, June 6, 2019, and August 20, 2020). Changes to the program may be approved by the Executive Officer after a 30-day public comment period.
4. If monitoring data indicates that habitat acreages have changed by more than 1 percent due to sediment deposition as indicated in section I.A.1, the minimum depth of 7 feet below mean sea level is not maintained in the Unit 1 and 2 sediment basins as indicated in section I.A.2, or the sediment basin capacity is less than 50 percent prior to November 15 as indicated in section I.A.3, the Permittees shall implement corrective actions, including sediment removal and/or additional sediment control measures as appropriate, to meet the WQBELs. The WQBELs shall be used to evaluate compliance actions and not as numeric WQBELs.”

As such, instead of defining these actions as a way to comply with the numeric WQBELs in Section I.A, the language should identify these actions as THE BMP-based WQBELs.

Recommendation: From a regulatory implementation perspective, the commenter's requested changes have little effect. But they do improve the reader's comprehension. Modifications have been made to align with the commenter's approach.

Modify Section I.B as follows to add the header (only the first portion of the section is shown, the section would include all of items 1-4):

II. WQBELs for Sediment

~~B. Permittees may comply with the above WQBELs for Sediment as follows:~~

- I. Conduct bathymetric and vegetation surveys of Newport Bay. This information will be used to evaluate compliance with the acreage and depth targets...

Section II "Compliance Determination"

In the RTO, Section II includes several compliance pathways that may be used by the Permittees to demonstrate compliance with the TMDL. However, several of the pathways should be revised so that they are consistent with the approach that would be used with a BMP-based WQBEL.

Recommendation

Modify Section II as follows:

II. Compliance Determination

- A. Demonstrate that the actions described in Section II. WQBELs for Sediment have been completed in a timely manner.
- B. Demonstrate that ~~there are no exceedances of the WQBELs the sediment targets~~ in section I of Appendix 4 ~~in the Permittee's MS4 discharge are being met~~ at the compliance point(s) identified in the PMRP.
- C. Demonstrate that the Permittee's MS4 discharge did not cause or contribute to an exceedance of the sediment targets WQBELs in section I of Appendix 4, because the exceedance is the result of an authorized or exempt non-stormwater discharge specified in section IV.A.2 of the Order during a specific sampling event. The water quality characteristics must be based on the source specific water quality monitoring data from the authorized or conditionally exempt essential non-stormwater discharge or other relevant information documenting the characteristics of the specific non-stormwater discharge.
- D. ~~Demonstrate attainment of the WQBELs according to section II of Appendix 4.~~
- E. Demonstrate that all non-stormwater and all stormwater runoff up to and including the volume equivalent to the 85th percentile, 24-hour storm event is retained for the drainage area tributary to the applicable receiving waters. The runoff retention must occur according to an approved Watershed Management Plan under section XII of the Order and include ongoing monitoring and adaptive management requirements.

F. Demonstrate that the Permittees have reduced the target annual average total sediment load in the watershed to 125,000 tons per year, thereby reducing the sediment load to Newport Bay to the combined Waste Load Allocations and Load Allocations (Total TMDL Allocations) of 62,500 tons per year and limiting sediment deposition in the drainages to approximately 62,500 tons per year. The reduction shall be calculated as 10 year running average amount of suspended solids measured in San Diego Creek at Jamboree Boulevard and Campus Drive.

Response: Modifications have been made to better indicate the relationships between the requirements in section II to the requirements in section I. These modifications continue to identify the requirements in section I as WQBELs and the requirements in section II as means for demonstrating compliance with them. Some of the commenter's requested changes have been made accordingly.

17.33. Comment: Modify Section I "WQBELs for Sediment" so that the provisions are consistent with the operative sediment TMDL's implementation plan, Monitoring and Reporting Program No. 99-74 and Order R8-2009-0030.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

In the RTO, the following language was added to I.B.3:

"Demonstration of compliance with the WQBELs for Sediment shall occur according to an approve PMRP (see MRP 2026-00XX). Demonstrations shall be consistent with the Monitoring and Reporting Program No. 99-74 (As amended on February 14, 2014, June 6, 2019, and August 20, 2020). Changes to the program may be approved by the Executive Officer after a 30-day public comment period.

Concern and Rationale

Appendix 4, Section I.B.3 requires that compliance demonstrations "be consistent with the Monitoring and Reporting Program No. 99-74 (As amended on February 14, 2014, June 6, 2019, and August 20, 2020)." However, within the RTO, Sections 1.B.1, 1.B.2, 1.B.3 and 1.C. have naming, locations, triggers, and dates inconsistent with the MRP 99-74 and Order R8-2009-0030 as follows:

- Section I.B.1 omits the word Upper from Newport Bay.

- Section I.B.2 changes bathymetric wording from I.B.1 to topographic, creating confusion. In the MRP, the wording is topographic/bathymetric.
- Section I.B.2 Compliance determination for sediment discharge is based on monitoring conducted at San Diego Creek at Campus Drive, not Jamboree Boulevard (MRP and Order R8-2009-0030).
- Section I.B.2 The San Diego Creek at Campus Drive monitoring station has never been called “Site ID: SDMF05” in any Sediment TMDL monitoring or reporting document.
- Section I.B.2 calls for topographic and vegetation surveys of Upper Newport Bay if monitoring “shows that more than 62,500 tons of sediment were discharged to the Bay.” The 62,500 target is the TMDL’s 10-yr running average target load, not an exceedance threshold, and would possibly trigger full surveys nearly every year. MRP 99-74, Sections D.1–D.2 and Basin Plan Section I.B.3 set the actual trigger at more than 250,000 tons discharged in a single year.
- Section I.B.3 cites the MRP as last “amended on February 14, 2014, June 6, 2019, and August 20, 2020.” The correct date of the most recent amendment is August 24, 2020.
- Section I.C cites submitting an annual report “by December 31 of each year.” The annual report submittal date is February 27 of each year (MRP and Order R8-2009-0030).

Recommendation

- Remove I.B.1 and I.B.2 entirely as I.B.3 is sufficient and adequately captures all established monitoring timelines via referencing MRP 99-74.
- Alternatively, correct Sections I.B.1-2 and I.C to be consistent with the MRP as noted below:

Modify Section I.B as follows:

1. Conduct bathymetric and vegetation surveys of Upper Newport Bay. This information will be used to evaluate compliance with the acreage and depth targets.
2. Conduct topographic/bathymetric and vegetation surveys of Upper Newport Bay. If monitoring for total sediment load in San Diego Creek at ~~Jamboree Boulevard and~~ Campus Drive (~~Site ID: SDMF05~~) shows that more than ~~62,500~~ 250,000 tons of sediment were discharged to the Bay in a single year, the topographic/bathymetric and vegetation surveys shall be conducted to determine the amount of sediment deposition

in the two in-Bay basins and the other marine aquatic habitat areas and to determine changes in the areal extent of the existing aquatic wildlife and endangered species habitat areas.

3. Demonstration of compliance with the WQBELs for Sediment shall occur according to an approved PMRP (see MRP 2026-00XX). Demonstrations shall be consistent with the Monitoring and Reporting Program No. 99-74 (As amended on February 14, 2014, June 6, 2019, and August ~~24~~ 20, 2020). Changes to the program may be approved by the Executive Officer after a 30-day public comment period.

Modify Section I.C as follows

Submit an annual report via SMARTS by ~~December 31~~ February 27 of each year providing the monitoring data and information collected by the Permittees, including the flow and suspended solids monitoring data, the scour studies, the bathymetric and vegetation surveys, (and any additional information collected). The monitoring shall be completed prior to July 1 of each year, and this information shall be used to determine the maintenance requirements of all sediment basins in the watershed.

Response: The requested editorial corrections to place names and changes to dates have been made. The change from 62,500 tons of sediment to 250,000 tons requires explanation. The 250,000 tons per year is a condition that the TMDL explicitly seeks to avoid on a 10-year average. The desired condition is to reduce this average load by 50%, to 125,000 tons. The desired condition of 125,000 tons per year is expected to maintain desired habitat types. So, initiating monitoring when a single year meets this condition should not be necessary. The requested threshold is appropriate because, due to variability, a single year that transports 250,000 tons of total sediment does not necessarily mean that the 125,000 tons average will be exceeded over a 10-year averaging period. But it does indicate that there is risk that it will. The requested change has been made.

17.34. Comment: Modify Section I “WQBELs for Sediment”, Table 4.1 since the habitat acreages are pre-restoration figures and no longer indicative of the Upper Newport Bay Ecological Reserve’s current condition.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Section 1.B.4 was added in the RTO (emphasis added):

“If monitoring data indicates that habitat acreages have changed by more than 1 percent due to sediment deposition as indicated in section I.A.1, the minimum depth of

7 feet below mean sea level is not maintained in the Unit 1 and 2 sediment basins as indicated in section I.A.2, or the sediment basin capacity is less than 50 percent prior to November 15 as indicated in section I.A.3, the Permittees shall implement corrective actions, including sediment removal and/or additional sediment control measures as appropriate, to meet the WQBELs. The WQBELs shall be used to evaluate compliance actions and not as numeric WQBELs.”

Concern and Rationale

The habitat acreage WQBELs listed in Table 4.1 are very old and outdated values. The multi-year, multi-million dollar Upper Newport Bay Ecosystem Restoration Project, which was completed in 2010 fundamentally altered the Reserve. The restoration project allowed for the effective management of sediments deposited into the Bay, a reduction in the frequency of maintenance dredging, restoration of estuarine habitats, increased tidal circulation, and sustained a mix of open water, mudflat, and marsh habitat. The California Department of Fish and Wildlife has stated since completion of the project they would like flexibility in managing the habitat within the reserve, especially taking into account future sea level rise concerns.

Recommendation

1. Add two footnotes to Table 4.1

- a. Habitat acreage figures are from the Basin Plan and do not reflect the current acreages in the Reserve since completion of the Upper Newport Bay Ecosystem Restoration Project in 2010.
- b. The California Department of Fish and Wildlife manages the Reserve to address wildlife needs.

Response: The proposed footnotes have been added.

17.35. Comment: Modify Table 5.1 “Summary of WQBELs by Receiving Waters for Organochlorine Compounds” so that it is consistent with the Basin Plan, which no longer includes the now superseded USEPA Chlordane or PCBs TMDL values.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

In the RTO, Table 5.1 added the superseded USEPA Chlordane and PCB TMDL values for San Diego Creek and Tributaries (emphasis added):

Table 5.1: Summary of WQBELs by Receiving Waters for Organochlorine Compounds (Grams per Year)

Receiving Waters	Total DDT (g/yearyr)	Chlordane (g/yearyr)	Total PCBs (g/yearyr)	Dieldrin (g/yearyr)	Toxaphene (g/yearyr)
San Diego Creek and Tributaries	128.3	-220.3	-177.7	183.4	1.9

Concern and Rationale

Once the Regional Board Organochlorine TMDLs were adopted and effective, they superseded several portions of the USEPA TMDLs, including (but not limited to), PCBs and Chlordane for San Diego Creek and Tributaries as noted in the table below.

Resolution R8-2011-0037, Finding 18 stated (emphasis added):

“The U.S. Environmental Protection Agency (USEPA) indicated support of the Regional Board's organochlorine compounds TMDLs Basin Plan amendment, based on the technical approach and adaptive implementation plan. USEPA has stated that once these Regional Board OC TMDLs are approved by the State Board, the Office of Administrative Law and USEPA, they will replace those OC TMDLs that were promulgated by USEPA on June 14, 2002, as delineated in the table below.”

[Portion of the table below]

Waterbody-pollutant combinations for which Organochlorine Compounds TMDLs were established by USEPA (2002) and Regional Board (2007)

Waterbody	TMDLs Currently In Place	OCs TMDLs that will be in Place upon Approval of these State OCs TMDLs	
		USEPA	Regional Board
San Diego Creek and tributaries (includes San Diego Creek Reaches 1 and 2 and Peter's Canyon Channel)	Chlordane, Dieldrin, DDT, PCBs, Toxaphene	Dieldrin	DDT, Toxaphene, PCBs (informational), Chlordane (informational)

As such, these values should be removed from the table and replaced with a null value “--” since there are no other values that apply for regulatory purposes.

Recommendations

Remove the USEPA TMDL values for Chlordane and Total PCBs for San Diego Creek and Tributaries.

Table 5.1: Summary of WQBELs by Receiving Waters for Organochlorine Compounds (Grams per Year)

Receiving Waters	Total DDT (g/yearyr)	Chlordane (g/yearyr)	Total PCBs (g/yearyr)	Dieldrin (g/yearyr)	Toxaphene (g/yearyr)
San Diego Creek and Tributaries	128.3	-220.3	-177.7	183.4	1.9

Response: The proposed change has been made to be consistent with the Fact Sheet. For context, the EPA TMDLs for the two struck values were superseded by the board’s non-regulatory “informational” TMDLs.

17.36. Comment: Modify Table 5.2 “Summary of Total TMDL Allocations for San Diego Creek, Upper and Lower Newport Bay, expressed on an annual basis” so that it includes all of the applicable TMDL total allocations, including those from the USEPA TMDLs.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Although no specific edit was made to Table 5.2 in the RTO, the County noticed an error that should be corrected.

Table 5.2, Summary of Total TMDL Allocations for San Diego Creek, Upper and Lower Newport Bay, expressed on an annual basis, currently includes the following values:

Waterbody	Total Allocation (grams per year)			
	Total DDT	Toxaphene	Chlordane	Total PCBs
San Diego Creek and Tributaries	396	6	--	--
Upper Newport Bay	160	--	93	92
Lower Newport Bay	59	--	34	241

Concern and Rationale

Table 5.2 does not include all of the applicable values and should be updated to include the USEPA Total TMDL allocations for Dieldrin and Rhine Channel.

Recommendation

Modify Table 5.2 so that it includes the USEPA Total TMDL allocations

Table 5.2: Summary of Total TMDL Allocations for San Diego Creek, Upper and Lower Newport Bay, expressed on an annual basis.

	Total Allocation (grams per year)				
Waterbody	Total DDT	Toxaphene	Chlordane	Total PCBs	<u>Dieldrin**</u>
San Diego Creek and Tributaries	396	6	--	--	<u>262</u>
Upper Newport Bay	160	--	93	92	<u>=</u>
Lower Newport Bay	59	--	34	241	<u>5.93</u>
<u>Rhine Channel**</u>	<u>2.9</u>	<u>=</u>	<u>0.33</u>	<u>16.2</u>	<u>0.53</u>

******Total TMDL Allocations from the USEPA TMDLs

Response: The proposed correction has been made.

17.37. Comment: Clarify if the Chlordane TMDL values apply for Discharges to Rhine Channel.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Section I, WQBELs for Chlordane was modified in the RTO to remove I.C:

~~C. Discharges of runoff from MS4s must not transport more than 0.1 gram of chlordane into the Rhine Channel per year.~~

However, Table 5.1 includes a value for Chlordane for Rhine Channel (applicable portion of the table below):

Receiving Waters	Total DDT (g/yearyr)	Chlordane (g/yearyr)
Rhine Channel	0.7	0.1

Concern and Rationale

It is unclear if the Regional Water Board intended to remove the value for chlordane for Rhine Channel or retain it.

Recommendations

Either a) remove chlordane for Rhine Channel in Table 5.1; or b) remove the redline/strikeout in Section I.C.

Response: That removal appears to be an error that occurred in the redline version and was not intended. Section I.C will be present in the next version.

17.38. Comment: Modify the Title for Table 6.2 to reflect the applicability of the WQBELs.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The language to the header of Table 6.2 was modified:

“Table 6.2: Summary of WQBELs (~~Maximum Concentrations~~) for Runoff from MS4 Permittees for Diazinon into Upper Newport Bay and its Tributaries, and into San Diego Creek (ng/L)”

Concern and Rationale

In the July 2024, Tri County Group comment letter, the County noted that the header for Table 6.2, incorrectly included “Upper Newport Bay” in the title.

In RTC 35.238, the Regional Water Board noted the requested modification and stated, “The proposed change is aligned with the TMDL in the Basin Plan. Staff has made the proposed change.”

However, the modification was inadvertently not made in the RTO.

Recommendations

Modify the Table 6.2 title to “Table 6.2: Summary of WQBELs for Runoff from MS4 Permittees for Diazinon into ~~Upper Newport Bay, and into~~ San Diego Creek (ng/L)”

Response: The proposed correction has been made.

17.39. Comment: Modify Table 7.6 “Numeric Targets for Metals in Newport Bay” to be

consistent with the other language in Appendix 7 regarding when the Copper Targets will be superseded.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Although no specific edit was made in the RTO, the County noticed an error in Appendix 7 that should be corrected.

Table 7.6, Numeric Targets (ug/L) for Metals in Newport Bay, should include the clarification language provided in every other section of this Appendix noting when the values in this Table will be superseded.

Concern and Rationale

Appendix 7 explicitly recognizes, in multiple places within the Appendix, that “the WQBELS for copper discharges to Newport Bay shall be superseded by the WQBELS in Appendix 10 upon the effective date of the Copper TMDLs for Newport Bay adopted through Santa Ana Water Board Resolution R8-2022-0012.” This clarification language is included in the following locations within the Appendix:

- Introduction
- WQBELS for Copper, Dissolved
 - o Section IV.A
 - o Section IV.B

However, it was inadvertently not included as a footnote to Table 7.6 in Section VIII. Compliance Determination.

Recommendations

Add a footnote to Table 7.6 for Copper that states:

The copper numeric targets shall be superseded by Appendix 10 upon the effective date of the Copper TMDLs for Newport Bay adopted through Santa Ana Water Board Resolution R8-2022- 0012.

Response: The proposed change has been made.

17.40. Comment: Modify Table 7.5 “Numeric Targets for Metals Based on Flow Tiers for

San Diego Creek” to correct the values included for the Numeric Targets so that they are consistent with the values in Table 7.4 “Summary of Hardness-based Dissolved Zinc WQBELs for San Diego Creek”.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Although there no specific edit made in the RTO, the County noticed an error in Appendix 7 that should be corrected.

The values included in Table 7.5 for Zinc do not match the values included in Table 7.4.

Concern and Rationale

Table 7.4, Summary of Hardness-based Dissolved Zinc WQBELs for San Diego Creek includes values that were not copied over to Table 7.5, Numeric Targets for Metals Based on Flow Tiers for San Diego Creek.

This is inconsistent with the other metals in the Appendix (e.g., the values for lead in Table 7.5 matches the values for lead in Table 7.3).

Recommendations

Modify Table 7.5 as follows:

Table 7.5: Numeric Targets (µg/L) for Metals Based on Flow Tiers for San Diego Creek

	Acute	Chronic	Acute	Chronic	Acute	Chronic	Acute
Zinc (µg/L)	379	382	<u>316</u> 318	<u>318</u> 243	<u>243</u> 224	<u>244</u> 208	<u>208</u>

Response: The proposed correction has been made.

17.41. Comment: Use Consistent Terminology for WQBELs within the Appendix.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The language for Section I. WQBELs for Selenium was modified to include references to WLAs [emphasis added]:

~~“By June 20, 2049, discharges~~ Permittees must comply with any of the following WLAs as soon as possible but no later than 30 years from the Reconsidered TMDL effective date (see Basin Plan, Chapter 6, section 4.c):”

“A. CTR-based Water Column WLAs: Discharges of selenium in dry-weather...”

~~“B. By June 20, 2049, discharges~~ Conditional Mass-based WLAs: Applies when a...”

“C. Tissue-based Column WLAs:...equivalent to the default values for the Tissue-based Water Column WLAs...”

Concern and Rationale

Section I. is specifically termed “WQBELs for Selenium”; the terms should be consistent throughout and refer to WQBELs, not WLAs since the permit is establishing WQBELs that are consistent with the assumptions and requirements of the WLAs.

Recommendations

Modify this section to consistently refer to WQBELs

I. WQBELs for Selenium

Permittees must comply with any of the following WQBELs ~~WLAs~~ as soon as possible...

Permittees must comply with any of the following WQBELs ~~WLAs~~ as soon as possible...

A. CTR-based Water Column WQBELs WLAs: Discharges of selenium in dry-weather...

B. Conditional Mass-based WQBELs WLAs: Applies when a...

C. Tissue-based Column WQBELs WLAs:...equivalent to the default values for the Tissue-based Water Column WQBELs WLAs...

Response: The proposed correction has been made.

17.42. Comment: Modify Section IV. “Compliance Determination” so that it is consistent with the Basin Plan.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO modified Section IV. Compliance Determination, in part, to include the following:

A. Implement an approved BMP Strategic Plan, consistent with the approved plan and schedule, according to section III of Appendix 9, for all areas where the MS4 Permittee is identified as a Regulated Party.

B. Demonstrate that the Permittee's MS4 discharge to the receiving waters is offset by reductions in selenium pursuant to an approved Offset and Trading Program that meets the requirements of section II of this Appendix 9.

Concern and Rationale

In the July 2024 Tri County Group comment letter, the County specifically requested (Comment #50) that the requirements for demonstrating compliance with the TMDL be consistent with the Basin Plan, which includes explicit compliance language to be incorporated into permits for MS4 Permittees (emphasis added).

Basin Plan pg. 6-95:

"The following compliance options are included to clearly indicate how compliance with the WLAs, incorporated as effluent limitations into the applicable NPDES Permit, will be determined. These compliance options are part of the assumptions and requirements of the WLAs and will be explicitly incorporated in the applicable NPDES Permit to the extent permitted by law.

MS4 Permittees

Compliance with final WLAs (incorporated as effluent limits) may be demonstrated through any one of the following means:

1. For MS4 Permittees who opt to implement a BMP Strategic Plan consistent with requirements specified in the Implementation Plan:

A. Implementation of an approved BMP Strategic Plan (consistent with the approved Plan and schedule) for all areas where the MS4 Permittee is identified as a Regulated Party¹² OR

B. Attainment of tissue-based numeric targets over the specified averaging period, as measured in the Assessment Area^{13,14} OR

C. Attainment of dry weather WLAs over the specified averaging period in the receiving water, as measured at the Assessment Point¹⁵ OR

D. Attainment of conditional mass-based WLAs, consistent with all requirements of the conditional mass-based WLAs¹⁶ OR

E. Attainment of dry weather WLAs over the specified averaging period at the point of discharge OR

F. Attainment of a water column concentration at the point of discharge which is calculated to attain the water quality objective OR

G. No discharge.

2. Where the BMP Strategic Plan is not implemented consistent with the approved plan and schedule, MS4 Permittees must demonstrate compliance through one option in 1.B through 1.G.”

In the RTC [35.285], the Regional Water Board stated [emphasis added]:

“Changes have been made to better reflect the TMDL compliance determination language, including option A to implement an approved BMP Strategic Plan. The options in C through G are included, but with language edited for clarity. The edits are not substantively different than the language in the TMDL. Options C, E, and F in this comment are included in Appendix 9 subdivision V.C, “Demonstrate that there are no exceedances of the WQBEL in the Permittee’s MS4 discharge at the compliance point(s) identified in the PMRP. This showing may be made in the receiving waters and/or in the effluent at the discharge point at MS4 outfalls,” as both the dry weather WLAs and water column concentrations are incorporated as WQBELs, and the demonstration can be made in the receiving water or the point of discharge. Option D is included as Appendix 9 subdivision IV.B, and option G is included as subdivision IV.D.

Option B is excluded as the use of the tissue-based numeric targets is explicitly excluded by footnote 26 on page 6-84 of the Basin Plan until revised tissue-based objectives are adopted. This will require a Basin Plan amendment which will allow the Santa Ana Water Board to amend this Permit to allow the target to be used. Until that happens, the discussion of the target is speculation and so it is excluded.”

The County disagrees that the language was edited for clarity and that the edits are not substantively different than the language in the TMDL. The Basin Plan explicitly states, “These compliance options are part of the assumptions and requirements of the WLAs and will be explicitly incorporated in the applicable NPDES Permit” thus, it remains unclear why Board staff are ignoring the mandate within the Basin Plan.

Based on RTC 35.285, a comparison of the compliance options below demonstrates the differences in the pathways in the RTO compared to the pathways stated in the Basin Plan.

A comparison of the compliance determination pathway in the RTO based on RTC 35.285 and the required language in the Basin Plan is discussed below.

[Original comment letter contains an image showing language from the Tentative Order and language from the Basin Plan with color coded stars to indicate how the provisions align, as discussed below.]

- General
 - The Basin Plan language identifies a structure for the compliance pathways that is predicated upon “1. For MS4 Permittees who opt to implement a BMP Strategic Plan...”, and “2. Where the BMP Strategic Plan is not implemented consistent with the approved plan and schedule...” This language and structure is not included in the RTO.
- Pathway RTO IV.A and Basin Plan 1.A
 - There is a direct correlation between the language that is in the RTO and what is specified in the Basin Plan (albeit not within the structure discussed in ‘General’ above).
- Pathway RTO IV.B and Basin Plan 1.D
 - Although the language is similar in the RTO, it does not fully capture the language in the Basin Plan, which includes corresponding footnotes.
- Pathway RTO IV.C and Basin Plan 1.C, 1.E, and 1.F
 - In the RTC, Board staff stated that 1.C, 1.E, and 1.F are captured within the single pathway IV.C and that the language was “edited for clarity”. However, within the Basin Plan, the three distinct pathways are included to cover different seasonal conditions as well as different assessment locations. This specificity and corresponding footnotes should be included in the RTO and not consolidated into one pathway.
- Pathway RTO IV.D and Basin Plan 1.G
 - There is a direct correlation between the language that is in the RTO and what is specified in the Basin Plan.
- Basin Plan 1.B
 - This compliance pathway was not included in the RTO. In the RTC Board staff stated “Option B is excluded as the use of the tissue-based numeric targets is explicitly excluded by footnote 26 on page 6-84 of the Basin Plan until revised tissue-based objectives are adopted. This will require a Basin Plan amendment which will allow the Santa Ana Water Board to amend this Permit to allow the target to be used. Until that happens, the discussion of the target is speculation and so it is excluded.”
 - The County disagrees with the omission of this compliance pathway.
 - The Basin Plan explicitly includes this pathway as a part of the language to be inserted into an NPDES Permit. In including the pathway, there is a

footnote that explains “Compliance with final WLAs may not be demonstrated through attainment of tissue-based numeric targets over the specified averaging period, as measured in the Assessment Area, until revised objectives (e.g., SSOs) are adopted.” Thus, it is a pathway that is simply conditioned upon the adoption of revised objectives. It is immediately available, without any further regulatory action, once the revised objectives are adopted.

- If the Basin Plan intended for this pathway to be incorporated into NPDES permits after the adoption of revised objectives, the language would have been written differently to indicate that.
- Lastly, even if the Board disagrees with the County’s interpretation of the Basin Plan language, there is no harm in including the conditioned language in the Permit since it

Recommendations

Modify Section IV of Appendix 9 [Compliance Determination] to be consistent with the Basin Plan – replace the current language in the Revised TO with the following:

Permittees responsible for complying with the WQBELs must demonstrate compliance through any of the means identified in section IV of Order No. R8-2026-0034 (Order) or as shown in this section IV of Appendix 9. Processes used to analyze data and support demonstrations of compliance, as well as compliance monitoring locations, must be approved by the Executive Officer as part of the PMRP.

1. For MS4 Permittees who opt to implement a BMP Strategic Plan consistent with requirements specified in the Implementation Plan[1]:

A. Implementation of an approved BMP Strategic Plan[2] (consistent with the approved Plan and schedule) for all areas where the MS4 Permittee is identified as a Regulated Party[3] OR

B. Attainment of tissue-based numeric targets over the specified averaging period, as measured in the Assessment Area[4] OR

C. Attainment of dry weather WLAs over the specified averaging period in the receiving water, as measured at the Assessment Point[5] OR

D. Attainment of conditional mass-based WLAs, consistent with all requirements of the conditional mass-based WLAs[6] OR.

E. Attainment of dry weather WLAs over the specified averaging period at the point of discharge OR

F. Attainment of a water column concentration at the point of discharge which is calculated to attain the water quality objective OR

G. Demonstrate that there is no discharge from the Permittee's MS4(s) during the relevant time period.

2. Where the BMP Strategic Plan is not implemented consistent with the approved plan and schedule, MS4 Permittees must demonstrate compliance through one option in 1.B through 1.G or 3. Demonstrate that the Permittee's MS4 discharge to the receiving waters is offset by reductions in selenium pursuant to an approved Offset and Trading Program that meets the requirements of section II of this Appendix 9. Demonstrate that there are no exceedances of the WQBEL in the Permittee's MS4 discharge at the compliance point(s) identified in the PMRP. This showing may be made in the receiving waters and/or in the effluent at the discharge point at MS4 outfalls.

3. Demonstrate that the Permittee's MS4 discharge did not cause or contribute to an exceedance of the WQBEL, because the exceedance is the result of an authorized or exempt non-stormwater discharge specified in section IV.A.2 of the Order during a specific sampling event. The Permittee must support this demonstration with measurements of the water quality of the specific authorized or conditionally exempt essential non-stormwater discharge(s) alleged to have caused or contributed to the exceedance of the WQBEL.

Response: Staff disagree that the Tentative Order "ignores the mandate within the Basin Plan." The Basin Plan does not "mandate" that the language in the implementing permit be identical to the language in the Basin Plan. It provides that the compliance options will be incorporated into the implementing permit.

Regarding Tentative Order IV.A/Basin Plan 1.A, the Tentative Order does not need to reproduce the exact language or organizational structure of the Basin Plan. The Basin Plan provides implementation of an approved BMP Strategic Plan, consistent with the approved plan and schedule, as one means of demonstrating compliance. Tentative Order IV.A provides the same compliance option. The Basin Plan's two-part structure does not establish two different sets of compliance options. Options B through G in the Basin Plan apply exactly the same whether or not a Permittee has elected to implement a BMP Strategic Plan. The only option that is not available without implementation of a BMP Strategic Plan is option A, which is itself implementation of a BMP Strategic Plan. Accordingly, the difference in organization does not substantively change the Basin Plan's compliance framework or eliminate any compliance option available to Permittees.

Regarding Tentative Order IV.B/Basin Plan 1.D, the commenter raises that the Tentative Order does not include footnotes. The footnote states "Attainment requires that the discharger meets the following conditions: (1) Participates in approved Offset and Trading Program and (2) Offsets entirety of discharge (concentration x flow) at the applicable ratio." Instead of being stated as a footnote, the Tentative Order states "...pursuant to an approved Offset and Trading Program that meets the requirements of section II of this Appendix 9."

Section II incorporates the Basin Plan for the Offset and Trading Program. Additionally, the conditional mass-based WQBELs state these conditions directly. This highlights the importance of the language and reduces the likelihood that it will be overlooked by the reader.

Regarding Tentative Order IV.C/Basin Plan 1.C, 1.E, and 1.F, staff disagree with the commenters claim that consolidation of these provisions eliminate the specificity or substance of the compliance options established in the Basin Plan. Of these, only 1.C has a footnote, which cites that the Assessment Area is defined in the Implementation Plan. Compliance determination methods must be proposed in the Program Monitoring and Reporting Plan (PMRP), nothing precludes the commenter from using the Assessment Area in the Implementation Plan in the PMRP.

Similarly, the assessment locations for Basin Plan options E and F will also be in the PMRP, not in the Tentative Order Appendix. The Tentative Order incorporates both the dry-weather WLAs and applicable water-column concentrations as WQBELs. Tentative Order IV.C then provides that compliance may be demonstrated by showing no exceedance of the applicable WQBEL at the compliance point(s) identified in the PMRP and expressly allows that demonstration to be made “in the receiving waters and/or in the effluent at the discharge point at MS4 outfalls.” The WQBEL provisions establish which numeric requirement applies, while IV.C establishes the locations at which compliance with those requirements may be demonstrated through the PMRP. Accordingly, IV.C preserves the substantive distinctions contained in Basin Plan options 1.C, 1.E, and 1.F: the Permittee must meet the applicable numeric WQBEL, under its applicable conditions and averaging period, at an applicable assessment location.

The requirements of the PMRP provide consistency with the relevant water quality control plans, including the Basin Plan. Section VI.A.3 of Monitoring and Reporting Program R8-2026-0034 requires that the PMRP comply with applicable plans and policies. Section II.B.11 requires that locations and frequencies of monitoring be consistent with those in the TMDLs and approved TMDL monitoring plans. Assessment Areas and other assessment locations in the TMDLs may be used to comply with these requirements.

Regarding Basin Plan option B, the commenter is correct that the Basin Plan identifies attainment of the tissue-based numeric targets as a compliance pathway and then makes it conditioned upon the adoption of revised objectives. A new section, and a corresponding conditional compliance option, has been added to Appendix 9 to recognize the tissue-based numeric targets.

17.43. Comment: Modify Section II. “Sediment Targets for Copper” so that it includes both Numeric Targets a) Dissolved Copper in Newport Bay, and b) Numeric and Alternative Targets for Sediment Copper in Newport Bay [see also related Comment 44]

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Section II. was added to include “Sediment Targets for Copper”, which currently only includes the values from Table 2 – Numeric and Alternative Targets for Sediment Copper (Cu) in Newport Bay in Attachment A to Resolution No. R8-2022-12.

Concern and Rationale

The new Section II should be revised to include both the Numeric Targets for Dissolved Copper in Newport Bay – currently not included in this section (Table 1 of Attachment A to Resolution No. R8-2022-12) as well as the Numeric and Alternative Targets for Sediment Copper in Newport Bay – currently Sediment Targets (Table 2 of Attachment A to Resolution No. R8-2022-12).

Attachment A to Resolution No. R8-2022-12 includes the following language in the “Numeric Targets for Copper” Section:

“These Cu TMDLs include both dissolved Cu targets and sediment Cu numeric and alternative targets, shown in the tables below.

1. The numeric targets for dissolved Cu are the California Toxics Rule (CTR) saltwater criteria for dissolved Cu (chronic 3.1 µg/L and acute 4.8 µg/L) (USEPA 2000). (See Table 1 below.)

<i>Table 1 - Numeric Targets for Dissolved Copper (Cu) in Newport Bay</i>	
Dissolved Cu CTR saltwater criteria¹	
acute	chronic
4.8 (µg/L)	3.1 (µg/L)

¹The numeric targets are the dissolved Cu CTR saltwater criteria.

2. The targets for sediment Cu are both numeric and alternative targets; the alternative sediment quality objectives (SQOs) target may be achieved as an alternative to the numeric sediment Cu target. (See Table 2 below.)”

Table 2 - Numeric and Alternative Targets for Sediment Copper (Cu) in Newport Bay	
Sediment Cu Numeric Target Effects Range Low (ERL) ¹	Alternative Sediment Quality Objectives (SQOs) Target
34 (µg/g)	Sediment Quality Condition of Unimpacted or Likely Unimpacted ²

Thus, it is clear within the Adopted TMDL that the two targets are to apply within Newport Bay.

Recommendations

Revise Section II as follows:

~~II. Sediment~~ Targets for Copper

A. The numeric targets for dissolved Copper in Newport Bay are the CTR saltwater criteria for dissolved copper and include:

- i. Acute concentration of 4.8 micrograms per liter (µg/L).
- ii. Chronic concentration of 3.1 µg/L.

B. The targets for sediment Cu are both numeric and alternative targets; the alternative sediment quality objectives (SQOs) target may be achieved as an alternative to the numeric sediment Cu target.

- i. The copper sediment numeric target is 34 µg/g.
- ii. The alternative sediment quality objectives (SQOs) is the sediment quality condition of Unimpacted or Likely Unimpacted, determined by chemistry, toxicity and benthic analyses (per the SQOs methodology specified in the State Water Board's Sediment Quality Provisions (SWRCB 2018))

1. If the condition of Unimpacted or Likely Unimpacted is met, the alternative sediment Cu SQOs target is achieved.

2. If the condition of Unimpacted or Likely Unimpacted is not demonstrated, then stressor identification analyses must be conducted per the SQOs methodology (Sediment Quality Provisions) to determine whether Cu is the cause of the impacted condition. If Cu is not shown to be the cause of the impacted condition, the alternative sediment Cu SQOs target is achieved.

C. The **Sediment** Targets for copper shall be used to evaluate compliance actions and not as numeric WQBELS.

Response: The proposed change has been made.

17.44. Comment: Modify Section I. “WQBELS for Copper, Dissolved” so that it only include the WQBELS that apply directly to the Permittee discharges consistent with the Adopted TMDL. [see also Comment 43]

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

In the RTO, a new Section II was added to include the Sediment Targets for Copper. However, the dissolved copper numeric targets inadvertently remained in Section I.B under the WQBELS rather than in the new Section II with the Sediment Targets. This is inconsistent with the adopted TMDL.

Concern and Rationale

Section I. WQBELS for Copper, Dissolved includes two types of WQBELS:

A. Discharges of runoff from MS4s must not transport more than 2,501 pounds of dissolved copper into Newport Bay per year.

B. Discharges of dissolved copper in runoff from MS4s to Newport Bay must not exceed:

i. Acute concentrations of 4.8 micrograms per liter ($\mu\text{g/L}$).

ii. Chronic concentrations of 3.1 $\mu\text{g/L}$.

The WQBELS in Section I.A above correlate with Attachment A to Resolution No. R8-2022-12, Section TMDLs, Waste load and Load Allocations, and Margin of Safety for Copper, Table 6 – Mass-Based Allocations for Copper (Cu) in Newport Bay, which includes the Tributary and Storm Drain WLAs for the MS4 Permittees (2,501 lbs/year) [see excerpt of Table 6 below]

Table 6 - Mass-Based Allocations for Copper (Cu) in Newport Bay		
Category	Type	Dissolved Copper (lbs/year)
Tributary and Storm drain WLAs	MS4 permittees ¹	2,501
	CalTrans ¹	348
	Other NPDES Permittees (including the Industrial General Permit (IGP), Construction General Permit (CGP), Scrap Metal General Permit (SMGP))	156 ²

However, the values from this same section, Table 8 – Concentration-Based Allocations for Copper (Cu) in Newport Bay should not be included as WQBELs under Section I.B for “discharges of dissolved copper in runoff from MS4s to Newport Bay” since that is not the intended application or use of these values.

See Table 8 and the qualifying footnotes provided below.

Table 8 - Concentration-Based Allocations for Copper (Cu) in Newport Bay¹	
Dissolved Cu Saltwater Acute TMDL and Allocation (µg/L)	Dissolved Cu Saltwater Chronic TMDL and Allocation (µg/L)
4.8	3.1

¹These concentration-based allocations are equivalent to the CTR saltwater criteria for dissolved Cu, which assume a WER of 1 (USEPA 2000). (If a different WER is approved for Newport Bay, the criteria and the concentration-based allocations will change accordingly. The concentration-based allocations will also change accordingly if a dissolved Cu chronic SSO is approved.) These allocations apply to and are assessed in the receiving waters of Newport Bay where the salinity is equal to or greater than 10 parts per thousand 95% or more of the time. These allocations apply to the receiving waters of Newport Bay at all times of the year, regardless of freshwater flow from San Diego Creek, Santa Ana Delhi, Big Canyon Wash, Costa Mesa and Santa Isabel Channels and other tributaries into Newport Bay. Concentration and flow data for tributary runoff shall be used to determine compliance with the mass-based allocations specified in Table 6 and not as the basis for compliance with the concentration-based allocations specified in Table 8.

Footnote 1 for Table 8 clearly states three things (emphasis added):

- 1) The allocations are based on CTR saltwater criteria (not freshwater)
- 2) The allocations apply to and are assessed in the receiving waters of Newport Bay where the salinity is equal to or greater than 10 parts per thousand 95% or more of the time.

3) Concentration and flow data for tributary runoff shall be used to determine compliance with the mass-based allocations specified in Table 6 and not as the basis for compliance with the concentration-based allocations specified in Table 8.

As such, if these values are included in Appendix 10, they must be included in the Sediment Targets Section II and should not be expressed as WQBELs that apply to tributaries and storm drains under Section I in order to be consistent with Attachment A to Resolution No. R8-2022-12.

Recommendations

Modify Section I as follows:

I. WQBELs for Copper, Dissolved

A. Discharges of runoff from MS4s must not transport more than 2,501 pounds of dissolved copper into Newport Bay per year.

B. ~~Discharges of dissolved copper in runoff from MS4s to Newport Bay must not exceed:~~

~~iii. Acute concentrations of 4.8 micrograms per liter ($\mu\text{g/L}$).~~

~~iv. Chronic concentrations of 3.1 $\mu\text{g/L}$.~~

Response: The proposed change has been made.

17.45. Comment: Modify Section III. "Compliance Determination" to provide clarity for Pathway E (for the Receiving Water).

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The language in the Compliance Determination section was modified in the RTO for pathway III.E for the receiving water:

"E. Demonstrate that the receiving waterbody is meeting the combined Waste Load Allocations mass-based WLAs and Load Allocations (Total TMDL Allocations) designated in the TMDL, as specified in the Basin Plan."

Concern and Rationale

This pathway should be consistent with the similar pathways in the other Appendices and incorporate the actual value for the Total TMDL allocation instead of referencing the

Basin Plan (to this end, the Copper TMDL is not incorporated into the Basin Plan as of the date of this letter).

Recommendations

Modify the III.E to read

E. Demonstrate that the receiving waterbody is meeting the combined mass-based WLAs and Load Allocations (Total TMDL Allocation of 11,646 dissolved copper (lbs/year)) designated in the TMDL Table 6, and as specified in the Basin Plan.

Response: The proposed change has been made.

17.46. Comment: Add a Compliance Determination Pathway F for the Tributary and Storm Drain Total TMDL Allocations.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The language in the Compliance Determination section was modified for pathway III.E for the receiving water but did not include a similar pathway for the tributary and storm drains.

Concern and Rationale

While Section III.E provides a compliance pathway for the total TMDL allocation for the receiving water (as measured in the receiving water), which the County supports, a parallel compliance pathway should also be provided for the total TMDL allocation for the Tributary and Storm Drains. This is critical since the MS4 Permittees can measure the total TMDL allocation for the tributary and storm drains as a part of the PMRP.

Recommendations

Add a new compliance determination pathway III.F

F. Demonstrate that the tributary and storm drain discharges are meeting the combined mass- based WLAs and Load Allocations (Total TMDL Allocation of 3,176 dissolved copper (lbs/year)) designated in the TMDL Table 6, and as specified in the Basin Plan.

Response: The proposed change has been made.

17.47. Comment: Modify Appendix 10, Section III. “Compliance Determination” to add a Watershed Management Plan-based compliance determination pathway

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The following language was modified in the RTO:

~~“E. Where the final compliance deadline for achievement of the WQBEL has not passed, develop and implement an approved Watershed Management Plan addressing the waterbody-pollutant combination pursuant to section XII of the Order.”~~

Concern and Rationale

All of the TMDLs in the RTO that have final attainment dates, which have not yet passed, should have a WMP-based Compliance Determination pathway.

However, even though Appendix 10 (WQBELs for Copper in Upper and Lower Newport Bay) has a final attainment date of 12 years after the USEPA approval (which is still pending), the RTO removed this pathway, which is inconsistent with the precedent of using WMPs in California stormwater permits as well as the RTO Fact Sheet and RTC.

The RTO Fact Sheet states in Purpose of Watershed Management Plans (in part, emphasis added) “...Specifically, the development and implementation of, and the Permittees’ compliance with, WMPs serves as an alternate method to comply with receiving water limitations in section VI (Receiving Water Limitations) and/or with WLAs that are expressed as WQBELs in section VII (Effluent Limitations and Discharge Specifications). Watershed Management Plans may only be used to determine compliance with these requirements when final compliance dates have not yet passed or where no final compliance deadline is specified.¹⁷”

For Appendix 10 – The RTO Fact Sheet states (in part, emphasis added) “The compliance deadline is 12 years after the date of USEPA approval of the Copper TMDL. The Permittees may therefore alternatively comply with the WQBELs by developing and implementing an approved Watershed Management Plan that employs BMPs that are subject to an iterative improvement process.¹⁸”

The County understands, from the July 16, 2026 public workshop that Regional Water Board staff are supportive of this modification.

Recommendation

Reinstate an option for the WMP-based Compliance Determination pathway in Appendix 10 as follows:

Where the final compliance deadline for achievement of the WQBELs has not passed, develop and implement an approved Watershed Management Plan addressing the waterbody-pollutant combination pursuant to section XII of the Order.

Response: This option was removed in error and has been restored.

17.48. Comment: Modify Section IV.F and IV.G in “Monitoring and Reporting” so that the language is consistent with the timeline established for the TMDL

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The language in the Monitoring and Reporting section was modified with significant, additional language [excerpt below; note that the subsections are numbered incorrectly in the RTO and Section IV.F and G should be items C and D, respectively]:

F. “If the Copper loads in the WQBELs in section I of this Appendix 10 are exceeded, responsible Permittees shall develop and submit plan(s) and schedule(s) to achieve the WQBELs.

- i. The proposed plan(s) and schedule(s) shall include a reporting program.
- ii. The plan(s) and schedule(s) must be submitted as soon as possible but no later than three (3) months from the finding that the WQBELs have not been achieved, as determined by the Executive Officer.
- iii. Upon approval by the Executive Officer, the responsible Permittees shall implement their plan(s) and schedule(s) and submit a report that identifies the actions taken and the effectiveness of those actions and evaluate progress towards meeting the mass-based WQBEL in section I.A of this Appendix 10.

G. If impairment for copper is found in the water column (based on exceedances of the CTR criteria consistent with the assessment methodology in the State Listing Policy), the responsible Permittees shall develop and submit a plan(s) and schedule(s) to reduce copper discharges from storm drains to impacted areas and correct the impairment. Impairment shall be found if the monitoring required by Appendix...

Concern and Rationale

The timeline for this requirement is unclear and potentially inconsistent with the structure and timeline for the TMDL. As noted within the introduction to Appendix 10 “the compliance deadline is 12 years after the date of USEPA approval of the Copper TMDLs.” Thus, the Permittees are provided this same timeline in order to meet the WQBELS designated for the Copper TMDL.

In addition, Sections IV.D and IV.E require the Permittees to submit detailed implementation plans and schedules for approval by the EO to monitor and assess various aspects of the TMDLs in order to meet the WQBELS and other requirements.

Thus, the Permittees should define the timeline for when these reports are developed and submitted within the PMRP so that it does not create the need to develop and submit plans that would be premature within the context of the TMDL approach.

Recommendations

Modify Section F and G [excerpts below]:

F. Consistent with the PMRP, if the Copper loads in the WQBELS in section I of this Appendix 10 are exceeded, responsible Permittees shall develop and submit plan(s) and schedule(s) to achieve the WQBELS.

G. Consistent with the PMRP, if impairment for copper is found in the water column (based on exceedances of the CTR criteria consistent with the assessment methodology in the State Listing Policy), the responsible Permittees shall develop and submit a plan(s) and schedule(s) to reduce copper discharges from storm drains to impacted areas and correct the impairment. Impairment shall be found if the monitoring required by Appendix...

Response: The proposed change has been made.

Category 16 – Coyote Creek including Appendix 14

4.2. Comment: Table 1.3, TMDLS Applicable to San Bernardino County Permittees.

No runoff from the City of Chino Hills' MS4 is discharged into Coyote Creek; therefore, the City should not be subjected to TMDLS for bacteria and metals in Coyote Creek.

Tentative Order R8-2026-0034 would subject the City of Chino Hills to total maximum daily loads (TMDLs) for bacteria and metals in Coyote Creek. The apparent basis for this is the Los Angeles Regional Water Quality Control Board's 2015 amendment to the

Water Quality Control Plan for the Los Angeles Region (the "LA Basin Plan"), wherein the LA Water Board found the City of Chino Hills to be a "responsible jurisdiction" within the San Gabriel River watershed. However, the LA Water Board did not articulate any evidentiary basis for its finding, and it is demonstrably erroneous. All discharges from the City's MS4 within the Coyote Creek watershed are ultimately conveyed to the Carbon Creek Diversion Channel and then to the Santa Ana River. Figures 1 through 3 below depict the flow of discharges from that portion of the Coyote Creek watershed that is within the City's jurisdiction. All such flows are conveyed to Carbon Canyon Creek and, ultimately, southwest to the Carbon Creek Diversion Channel.

[Three figures are in the comment letter, depicting maps of the Coyote Creek Watershed]

As detailed in the analysis prepared by the Orange County Department of Public Works and excerpted below, the Carbon Creek Channel in the San Gabriel River/Coyote Creek watershed is hydrologically disconnected from discharges to the Carbon Canyon Diversion Channel.

Accordingly, such discharges should be considered tributary to the Santa Ana River watershed and not Coyote Creek. For this reason, the City of Chino Hills should not be subjected to TMDLs applicable to Coyote Creek in Appendix 8 (Water Quality Based Effluent Limitations for Metals in San Gabriel River and Impaired Tributaries) and Appendix 14 (Water Quality Based Effluent Limitations for San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL).

Excerpt from OC Public Works' Comment Regarding the Operation of Carbon Canyon Diversion Channel (E03) and Potential Inputs to Carbon Creek Channel (B0I):

The Orange County Flood Control District (OCFCD) has received questions about the current configuration and operation of the Carbon Canyon Diversion Channel (E03) in the Santa Ana River watershed, and whether discharges from upstream tributary city jurisdictions through this drainage reach Carbon Creek Channel (B0I) in the San Gabriel River/Coyote Creek watershed. Carbon Canyon Diversion Channel (E03) connects with Atwood Channel (E04) at

the Miller Retarding Basin (E02B01) forebay, which then discharges to Carbon Creek Diversion Channel (E02) and then Santa Ana River (E0I). Carbon Creek (B0I) starts to the west of Carbon Canyon Diversion Channel (E03) and along the north side of Miller Basin and is hydrologically disconnected with the installation of Carbon Creek Diversion Channel years ago. OCFCD posts its flood control maps publicly at

<https://pwip.oc.gov/service-areas/ocinfrastructure-programs/documents-maps/drawings->

[maps](https://ocgov.box.com/s/w6tuy995te5pyv55pyi27w6rlsl9sop1). Additionally, as-builts for the facility are available here:
<https://ocgov.box.com/s/w6tuy995te5pyv55pyi27w6rlsl9sop1>

The map below shows the designation of the Santa Ana River watershed (yellow) separately from Carbon Creek (green), and Carbon Canyon Diversion Channel runs along the border.

[A figure is in the comment letter of a map]

The historical connection from Carbon Canyon Channel has been bermed and sealed with grout as depicted in the images below:

[Two figures are in the comment letter of two angles of the Miller Basin area.]

Miller Basin (facility E02B01) is owned in fee by OCFCD for the primary purpose of reducing the peak flow of storm waters tributary to Carbon Canyon Diversion Channel (facility E02).

Orange County Water District (OCWD) and OCFCD have for many years coordinated on the operation of Miller Basin for water conservation.

A weir exists along the west side of Carbon Canyon Channel (E03) just downstream of the photographed area to receive potential peak storm flows in Carbon Canyon Diversion Channel (E03). According to OCWD, Miller Basin has only received storm flow from overtopping the weir once in the past 25 years, which was absorbed by OCWD at its nearby Kraemer Basin.

There is an agreement between OCFCD and OCWD that details the water elevation that is allowed by OCFCD to be maintained in Miller Basin for OCWD groundwater recharge operations. It also describes how water exits the basin: water stored in Miller Basin may be drawn down by OCWD's two submersible pumps rated at 20 cfs capacity each (capacity varies from 15 cfs to 30 cfs depending upon water surface elevation), and/or by OCFCD's gated 24-inch outlet pipe to Carbon Canyon Diversion Channel. With these facilities, OCWD can redirect water in the area to their nearby facilities Kraemer Basin or Anaheim Lake for groundwater recharge. According to OCWD, the only time flows would be directed to Carbon Creek (B01) if there was no capacity in Kraemer Basin or Anaheim Lake, and needed to empty Miller Basin to reach the required flood safety elevation. It would take a number of extreme events back-to-back for this to occur, and concurrence from OCFCD would be required for a stormwater discharge to Carbon Creek (B01) to occur per the agreement.

Based on the current configuration and operation of the flood control facilities and water conservation basins in the area, municipal jurisdictions that discharge to Carbon Canyon Diversion Channel (E03) should be considered tributary to Santa Ana River watershed and not Coyote Creek, and the MS4 permit should make findings where appropriate related to these tributary jurisdictions. These Permittees may include the City of Yorba Linda as well as other upstream Permittees in San Bernardino County.

Recommendation: Table 1.3 of Appendix 1 of the Tentative Order should be amended to remove the City of Chino Hills from application of the Coyote Creek bacterial and metals TMDLs.

Response: Water Code section 13263 requires the Santa Ana Water Board to implement relevant water quality control plans. This includes implementing waste load allocations, technical assumptions, and the compliance schedules in TMDLs. This also includes the Los Angeles Water Board's Basin Plan, where the City of Chino Hills is named as a responsible party for the San Gabriel River and Impaired Tributaries TMDLs for bacterial and metals. The Tentative Order cannot revise the Los Angeles Regional Board's Basin Plan.

Alternatively, the Coyote Creek TMDLs as implemented in the Tentative Order include the compliance demonstration option to "demonstrate that there is no discharge from the Permittee's MS4(s) during the relevant time period." The commenter is welcome to use the proposed evidence in order to make this compliance demonstration under the Tentative Order.

4.3. Comment: The City of Chino Hills was never notified of the LA Water Board's designation of Chino Hills as a "responsible jurisdiction" within the San Gabriel River (SGR) watershed and has been severely prejudiced as a result.

On June 10, 2015, the LA Water Board adopted Resolution No. R15-005 amending the LA Basin Plan to incorporate TMDLs for indicator bacteria in the San Gabriel River, Estuary and Tributaries. In its Resolution, the LA Water Board named the City of Chino Hills as a "responsible jurisdiction" within the SGR watershed. Therefore, Chino Hills had not been considered a responsible jurisdiction within the SGR watershed.

Although the LA Water Board's determination could significantly impact the City of Chino Hills, the City was never notified of it. Not only was the City not notified of the June 10, 2015 hearing at which the LA Water Board would ultimately adopt the Resolution amending the LA Basin Plan, the City has not been notified *since* the LA Basin Plan was amended. This fact is particularly troubling considering that the City has been meeting and interacting with the Santa Ana Water Board since 2018 to discuss the terms of an

update to the current (2010) MS4 permit. At no time during the course of that interaction was the City informed of the LA Water Board's determination.

The Santa Ana Water Board released its first draft of the new MS4 permit in 2024. That draft made no mention of the 2015 amendment to the LA Basin Plan or to the City of Chino Hills' purported status as a "responsible jurisdiction" within the SGR watershed. *It was not until May 5, 2026, when the Santa Ana Regional Water Quality Control Board released Tentative Order RB-2026-0034, that the City of Chino Hills first learned of the LA Water Board's 2015 determination.*

It goes without saying that the City of Chino Hills has been greatly prejudiced by the failure of both the LA and Santa Ana Water Boards to inform the City of its purported status as a "responsible jurisdiction" with regard the SGR Watershed. As a "responsible jurisdiction," the City would immediately become subject to a number of critical compliance deadlines *that have already passed*. For example, the dry weather compliance deadline for the Coyote Creek watershed TMDL for metals was September 23, 2023. The dry weather compliance deadline for the Coyote Creek watershed TMDLs for bacteria was June 14, 2026. Similarly, the wet weather compliance deadline for the Coyote Creek watershed TMDL for metals is September 30, 2026, less than five months from the time that the City first learned (second hand) about its purported responsibility. Needless to say, it is impossible for the City to comply with deadlines that have already passed.

Recommendation: As detailed in the previous comment, no runoff from the City of Chino Hills' MS4 is discharged into Coyote Creek; therefore, the City should not be subjected to TMDLs for bacteria and metals in Coyote Creek. If, however, the City of Chino Hills is not removed from the TMDLs, it must be granted significant additional time to conduct the appropriate studies and to identify and develop infrastructure that may be necessary, if any, and alternative risk and BMP based compliance pathways that may be utilized to achieve compliance with applicable TMDLs.

Response: See [Response 22.2](#).

The commenter raises concerns regarding notice provided in connection with proceedings before the Los Angeles Water Board and adoption of the Los Angeles Basin Plan amendment. Those matters are outside the scope of this permit proceeding and cannot be addressed through this Order. To the extent the commenter requests changes to matters established by the Los Angeles Basin Plan or associated TMDLs, such requests must be directed to the Los Angeles Water Board or through the applicable Basin Planning process. No changes have been made.

21.45. Comment: Appendix 1

Coyote Creek Bacteria TMDL and Coyote Creek Metals TMDL should not include San Bernardino County Flood Control District and San Bernardino County. There are no areas in that watershed that include any unincorporated County land or any District property or easements.

SBCFCD's farthest west property flows east into the San Antonio Channel, which discharges into Santa Ana River watershed.

Recommendation: Please refer to the issue/concern.

Please see attached map (Attachment XX) showing that SBCFCD and San Bernadino County have no flows going to in the Coyote Creek watershed.

Response: See [Response 22.2](#).

17.49. Comment: Modify Section I.D "WQBELs for Escherichia Coli" to reflect that the section is an Implementation Plan, not a WQBEL.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Appendix 14 is a new appendix added to the Revised Tentative Order. Section I.D is titled "D. Implementation Plan WQBEL"

Concern and Rationale

This section of the Revised TO is inconsistent with the adopted TMDL (Attachment A to Resolution No. R15-005), which includes the requirement to develop an Implementation Plan in the "Implementation Plan" section of the TMDL, not the WLA or LA sections.

Recommendations

1. Modify "D. Implementation Plan WQBEL" to "II. [Implementation](#) Plan"

Response: The proposed change has been made.

17.50. Comment: Modify Section I.D to provide an adequate amount of time to develop and submit the Implementation Plan.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Appendix 14 is a new appendix added to the Revised Tentative Order. Section I.D requires the development of an Implementation Plan within 180 days from the effective date of the Order.

Concern and Rationale

The May 5, 2026 Revised TO R8-2026-0034 is the first time that the San Gabriel River Estuary and Tributaries Indicator Bacteria TMDL has been incorporated into the municipal stormwater permit for the Orange County Permittees.

The Implementation Plan section of the Revised TO requires that the Permittees develop and submit a Plan to the Executive Officer within 180 days from the effective date of the Order. This timeline is both inconsistent with the adopted TMDL (Attachment A to Resolution No. R15-005) and does not provide the Permittees an adequate amount of time to engage in a thoughtful and collaborative process to develop an Implementation Plan.

While the Adopted TMDL has an Implementation Schedule (Table 7-41.3), the schedule does not include a specific timeline for the development and submittal of an Implementation Plan and, more importantly, the schedule contemplated a TMDL that was implemented in two phases over a twenty-year period, which is not the timeframe that is being afforded to the responsible Permittees.

Additionally, the Revised TO allows for the Permittees to use a WMP to meet the Implementation Plan requirement. However, 180 days would be insufficient time to develop a WMP and is inconsistent with the timeline for developing a WMP which allows 24 months from the date of submittal of the Notice of Intent (NOI) to develop a WMP.

The responsible Permittees need an adequate amount of time to assess and develop an approach to meet the WQBELs for this TMDL that is being incorporated into the municipal permit for the first time and time to develop a WMP, if desired, to meet the Implementation Plan requirement. The 27-month time period that is being requested would allow the necessary time for responsible Permittees to conduct activities to develop the Plan, including evaluating the readily available data, determining if additional monitoring is necessary, and identifying potential approaches to meet the WQBELs.

Recommendations

Modify Section D.1 to read “...The implementation plan must be submitted to the Executive Officer for approval within ~~180 days~~ 27 months from the effective date of this Order”

Response: The commenters are correct that the Los Angeles Basin Plan does not set a schedule for when the implementation plan is to be submitted.

Staff disagree that a 27-month submittal period is appropriate. The purpose of the Implementation Plan is to identify the proposed approach, implementation schedule, and milestones. It is not intended to require completion of implementation within 180 days. While an implementation plan is not a Watershed Management Plan, this is more equivalent to a Watershed Management Plan Notice of Intent, which is due 180 days after the effective date of the order. The Implementation Plan may propose longer implementation schedules and milestones where appropriate. In addition, for wet weather requirements, the Order allows development of a Watershed Management Plan in lieu of a separate Implementation Plan. No changes have been made.

17.51. Comment: Include a 10-year Compliance Schedule in the Permit for both the Dry Weather and Wet Weather WQBELs.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Appendix 14 is a new appendix added to the Revised Tentative Order. Appendix 14 imposes a new TMDL on the permittees.

Concern and Rationale

The May 5, 2026 Revised TO R8-2026-0034 is the first time that the San Gabriel River Estuary and Tributaries Indicator Bacteria TMDL has been proposed for incorporation into the municipal stormwater permit for the Orange County Permittees.

The TMDL, which was promulgated by the Los Angeles Water Board in 2015, became effective on June 14, 2016, and includes dry weather and wet weather WLAs assigned to MS4 dischargers, and WQBELs. The TMDL provides an implementation period reflected in a compliance schedule: until 2026 to meet the dry weather WQBELs and 2036 to meet the wet weather WQBELs (Table 7-41.3).

The Revised TO requires that Permittees comply with the TMDL’s WQBELs, but completely bypasses the roughly ten and twenty-year implementation periods for the dry

and wet-weather WQBELs, respectively. Further, the Revised TO Fact Sheet does not explain the approach or provide any rationale for this action. As a result, the Revised TO introduces WQBELs that are immediately in effect and that the responsible Permittees have not had time to assess or address.

Water Code section 13263 states that waste discharge requirements issued by the Board “implement any relevant water quality control plans that have been adopted.” (Cal. Water Code 13263).

Subdivision (c) of this same statute provides that these permit requirements “may contain a time schedule, subject to revision in the discretion of the Board.” (Cal. Water Code 13263(c)). Where a TMDL is being incorporated into a permit, federal regulation further requires that effluent limits “are consistent with the assumptions and requirements of any available waste load allocation for the discharge prepared by the State and approved by EPA...” (40 C.F.R. 122.44(d)(1)(vii)(B)).

Under these authorities, not only does the Board have discretion to include a time schedule for this new TMDL being incorporated into Permittees’ MS4 permit for the first time, but the failure to do so would run afoul of both the state law requirement to implement relevant water quality control plans, as well as the federal regulatory requirement that effluent limitations in permits be consistent with the assumption and requirements of an underlying TMDL. This is because the period of implementation afforded by the compliance schedule, in other words, the period of time permittees are given to implement actions that are designed to achieve compliance with TMDL effluent limits, is not only required under the TMDL, but is foundational to the assumptions underlying compliance with the final effluent limits for both dry and wet weather.

Further, an in-permit compliance schedule is both warranted and consistent with the Compliance Schedule Policy.¹⁹ The Permittees were never afforded the compliance schedule authorized by the TMDL during the designated 20-year compliance period and the limitations in the Revised TO are newly interpreted and more stringent. Under these circumstances, a compliance schedule that reflects the original intent of the TMDL is appropriate to meet the WLAs.

The requested 10-year compliance schedule is consistent with both the Compliance Schedule Policy and the Basin Plan:

- The Compliance Schedule Policy [pg 5-6] allows a compliance schedule of up to 10 years, or up to the length of a TMDL compliance schedule in a TMDL approved by EPA under Section 303(c) of the Clean Water Act. The Compliance Schedule Policy further provides that a compliance schedule may not “exceed the maximum length for compliance schedules or implementation schedules

contained in the TMDL implementation plan.” However, the Policy does not state that a compliance schedule cannot extend beyond a TMDL’s final compliance date; it states only that the schedule’s duration cannot exceed the maximum length provided in the TMDL. The County’s requested 10-year schedule is shorter than the TMDL’s 20-year implementation schedule.

- The Basin Plan’s Chapter 5, Implementation – Compliance Schedules [pg 5-7], contains parallel language, providing that:
 - “Where the Regional Board determines that it is infeasible to achieve immediate compliance with an effluent limitation specified to implement a new, revised or newly interpreted water quality objective, whether numeric or narrative, adopted by the Regional Board or State Water Resources Control Board, or with a new, revised or newly interpreted water quality criterion promulgated by the U.S. Environmental Protection Agency, the Regional Board may establish a schedule of compliance in a discharger’s waste discharge requirements (NPDES permit).
 - In no event shall an NPDES permit include a schedule of compliance that allows more than ten years from the date of adoption or interpretation of the applicable objective or criterion.” The County’s request does not exceed this threshold.

Recommendations

Given that the Revised TO is incorporating a new WQBEL to implement a TMDL that has not previously been included in the MS4 Permit for the Orange County Permittees, and the Permittees have never received an in-permit compliance schedule for the Bacteria TMDL, the County requests that a 10-year compliance schedule be incorporated into the permit for both the dry weather and wet weather WQBELs, so that Appendix 14 is consistent with the assumptions and requirements of the TMDL. The requested 10-year schedule is consistent with both the Compliance Schedule Policy and the Basin Plan and is shorter than both the TMDL’s 20-year implementation schedule and the Compliance Schedule Policy’s maximum allowable duration.

Response: Appendix 14 implements the San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL established in the Los Angeles Basin Plan, including the waste load allocations and implementation schedule applicable to the responsible MS4 dischargers identified by that TMDL. The fact that the TMDL requirements are being incorporated into this MS4 Permit for the first time does not restart the implementation schedule established by the TMDL. The applicable compliance dates are established by the Basin Plan.

The State Water Board's Compliance Schedule Policy authorizes compliance schedules under specified circumstances and establishes limitations on their duration. This Policy does not independently authorize the Santa Ana Water Board to disregard or restart a final compliance date already established by the applicable TMDL. Water Code section 13263(c) authorizes waste discharge requirements to contain time schedules subject to applicable law; it does not require the Santa Ana Water Board to establish a new compliance schedule whenever an existing requirement is incorporated into a reissued permit.

Where the final TMDL compliance date has passed, the State Water Board recognized that municipal stormwater dischargers may not always be able to meet final TMDL deadlines, but concluded that, short of amending the Basin Plan to modify those deadlines, it was appropriate for dischargers to seek time schedule orders rather than receive an extension through the provisions of the MS4 permit (Order WQ 2015-0075). For wet weather where the compliance date has not passed, Permittees have until 2036 to comply.

Accordingly, the Tentative Order does not provide a new ten-year compliance schedule for either dry- or wet-weather WQBELs, but a ten-year BMP-based compliance schedule may be available, where justified, through a TSO for dry-weather and through a Watershed Management Plan for wet-weather.

17.52. Comment: Modify Section II. "Compliance Determination" to add compliance determination options based on risk.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Appendix 14 is a new appendix added to the Revised Tentative Order. Concern and Rationale

The TMDL appendix should include compliance demonstration options based on risk that were included in the Tentative Order for the other bacteria TMDLs in the permit. As outlined in Comment 30 on the Newport Bay Fecal Coliform TMDL, natural sources of bacteria pose a lesser risk of illness than human sources of bacteria. Therefore, exceedances that are primarily caused by less risky sources of bacteria are unlikely to be impairing beneficial uses. Providing options to demonstrate compliance through measurements of risk, rather than indicator bacteria concentrations, addresses this concern by focusing implementation and demonstration of compliance on the sources that pose the most risk to human health.

Recommendations

1. Add a compliance demonstration option that states “Demonstrate that an alternative indicator in the receiving water is below levels that are equivalent to a risk to human health less than 32 illnesses/1000 people.”
2. Add a compliance demonstration option that states “Demonstrate, through an approved epidemiological study or quantitative microbial risk assessment (QMRA), that the risk to human health is less than 32 illnesses/1000 people in the receiving water.”

Response: The proposed change has been made.

17.53. Comment: Modify Section II. “Compliance Determination” to add compliance determination option based on measurements in the receiving water.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Appendix 14 is a new appendix added to the Revised Tentative Order. Concern and Rationale

Consistent with adopted TMDL (Attachment A to Resolution No. R15-005), the TMDL appendix should include a compliance demonstration option that is assessed in the receiving water.

The San Gabriel Bacteria TMDL states that the waste load allocations will be measured in the receiving water and the implementation plan states that the MS4 permit should allow for permittees to be deemed in compliance with the waste load allocations if they “demonstrate there are no exceedances of the receiving water limitations in the receiving water at, or downstream of, the Permittee’s outfalls.” Additionally, the text in Appendix 14 describing the WQBELs states that the samples will be collected in the receiving water.

The Implementation section of the TMDL states “MS4 Permittees may be deemed in compliance with WQBELs if they demonstrate that:...(2) there are no exceedances of the receiving water limitations in the receiving water at, or downstream of, the Permittee’s outfalls”.

However, the compliance demonstration section of Appendix 14 does not include any option that allows for assessing compliance in the receiving water. Demonstrating that the WQBELs are being met at receiving water compliance monitoring locations should

be considered compliance with the TMDL as it is demonstrating that the impairment no longer exists in the receiving water and is consistent with the TMDL Basin Plan language and the language describing the WQBELs in the permit.

Recommendation

Add a compliance demonstration option that states “Demonstrate that the WQBELs are being met at receiving water compliance monitoring locations.”

Response: As the WQBELs in Appendix 14 are assessed based on receiving water monitoring in sections I.A.1, I.B.2, and I.C.1, demonstration of no exceedances of the WQBEL is intended to be in the receiving water. Compliance demonstration language has been updated to clarify this.

17.54. Comment: Modify Section II. “Compliance Determination” to add compliance determination option based on implementing an Implementation Plan or WMP.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Appendix 14 is a new appendix added to the Revised Tentative Order. Concern and Rationale

The San Gabriel Bacteria TMDL Basin Plan Language states that “if permittees provide a quantitative demonstration as part of a watershed management program that control measures and best management practices (BMPs) will achieve WQBELs consistent with the schedule in Table 7-41.3, then compliance with WQBELs may be demonstrated by implementation of those control measures and BMPs, subject to Executive Officer approval.” This compliance pathway is explicitly not limited to interim or final WLAs.

This language provides TMDL-specific guidance that allows for the WMP compliance pathway to be used for final TMDL WQBELs. As provided in the previous comment letter, not providing for a BMP-based, alternative pathway through the WMP as final compliance with TMDL requirements is error under both Water Code 13263 and 40 C.F.R. 122.44(d)(1), because, without these provision, the Revised TO fails to inaccurately implement the LA basin plan, and is inconsistent with the assumptions and requirements for multiple TMDLs and is clearly inconsistent with the direct Basin Plan language for the San Gabriel Bacteria TMDL noted above. For this reason, compliance option D should be modified to remove the language stating that it can only be used when the final compliance date has not yet passed.

Recommendation

Modify compliance demonstration option D as follows

“Where ~~the compliance date(s) for achievement of the WQBEL(s), as shown in Table 14.1, has not passed, &~~ Develop and implement an approved Implementation Plan or Watershed Management Plan addressing the waterbody- pollutant combination pursuant to section XII of the Order.”

Response: Staff disagrees that the San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL authorizes implementation of an Implementation Plan to constitute compliance with final WQBELs after the final TMDL compliance date has passed. The Basin Plan language cited by the commenter provides that compliance with wet-weather WQBELs may be demonstrated through implementation of control measures and BMPs “consistent with the schedule” established by the TMDL. Thus, this alternative compliance mechanism operates within the TMDL's implementation schedule; it does not eliminate or extend the final compliance date established by the Basin Plan.

This interpretation is also consistent with implementation of the TMDL under the Los Angeles Region MS4 Permit. The Los Angeles Water Board has required WMP milestones tied to the TMDL's applicable compliance dates and has expressly stated that WMP deemed compliance is unavailable where final TMDL deadlines have passed, absent an applicable TSO or other authorized compliance pathway. (See Order R4-2021-0205 section X.B.2.b.ii and Los Angeles Water Board, Conditional Approval of East San Gabriel Valley WMP (May 1, 2023), p. 5.)

17.55. Comment: Modify Appendix 1 and the Fact Sheet to reflect that municipal jurisdictions that discharge to Carbon Canyon Diversion Channel (E03) should be considered tributary to Santa Ana River watershed and not Coyote Creek, and thus, are not subject to Appendices 8 and 14.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Appendix 14 is a new appendix added to the Revised Tentative Order, and Appendix 8 was included in the 2024 version of the Tentative Order.

Concern and Rationale

The Orange County Flood Control District (OCFCD) has received questions about the current configuration and operation of the Carbon Canyon Diversion Channel (E03) in the Santa Ana River watershed, and whether discharges from upstream tributary city jurisdictions through this drainage reach Carbon Creek Channel (B01) in the San Gabriel River/Coyote Creek watershed.

Carbon Canyon Diversion Channel (E03) connects with Atwood Channel (E04) at the Miller Retarding Basin (E02B01) forebay, which then discharges to Carbon Creek Diversion Channel (E02) and then Santa Ana River (E01). Carbon Creek (B01) starts to the west of Carbon Canyon Diversion Channel (E03) and along the north side of Miller Basin and is hydrologically disconnected with the installation of Carbon Creek Diversion Channel years ago. OCFCD posts its flood control maps publicly at <https://pwip.oc.gov/service-areas/oc-infrastructure-programs/documents-maps/drawings-maps>.

Additionally, as-builts for the facility are available here:

<https://ocgov.box.com/s/w6tuy995te5pyv55pyi27w6r1sl9sop1>.

The map below shows the designation of the Santa Ana River watershed (yellow) separately from Carbon Creek (green), and Carbon Canyon Diversion Channel runs along the border.

The historical connection from Carbon Canyon Channel has been bermed and sealed with grout as depicted in the images below:

Miller Basin (facility E02B01) is owned in fee by OCFCD for the primary purpose of reducing the peak flow of storm waters tributary to Carbon Canyon Diversion Channel (facility E02). Orange County Water District (OCWD) and OCFCD have for many years coordinated on the operation of Miller Basin for water conservation.

A weir exists along the west side of Carbon Canyon Channel (E03) just downstream of the photographed area to receive potential peak storm flows in Carbon Canyon Diversion Channel (E03). According to OCWD, Miller Basin has only received storm flow from overtopping the weir once in the past 25 years, which was absorbed by OCWD at its nearby Kraemer Basin.

There is an agreement between OCFCD and OCWD that details the water elevation that is allowed by OCFCD to be maintained in Miller Basin for OCWD groundwater recharge operations. It also describes how water exits the basin: water stored in Miller Basin may be drawn down by OCWD's two submersible pumps rated at 20 cfs capacity each (capacity varies from 15 cfs to 30 cfs depending upon water surface elevation), and/or by OCFCD's gated 24-inch outlet pipe to Carbon Canyon Diversion Channel. With these facilities, OCWD can redirect water in the area to their nearby facilities Kraemer Basin or Anaheim Lake for groundwater recharge. According to OCWD, the only time flows would be directed to Carbon Creek (B01) if

there was no capacity in Kraemer Basin or Anaheim Lake, and needed to empty Miller Basin to reach the required flood safety elevation. It would take a number of extreme events back-to-back for this to occur, and concurrence from OCFCDD would be required for a stormwater discharge to Carbon Creek (B01) to occur per the agreement.

As a side note, during the dry season to maximize groundwater recharge, OCWD can potentially pump water from Warner Basin or Anaheim Lake to the west of Miller Basin and discharge it to Carbon Creek to percolate in the creek, diverted into OCWD owned recharge basin (La Jolla) or in downstream flood control basin (Raymond Basin, B01B03). During these dry periods when OCWD is pumping water into Carbon Creek, flow rates and the weather conditions are monitored closely to ensure that no water goes beyond Raymond Basin, making it a terminal basin.

Based on the current configuration and operation of the flood control facilities and water conservation basins in the area, municipal jurisdictions that discharge to Carbon Canyon Diversion Channel (E03) should be considered tributary to Santa Ana River watershed and not Coyote Creek, and the MS4 permit should make findings where appropriate related to these tributary jurisdictions. For Orange County Permittees, this would include the City of Yorba Linda, but this would also potentially apply to other Permittees from San Bernardino County.

Recommendations

Modify Appendix 1, Table 1.1 TMDLs Applicable to Orange County Permittees

- Remove the City of Yorba Linda from the columns “Coyote Creek Metals TMDL” and “Coyote Creek Bacterial TMDL”

Modify the Fact Sheet to support the removal of the City of Yorba Linda from both Appendix 8 and Appendix 14. Note these findings may also be applicable to named San Bernardino County jurisdictions that should also be evaluated.

Response: Staff acknowledge the information provided by the commenter regarding the current configuration and operation of Carbon Canyon Diversion Channel, Carbon Creek, and Miller Basin. The Fact Sheet has been revised to recognize the role of Miller Basin in relation to Appendix 14, consistent with its existing discussion for Appendix 8.

The Tentative Order cannot remove responsible parties identified in an applicable TMDL without a Basin Plan amendment modifying the TMDL. Accordingly, the Tentative Order does not remove the identified Permittees from the applicable TMDL provisions based on the current configuration and operation of these facilities.

Appendix 14 provides compliance demonstrations that account for the hydrologic conditions affecting a Permittee's discharge, including a demonstration that there was no discharge from the Permittee's MS4 during the relevant time period. Where Miller Basin, diversion facilities, groundwater recharge operations, or other conditions prevent a Permittee's MS4 discharge from reaching the Coyote Creek watershed during the relevant period, the Permittee may demonstrate compliance on that basis. No changes have been made to Appendix 1.

Category 17 – Attachment C Monitoring and Reporting Program

5.8. **Comment:** Monitoring and Reporting

Additional clarification is needed regarding the applicability of Attachment C of the Order to the City of Claremont. The reporting requirements in Attachment C are inconsistent with the Order's limited applicability to the City of Claremont.

Response: A provision has been added to Appendix 11, section VI, to clarify that, for Claremont and Pomona, the Monitoring and Reporting Program in Attachment C applies only to monitoring and reporting related to demonstrating compliance with the requirements of Appendix 11. Language has also been added to Attachment D, section II.B.

14.3. **Comment:** Preserve a reasonable transition process for PMRP development and existing MSAR monitoring

Order R8-2026-0034, Attachment C, Section VII requires permittees to implement monitoring and reporting through a Program Monitoring and Reporting Plan approved by the Executive Officer.

Attachment C, Section VII.A.5 requires the initial draft or revised PMRP to be submitted within 18 months of the effective date of the Order. Attachment C, Section VII.C states that, until the draft PMRP is approved, permittees must continue their existing monitoring and reporting program as described in the most recent Annual Progress Report, unless changes are approved by the Executive Officer.

The City requests that the Santa Ana Water Board recognize the City's existing participation in MSAR Bacterial Indicator TMDL monitoring and collaboration with the MSAR TMDL Task Force and provide a clear transition process. The City should be allowed to continue implementing existing approved MSAR monitoring and reporting activities until the Appendix 11 PMRP elements are approved and operational.

Requested revision or clarification:

Confirm that the City of Pomona may continue existing approved MSAR Bacterial Indicator TMDL monitoring, reporting, and QAPP-related procedures during the PMRP transition period, and that the Executive Officer will coordinate with affected permittees to avoid duplicative monitoring or conflicting reporting requirements.

Response: As the commenter states, Attachment C, Section VI.C recognizes that Permittees shall continue existing monitoring and reporting programs until the draft PMRP is approved. This provision does not exclude any existing programs coordinated through the Middle Santa Ana River Task Force.

In addition, Section VI.B.7 of Attachment C provides flexibility for Permittees to propose schedules for data collection, analysis, and reporting to demonstrate compliance, and Section VI.K provides a 30-day public review period and opportunity for Permittees to request Santa Ana Water Board review prior to PMRP approval. Nothing precludes existing procedures from being proposed in the PMRP where appropriate. These provisions provide sufficient flexibility for Permittees to propose an appropriate transition from existing monitoring programs to the approved PMRP while minimizing duplicative efforts.

Accordingly, no further revisions have been made in response to this comment.

19.20. Comment: Remove Section B.12 and Table C.1 from Attachment C Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026) Table C.1 - List of Constituents within Watersheds was added and includes required monitoring for Lower Santa Ana River.

Section B. General Water Quality Monitoring Requirements includes basic parameters that the Permittees need to follow when conducting their monitoring. The requirements are general in nature such as how sample collection should be completed (1) that laboratories need to be certified, (2) that calculations should use accepted methods, (3), etc. However, in the Revised TO, Regional Water Board staff also added in prescriptive requirements with the inclusion of "12. Permittees must test for the Constituents shown in Table C.1" and the inclusion of Table C.1.

The prescriptive nature of this section is not only in direct conflict with the Permittees ability to propose a comprehensive monitoring program as a part of the PMRP as described in Section IX.

Program Monitoring and Reporting Plan (PMRP), but it compromises the ability of the Permittees to make future modifications to the PMRP that may be different than what is being required in Table C.1.

Further, the Fact Sheet does not include any rationale as to why this prescriptive requirement is being included when the PMRP is already comprehensive and reviewed and approved by the Regional Water Board.

Recommendations

Remove Item #12 and Table C.1

Response: Item #12 and Table C.1 are the summary of the past and present obligations described in the Basin Plan. Until the Basin Plan language is adopted, the summary of the obligations remains for the list of watersheds' constituents. The Program Monitoring and Reporting Plans (PMRPs) can contain adaptive language to address future changes to the Basin Plan watersheds' constituents as inclusive and omissive language arises. The PMRPs are not meant to lock the Permittees into the current watersheds' constituents without consideration of possible changes, or to be based on conditional justification.

17.57. Comment: Modify Section B.12, Table C.1: Remove Section B.12 and Table C.1

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

Table C.1 - List of Constituents within Watersheds was added and includes required monitoring for Lower Santa Ana River.

Concern and Rationale

Section II.B. General Water Quality Monitoring Requirements, includes basic parameters that the Permittees need to follow when conducting their monitoring. The requirements are general in nature such as how sample collection should be completed (1), that laboratories need to be certified (2), that calculations should use accepted methods (3), etc.

However, in the Revised TO, Regional Water Board staff also added in prescriptive requirements with the inclusion of Section II.B.12 “Permittees must test for the Constituents shown in Table C.1” and the inclusion of Table C.1. For the Lower Santa Ana River in North Orange County, it is unclear why physical constituents and other general parameters are being added. Under typical conditions, the upper portion of the Lower Santa Ana River watershed in North Orange County is fully incorporated into local groundwater recharge operations across various facilities. Exact conditions may vary, but there are typically dry portions of the riverbed downstream of the recharge areas starting at Chapman Avenue.

Additionally, a low flow diversion system is installed and operated downstream of the 405 Freeway that directs any residual dry weather flow to the sanitary sewer system (which can be treated and incorporated into the Groundwater Replenishment System as well). Further downstream near the Santa Ana River ocean outlet is a tidally influenced area that contains very different water quality conditions. The Greenville-Banning Channel (D03) tributary also has a rubber dam installed for diversion of capturable flows to a local water quality project in Costa Mesa or to the sanitary sewer system. For Newport Bay, each of the TMDL appendices adds PMRP requirements that will inherently include these constituents, so it is unclear why the table is needed.

The prescriptive nature of this section potentially limits the Permittees ability to propose a comprehensive monitoring program as a part of the PMRP as described in Section IX. Program Monitoring and Reporting Plan (PMRP), and it also compromises the ability of the Permittees to make future modifications to the PMRP that may be different than what is being required in Table C.1.

Further, the Fact Sheet does not include any rationale as to why this prescriptive requirement is being included when the PMRP is already comprehensive and reviewed and approved by the Regional Water Board.

Recommendations

Remove item II.B.12 and Table C.1

Response: See [Response 19.20](#).

21.50. Comment: Attachment C – II.B.8 Monitoring and Reporting

Permittees must employ sample collection methods that are compatible with California’s Surface Water Ambient Monitoring Program (SWAMP) Quality Assurance Program Plan

(QAPP) and with SWAMP's Procedures for Conducting Routine Field Measurement unless otherwise specified in the PMRP.

PMRP needs to be included in the glossary.

Recommendation: Please refer to the issue/concern.

Response: The comment is acknowledged. PMRP will be included in the Glossary.

19.21. Comment: Modify Attachment C, II.G.5 And II.G.6.

The revised language requires participation in the Southern California Monitoring Coalition (SMC) and the use of Southern California Coastal Water Research Project (SCCWRP) tools.

Permits should establish enforceable requirements between the regulatory agency and Permittees.

Regional Water Board Modification from the Tentative Order to the Revised Tentative Order.

The proposed language in Section II.G.5 requires:

"Bioassessment monitoring conducted in coordination with the Stormwater Monitoring Coalition must be completed at the monitoring locations specified by the most recent SMC Stormwater Monitoring Coalition Workplan. The monitoring locations and parameters may be adjusted during the monitoring year according to recommendations from the SMC so that they are consistent with the SMC Workplan."

The SMC is a shared, cooperative program, not a single accountable entity. SMC should not be directly referenced as a requirement or standard, since a permit cannot enforce a requirement that is subject to change outside regulatory control. Similarly, SCCWRP tools should not be directly referenced as a requirement or standard.

Recommendation

Modify Attachment C, Sections II.G.5 and II.G.6 as follows:

- "In lieu of developing an independent bioassessment Permittees may satisfy this requirement through participation in regional monitoring programs (e.g., SMC)."

Response: The intention of this provision was to allow, not require, collaboration with the Stormwater Monitoring Coalition, and require conformance with the SMC Workplan where that is occurring. Changes have been made in section II.G.5 to clarify that this is allowed in lieu of independent bioassessment.

For section II.G.6, the language already requires that utilized guidance must be acceptable to the Executive Officer without requiring any specific tool as a requirement or standard. Instead, the provision frontloads that those certain tools, the cited tools in the SCCWRP Technical Report, are acceptable to the Executive Officer. This does not make the SCCWRP tools mandatory. No change is necessary.

21.52. Comment: Attachment C – III.A (IV.A) Monitoring and Reporting

Please correct nomenclature in Attachment C, as number III has been deleted on accident. Numbering currently goes from II to IV.

Permittees should have the opportunity to invest in research and/or studies that can benefit us on the path to compliance or help fill data gaps etc. in support of overall program, at their discretion.

Recommendation: Please refer to the issue/concern.

Response: Numbering from II to IV has been corrected. See Response [19.22](#) regarding the rest of the comment.

19.22. Comment: Modify Attachment C, IV.

The permit language needs to be clarified to state special studies are not required. Ensure consistency between Attachment C (Monitoring and Reporting Program) and Attachment D (Fact Sheet).

Regional Water Board Modification from the Tentative Order to the Revised Tentative Order.

The proposed language in Attachment C, Section IV reads:

"The Permittees should have ~~an effective~~ a strategy for carrying out special studies. Special studies include projects intended to contribute to stormwater science or to support continual improvement of the Permittees' stormwater program. Special studies

do not include projects intended to reach conclusions on compliance with receiving water limitations or ~~waste-load-allocations~~ WLAs; such projects may be subject to the requirements of this MRP. This strategy should include:

- 1. ~~A strategic plan that identifies~~Identified research priorities.*
- 2. Specific management questions to be informed by the results of the special study and which, when answered, will affect decisions in the program.*
- 3. Funding strategies which may include partnerships with other agencies, grants, etc.*
- 4. An annual workplan for carrying out special study projects."*

However, in the Attachment D (Fact Sheet), Section V.F, text states:

"It is encouraged that Permittees consider conducting special studies. Special studies are not required."

Per Section IV, Permittees should have a strategy that includes research priorities, specific management questions, funding strategies and "an annual workplan for carrying out special study projects." This implies that special studies are required. However, the Fact Sheet (Section V.F) states that special studies are not required.

Recommendation

- Modify Attachment C, Sections IV to state: "It is encouraged that Permittees consider conducting special studies. Special studies are not required."
- Ensure consistency between Attachment C (Monitoring and Reporting Program) and Attachment D (Fact Sheet).

Response: It is correct that special studies are not required. Attachment C section III (appeared to be section IV in the Revised Tentative Order) has been modified to better align with the Fact Sheet.

21.53. Comment: Attachment C – V.F Monitoring and Reporting

"Analyses of monitoring results must explicitly evaluate compliance with receiving water limitations and WQBELs, using methods consistent with applicable TMDL monitoring requirements where they exist."

Follow the basin plan. Permittees feel like this language is redundant.

Recommendation: Please remove this language.

Response: Duplicative language from the Basin Plan is required in the Tentative Order to ensure enforceability.

21.54. Comment: Attachment C – VI.B Monitoring and Reporting

“1. Each Permittee must perform assessments of the effectiveness of their program(s) to control Trash and comply with WQBELs and receiving water limitations according to the requirements of Order R8-2026-0034. Assessments must be performed annually or according to a schedule approved by the Executive Officer as part of the PMRP. The schedules will identify the timing of the assessments; the performance metrics that will be applied; and describe the methods of measuring effectiveness. Reported outcomes must be expressly compared to:

- a. The performance metrics prescribed by Order R8-2026-0034, and
- b. The performance metrics developed by the Permittees.”

Trash should be separate.

Recommendation: Revise language to remove Trash as it should be reported separately.

Response: Trash is a new pollutant relative to the existing pollutants of concern to the Tentative Order. In the past, Trash was loosely regulated, with little specificity beyond prevention, removal, and documentation. The compliance metrics for Trash have now been elevated to a similar level of impairment effectiveness under the Trash Provision. Regarding “*The performance metrics prescribed by Order R8-2026-0034*”, the pollutants of concern, including Trash, have already been established in the prior permits or provisions, and better performance metrics are required as a benchmark. “*The performance metrics developed by the Permittees*” can be used to compare and contrast with the effectiveness, or lack thereof, benchmark set forth in the Tentative Order.

19.23. Comment: Modify Attachment C, Section 6.B and C Regarding Trash.

Redline revisions related to trash appear inconsistent with the intent and applicability of the State Trash Amendments. The Trash Amendments are limited to Priority Land Uses; however, trash discharged from MS4 outfalls originates from entire drainage areas,

including land uses not regulated under the Amendments, creating potential ambiguity in compliance expectations and program scope. Furthermore, how to comply with proposed Track 2 monitoring report requirements is not made clear.

Regional Water Board Modification from the Tentative Order to the Revised Tentative Order.

Revised language has been added to Attachment C, Section B.1 (Program Effectiveness Assessments) to incorporate trash-related assessments and to Section C (Trash Program Reporting) to introduce additional requirements within the monitoring reports.

Redline revisions to the permit added "Trash" as a pollutant of concern along with an annual requirement to conduct effectiveness assessments to clarify compliance status with respect to receiving water limitations. The Trash Amendments policy is limited to Priority Land Uses, whereas the discharge of trash from MS4 outfalls comes from all land uses within the drainage area that may not be regulated under the Trash Amendments. This assessment could open the door for expanding the scope of the Permittees' Track 1 or Track 2 program based on outfall and/or receiving water data.

The revised draft removes MS4 and Receiving Water monitoring requirements for Track 1 but adds annual report assessment questions for Track 2. It is unclear how Permittees would generate information to address the Track 2 questions without monitoring data.

Recommendation

- Revise text to clarify that adding trash as a pollutant of concern does not expand Track 1/Track 2 requirements beyond Priority Land Uses or create new assessment obligations without defined criteria as follows:
 - Each Permittee must perform assessments of the effectiveness of their program(s) to control Trash at the PLUs defined in the State Water Resources Control Board's Trash Provisions (Statewide Trash Amendments) and comply with WQBELs and receiving water limitations according to the requirements of Order R8-2026-0034.
- Clarify how Permittees are expected to answer Track 2 assessment questions without supporting monitoring data.

Response: Under [Appendix E of Final Part 1 Trash Provisions Of The Water Quality Control Plan For Inland Surface Waters, Enclosed Bays, And Estuaries of California](#), Section A.2 (Prohibition of Discharge), it states that "*The discharge of TRASH to surface waters of the State or the deposition of TRASH where it may be discharged*

into surface waters of the State is prohibited.” EPA approved the objective statement is made on the second page of Appendix E, “Trash shall not be present in inland surface waters, enclosed bays, estuaries, and along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance.”

The goal is to ensure that Trash, a pollutant of concern, is regulated in a manner consistent with existing regulations. Currently, the Trash Amendments have a compliance date of December 31, 2030, with assessment and treatment control for Priority Land Uses. Once the compliance date passes, the scope of Trash as a pollutant of concern is no longer constrained to priority land uses and may expand to all land uses. The Tentative Order is taking the opportunity to ensure Trash is addressed similarly to other existing pollutants of concern.

Under Appendix E, section A.6.b (Monitoring and Reporting), Track 2 option requires annually submitting monitoring reports containing, but not limited to, “*GIS-mapped locations and drainage area served for each of the FULL CAPTURE SYSTEMS, MULTI-BENEFIT PROJECTS, other TREATMENT CONTROLS, and/or INSTITUTIONAL CONTROLS installed or utilized by the MS4 permittee.*” The five questions in the section provided an example of the performance metric data required for analysis. The Tentative Order is fulfilling Appendix E’s section A.6.b, and descriptive information can also be found in the [April 17, 2015 Final Staff Report for Trash Amendments](#), Section 2.7 (Monitoring and Reporting Requirements).

21.56. Comment: Attachment C – VIII.B.14 & 15 Monitoring and Reporting

Does not belong here and needs to be part of the annual report in their respective section.

Recommendation: Please refer to the issue/concern.

Response: The B.14 and 15 is part of the Annual Report Requirements summary listing. Excluding the two items from the annual reporting requirements will cause conflicts in the mentioned sections. Accordingly, no changes have been made in response to this comment.

13.19. Comment: Monitoring and Reporting

Attachment C - Monitoring and Reporting

Similar to the WMP comments, the City wants to emphasize that not all cities have the administrative teams to manage extensive tracking systems and most do not have GIS teams. In the monitoring requirements, please provide "low-tech" options for providing the information,

We understand that monitoring is a key method to prove compliance and program progress. We also ask that practical implementation is the goal when the Program Monitoring and Reporting Plan (PMRP) are draft, reviewed and approved.

Response: Orders R8-2009-0030, Section II.B.5, R8-2010-0033, Section II.B.2.g, and R8-2010-0036, Section III.B.2.e, require Permittees to maintain up-to-date MS4 facility maps (GIS-based or informational). The updates or periodic revisions must be submitted individually or provided to the Principal Permittee for preparation to submit as collective annual reports. At this point in time, GIS-based maps should be available either for individual Permittees or as an integrated mapping system, such as countywide drainage and/or hydrological condition of concern maps.

Category 18 – Attachment D Fact Sheet

17.25. Comment: The Fact Sheet should be modified/corrected to reflect that many of the TMDLs have been attained and/or WLAs have been achieved and sustained for many years.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

In Attachment D, Section IX.B.2. Expression of Water Quality-Based Effluent Limitations, the RTO includes new language as follows (pages 297-298 of 378) [excerpt]:

“In determining how to express the WQBELs, the Santa Ana Water Board has analyzed the specific facts and circumstances surrounding the Order and the underlying TMDL WLAs, including the nature of MS4 discharges in the Santa Ana Region, available data, modeling results, and other relevant information. In doing so, the Santa Ana Water

Board concludes that WQBELs expressed numerically are appropriate and necessary in the Order to achieve the WLAs after the deadline to comply has passed or where no deadline was established. MS4 discharges constitute a continuing and significant source of pollutants resulting in exceedances of water quality standards in the Santa Ana Region, as evidenced by the number of TMDLs established for impaired waters in the region and identification of MS4 discharges as a source of that impairment. To date, sole reliance on BMP-based requirements has been insufficient to resolve these exceedances. The circumstances of each of the pollutant-water body combinations under the TMDLs can be described by one of six situations.

The first includes pathogens and total phosphorous in Newport Bay and pathogens in the Middle Santa Ana River watershed. In these situations, the WLAs are not being met.

The second situation includes total nitrogen in Newport Bay. In this situation, the WLAs are being met but how they are met is uncertain....

The third situation includes diazinon in San Diego Creek, chlorpyrifos in San Diego Creek and Newport Bay, and organochlorines in Newport Bay. These pollutants were not assessed for compliance with their WLAs in the Permittees' 2022-2023 Unified Annual Progress Report.

The fourth situation includes metals discharged into Newport Bay and its tributaries. Compliance was not assessed in 2022-2023 directly with the WLAs in Order R8-2009-0030...

The fifth situation is sediment in the Newport Bay watershed. In this case, the TMDL assigned load allocations to urban sources and assigned certain "targets" or tasks to the Permittees...

The final situation includes the Phosphorus TMDL in Big Bear Lake and the nutrient TMDL in Lake Elsinore and Canyon Lake. Permittees have been able to attain compliance with the WLAs through a combination of pollution controls and offsets using in-lake treatments...

As such, the Santa Ana Water Board finds that WQBELs expressed numerically are necessary to address the historic and persistent exceedances of water quality standards in the Santa Ana Region...."

Concern and Rationale

The County understands that the purpose of the new language in the Fact Sheet is to support the Regional Water Board's conclusion that the "sole reliance on BMP-based

requirements has been insufficient to resolve these exceedances” and, therefore, to justify the inclusion of numeric WQBELs for certain TMDLs.

The County has the following concerns regarding this new language:

- The Fact Sheet states that “To date, sole reliance on BMP-based requirements has been insufficient to resolve these exceedances.” However, the County submits that the use of BMP-based requirements have resulted in many demonstrated improvements of water quality. Thus, BMP-based requirements should not be deemed a failure if the TMDLs have not yet been attained since, in many cases, implementation is still ongoing. Further, many of the TMDLs that have been attained used a BMP-based approach that should be recognized as successful.
- The new statements in the Fact Sheet have not previously been shared or discussed with the County or the Permittees during the many discussions held in recent years through the MS4 permit interactions nor via the various TMDL discussions held on a recurring basis. Therefore, the County is unclear why this language was added to the Fact Sheet for the first time.
- Certain assertions in the Fact Sheet are wholly inconsistent with other sections of the RTO that acknowledge that TMDLs are being attained (sediment, nutrients) and/or that pollutant water body combinations have been delisted (diazinon and chlorpyrifos).
- The statements are also inconsistent with the Water Quality Report Cards that the County worked on with Regional Water Board staff for Sediment, Nutrients, etc., which document attainment of these TMDLs (which include BMP-based approaches).
https://www.waterboards.ca.gov/about_us/performance_report_2425/plan_assess/tmdl_outcomes.html

The examples below demonstrate that several of the new statements are inconsistent with long-term monitoring data and other findings contained within the Fact Sheet itself:

- “Pathogens in Newport Bay”

- o Available monitoring data do not support the conclusion that the pathogen WLAs are not being met. The Fecal Coliform Annual Reports for the past five years demonstrate sustained attainment of the geometric mean WLA, with annual geometric means ranging from 14 to 20 CFU/100 mL, well below the target of 200 CFU/100 mL. In addition, the REC-1 Water Quality Assessment for Lower and Upper Newport Bay technical memorandum, prepared by the Newport Bay Fecal Coliform TMDL Technical Meeting Group, concluded that Newport Bay met the REC-1 Water Quality Objective based on data collected from 2013 through 2023. This conclusion is further supported

by the June 2026 Provision 23 Assessment submitted to the Regional Board, which confirms that recreational water quality objectives are being achieved and that human health is protected.

- “Total Phosphorous in Newport Bay”

- o The Permittees are currently implementing the Regional Monitoring Program approved in 2014. Monitoring data for the past five reporting periods demonstrate that the Total Phosphorous WLAs have been achieved in every reporting period. Annual phosphorus loads during this period ranged from 20,935 pounds to 46,122 pounds, well below the applicable TMDL waste load allocation of 62,080 pounds. Accordingly, the monitoring record does not support the assertion that the Total Phosphorus WLAs are not being achieved. Instead, it demonstrates sustained attainment of the WLAs and successful implementation of the TMDL.

- o The assertion that the Total Phosphorus WLAs are not being achieved is inconsistent with the following language also in the Fact Sheet which recognizes the success of the Nutrient TMDL in Newport Bay and San Diego Creek:

“The TMDL for Nitrogen and Phosphorus in Newport Bay and San Diego Creek is another example of the achievability of WQOs through coordinated control of all factors affecting water quality,” and acknowledges that “MS4 stakeholders have reduced nutrients loads by implementing: Treatment control measures such as constructed wetlands and biofilters, Volume reduction measures such as infiltration basins, Source control measures such as public education. In their 2021-22 Annual Report, Permittees reported seven of eight TMDL targets for Nitrogen and Phosphorus were met.” [pg 335 of 378]

- “Total Nitrogen in Newport Bay”

- o The assertion that the means by which the Total Nitrogen WLAs are being achieved is uncertain is not supported by the existing monitoring and reporting record. The Nutrient TMDL Annual Data Reports and BMP Strategic Plan Implementation Progress Reports document measurable nutrient reductions associated with implementation of major watershed-scale BMPs. Over the past five years, these projects have collectively removed a total of 534,172 pounds of nitrogen from the watershed while monitoring has continued to demonstrate attainment of the Total Nitrogen WLAs under the approved Regional Monitoring Program. Although the contribution of individual BMPs cannot be isolated, the monitoring and reporting program demonstrates that the existing watershed management approach is effectively achieving and maintaining the applicable water quality objectives.

o The success of the Nutrient TMDL is also documented through the following statement in the RTO Fact Sheet:

“The TMDL for Nitrogen and Phosphorus in Newport Bay and San Diego Creek is another example of the achievability of WQOs through coordinated control of all factors affecting water quality...MS4 stakeholders have reduced nutrients loads by implementing: Treatment control measures such as constructed wetlands and biofilters, Volume reduction measures such as infiltration basins, and Source control measures such as public education.” [pg 335 of 378]

- “Diazinon in San Diego Creek, Chlorpyrifos in San Diego Creek and Newport Bay”, and “Organochlorines in Newport Bay”

o Section C-11 of the 2022–2023 Unified Annual Progress Report summarizes applicable monitoring results and provides the basis for evaluating compliance with applicable thresholds and benchmarks, with additional data provided in the Section 11 attachments. Specifically, Section C-11.2 and Appendices C-11-II.3 and C-11-III.1 document monitoring results for organophosphate and organochlorine pesticides. Furthermore, an assessment of the monitoring data collected between 2015 and 2025 demonstrates that diazinon and chlorpyrifos have not exceeded applicable thresholds in 287 samples collected in Upper Newport Bay and 133 samples collected in San Diego Creek. The Permittees can evaluate how these data are presented and assessed in future Unified Annual Progress Reports; however, the existing monitoring data do not support the conclusion that compliance with the applicable WLAs has not been evaluated.

o Additionally, San Diego Creek Reaches 1 and 2 and Upper and Lower Newport Bay were delisted for diazinon and chlorpyrifos impairments following approval of the 2014 and 2016 California Integrated Report by the State Water Board and subsequent approval by USEPA in 2018. The delisting of these waterbodies further demonstrates attainment of the applicable water quality standards and the effectiveness of implemented management actions.

- “Sediment in the Newport Bay Watershed”

o The Sediment TMDL is an example of the successful implementation of a BMP-based approach, as demonstrated by annual loading data showing sustained attainment of the 10-year running average sediment reduction target since the compliance deadline of April 16, 2009. The effectiveness of this approach is also recognized within other sections of the Fact Sheet, which states that “the BMP-based approach is appropriate for this TMDL since actions by Permittees and other stakeholders have resulted in

attainment of the TMDL...” [pgs. 302–303 of 378]. The Fact Sheet further identifies the Sediment TMDL as an “example of achieving WQOs” through coordinated watershed management and acknowledges, based on the 2021–2022 and 2023–2024 Annual Reports, that sediment loads are below the established target [pgs. 334–335 and 278–279 of 378].

o This is further supported by Resolution R8-2024-0054 Triennial Review Medium-Priority List Project Descriptions – Fiscal Years 2024-2027, Attachment C, developed by Regional Water Board staff:

“The 2022 Sediment TMDL compliance annual report shows that the TMDL numeric target for loading is currently being attained. The 10-year average annual load is currently 15,297 tons. It is anticipated that sediment loading will continue to remain below the TMDL target due to urbanization of former agricultural areas, stabilization of eroding channels, periodic removal of sediment in San Diego Creek and its tributaries, and periodic removal of sediment from sedimentation basins in the foothills of the watershed (Foothill Retarding Basins).” [pg 27 of 33]

“The TMDL target for in-bay basin depths is also being achieved.” and “Preliminary modeling predictions indicate that sediment accumulation in the basins is not likely to reach -7 feet mean sea level, the TMDL sediment threshold, for 22 years (year 2042) in Basin Unit I/III and 88 years (year 2108) in the Basin Unit II.” [pgs 27-28 of 33]

Recommendation

a) Delete the unsupported Fact Sheet language starting with “To date, sole reliance on BMP-based requirements has been insufficient to resolve these exceedances” and ending with “As such, the Santa Ana Water Board finds that WQBELs expressed numerically are necessary to address the historic and persistent exceedances of water quality standards in the Santa Ana Region.”; OR

b) Revise the Fact Sheet language to accurately reflect the current attainment status of the TMDLs.

Response: The Fact Sheet does not state that BMP-based requirements have failed to improve water quality or that all TMDL WLAs are currently being exceeded. Rather, it expressly recognizes the different circumstances applicable to individual pollutant-waterbody combination. It is correct that “sole reliance” on BMP-based requirements has been insufficient, as there are circumstances where past-due compliance dates for TMDLs that are using BMP-based

compliance have not met WLAs, such as for the Middle Santa Ana River Bacteria TMDL.

As explained in the redline paragraphs immediately following that statement, the circumstances vary among the applicable TMDLs. The additional information cited by the commenter regarding BMP implementation and historical or recent attainment does not conflict with the Fact Sheet's conclusion. The purpose is not to determine whether BMPs have ever been successful, but to determine the appropriate expression of the WQBELs necessary to implement an enforceable means of demonstrating and maintaining compliance.

Regarding pathogens in Newport Bay, the commenters statement is incomplete. The REC1 WLA has two components, the geometric mean (5-sample/30-day geometric mean < 200 CFU/100 mL) that is reported to be attained, and the “no more than 10% of samples > 400 CFU/100 mL in any 30-day period” component. The 2025 TSO amendment, Order R8-2025-0003 discusses that the 2023 Annual Report showed generally declining fecal coliform concentrations, but the REC-1 WLAs were still not being met at some TSO monitoring stations. The Final California 2026 Integrated Report (303(d) List/305(b) Report) evidence is inconsistent with a broad statement that Newport Bay's pathogen problem has been resolved. For example, the State Water Board's current assessment for Upper and Lower Newport Bay report exceedances of the SHEL 43 MPN/100 mL threshold and also reports Enterococcus exceedances. Note that the compliance date for SHEL has not yet passed and final compliance has not been evaluated, and Enterococcus is not the WLA in the existing TMDL. The June 2026 Provision 23 Assessment was prepared pursuant to a conditionally approved alternative method for determining compliance with the Newport Bay fecal coliform WLA. The assessment therefore provides relevant information regarding current compliance with the WLA under the alternative methodology. However, submission of the assessment does not itself establish that the applicable WLA has been attained unless and until the compliance determination is accepted in accordance with the requirements of the TSO and the Executive Officer's approval. The assessment reports that all assessment areas met the six-week rolling Enterococcus geometric mean following implementation of Provision 23 in December 2025. However, the assessment also identifies exceedances of the STV in some assessment areas, which triggered targeted follow-up monitoring. Of the 29 HF183 samples analyzed, 28 were below the limit of detection and the single detected result was below the applicable action threshold; the report states that these results “suggest a low risk to recreators.” The report does not conclude that all applicable water quality objectives or WLAs have been permanently attained and states that continued monitoring and evaluation of the Provision 23

methodology is warranted. The recent monitoring results do not alter the determination that numeric WQBELs remain appropriate for implementing the applicable TMDL WLAs, including the alternative compliance options, such as the epidemiological study, in each Appendix.

Regarding Total Phosphorus in Newport Bay, the commenter states that the TMDL waste load allocation is 62,080 pounds. However, that value is the total TMDL loading capacity, not the municipal MS4 WLA. The applicable WLA is 2,960 lbs/year from urban areas. While demonstrations that a receiving water body is meeting the total TMDL allocation is an available compliance pathway, that is not the same as saying the WLA is being met. The 2023–24 Newport Bay Nutrient TMDL Annual Data Report states that “the annual TP urban runoff WLA target is 2,960 pounds and the calculated load was 12,395 pounds estimated through extrapolation.” This does not change the Fact Sheet’s conclusion that numeric WQBELs are appropriate because they allow compliance to be determined directly against the applicable WLA rather than inferred from attainment of the total TMDL loading capacity, while attainment of the total TMDL loading capacity remains an available alternative method to demonstrate compliance.

Regarding Total Nitrogen in Newport Bay, the comment does not conflict with the Fact Sheet. Both the Fact Sheet and the commenter acknowledge that WLAs are being met and the Permittees have implemented controls that reduce nutrient loads. Both recognize that the contribution of individual BMPs cannot be quantified, which prevents a clear linkage between implemented BMPs and the level of pollutant reduction achieved. The numeric WQBELs provide a direct objective measure of whether the WLAs continue to be met, while performance metrics provide a formal path to evaluate how implementation of controls contributes to maintaining that result.

Regarding Diazinon in San Diego Creek, Chlorpyrifos in San Diego Creek and Newport Bay”, and Organochlorines in Newport Bay, the Fact Sheet does not say that pollutants were not monitored or that data was not available, it says that they were not assessed for compliance with their WLAs. The presented data provides a basis for evaluating compliance, but that is not necessarily the same as evaluating compliance with the WLAs. The delisting of San Diego Creek and Newport Bay for diazinon and chlorpyrifos does not alter this conclusion. Delisting is relevant to the Integrated Report assessment but does not itself rescind the TMDL or its WLAs or evaluate compliance with those WLAs. The numeric WQBELs in the Tentative Order provide a clear basis for making that direct compliance determination using the monitoring data.

Regarding Sediment in the Newport Bay Watershed, the Fact Sheet recognizes that the Sediment TMDL is an example of a successful BMP-based approach, and the Tentative Order continues the BMP-based approach for this TMDL. The Sediment TMDL does not demonstrate that BMP-based WQBELs are appropriate for the other TMDLs discussed in the Fact Sheet. The Sediment TMDL demonstrates that the Tentative Order considered the circumstances of each TMDL individually and selected the form of WQBEL appropriate to those circumstances.

Continued implementation of effective controls is necessary to maintain compliance where attainment has been achieved. Demonstrated attainment during previous assessment periods may establish compliance for those periods, but does not establish that the WLA will continue to be attained throughout the permit term or eliminate the need for the Permit to implement the applicable TMDL. No change has been made.

17.31. Comment: Modify Fact Sheet Section IX.B.3.d “Water Quality Based Effluent Limitations” related to Appendix 4 (page 302-303 of 378) so that the Fact Sheet and RTO do not attempt to re-write or re-interpret the Sediment TMDL Staff Report or TMDL language. Rather, the Fact Sheet should only be conveying the facts, as derived from the Basin Plan and/or other policy or technical documents, not Board staff opinion.

In the July 2024 Tri County Group comment letter, the County provided significant evidence that the sediment TMDL identified sediment as a non-point source and, as a result, did not establish Waste Load Allocations for the Permittees⁹.

Despite this, in RTC 35.543, Regional Board staff stated “The cited language in the Staff Report includes the same error as the Basin Plan. Sediment discharges from MS4s are point source discharges under the Clean Water Act, regardless of how they were labeled in the development of the TMDL. The fact that the Santa Ana Water Board assumed Permittees could meet allocations by reducing sediment runoff into their MS4s through nonpoint source measures does not distinguish this TMDL from other municipal stormwater programs, which can use a variety of strategies other than structural or treatment controls to meet effluent limitations and receiving water limitations.”

Although the County disagrees with this response and believes that it does not reflect the 30+ years of technical work within the watershed and approach discussed during the development of the TMDL, the MS4 Permit should not reinterpret the TMDL.

Recommendation

Modify Fact Sheet Section IX.B.3.d as follows:

Appendix 4 – This Appendix includes WQBELs that are consistent with the assumptions and requirements specified in the Sediment TMDL for the Newport Bay/San Diego Creek Watershed. The Sediment TMDL in the Basin Plan includes quantifiable targets and “Load Allocations” [note, this term should not be in quotes as if the term is qualified somehow] for discharges of sediment to tributaries of Newport Bay and San Diego Creek and tributaries. ~~These should have been described as “waste load allocations” because MS4 discharges are point sources rather than non-point sources.~~ The Sediment TMDL was first adopted by the Santa Ana Water Board in Resolution No. 98-101 and subsequently approved by OAL on February 2, 1999, and by USEPA on April 16, 1999. The requirements implementing the Sediment TMDL are expressed as BMP-based WQBELs and are effective on the effective date of the Order....”

Response: The Basin Plan uses the term ‘Load Allocations.’ The Tentative Order does not alter that terminology in the Basin Plan. However, for purposes of implementation through an NPDES permit, allocations applicable to pollutant discharges from an MS4 are implemented as WQBELs because MS4 discharges are point source discharges under the Clean Water Act. The Fact Sheet explains how the existing TMDL requirements applicable to MS4 discharges are implemented through this NPDES permit. No change has been made.

Category 19 – Credit Trading Programs

1.2. **Comment:** Remove Water Quality Credit Trading Program Watershed Size Boundary Limitation (See Section VIII. H. 3)

We appreciate that staff has modified Section VIII. H. 3. slightly, by allowing an alternative watershed trading area scale with Executive Officer approval. However, we and many other stakeholders believe that placing size restrictions on credit trading program areas will kill the likelihood any credit program will move forward. In short, requiring that “credits must not be allowed to be applied to projects outside of the watershed of the nearest receiving waters of the U.S. in which the LID treatment control measure is located” is unnecessarily restrictive, ambiguous, and unrelated to any hydrological metric.

We know from more than 12 years of working collaboratively with public works agencies, NGOs, and private development interests to develop a credit trading program for north Orange County that the larger the watershed trading area within the Santa Ana River watershed, the greater the opportunity for overall water quality improvement and the greater amount of environmental and societal benefits realized.

The logic presented by staff in the Fact Sheet and Response to Comment Document seems to be the opposite of what our experience has illustrated-- especially as it relates to disadvantaged communities (DAC). DAC boundaries have no geographical relationship to the "nearest receiving water." Further, there is no evidence to suggest that credit use would disproportionately impact DACs by reducing localized BMPs.

To address the stated concern the Regional Board should simply require the Permittee to demonstrate, based on substantial evidence, that the proposed credit program will not cause or contribute to localized adverse water quality impacts or disproportionate pollution burdens.

Both the Tri-County Group and the City of Anaheim's comment letters on the proposed Order and specifically on Section VIII. H. 3. expresses our concerns comprehensively, and specifically with regard to necessary changes which must be made to the permit language to allow the largest trading area possible.

Response: Comment noted. See [Response 18.1](#).

18.1. Comment: Credit Program Trading Areas

The current language in Section VIII.H.3. prohibits applying credits to projects outside of the watershed of the nearest receiving water. While Coastkeeper agrees that credits should be generally applied to the location impacted by development, we believe that more flexibility and a larger credit trading area will encourage more successful credit trading programs. First, smaller trading areas will have less redevelopment within that particular area, and therefore less demand for credits.

This results in less potential for implementation of a credit generator project inside of a DAC. Conversely, larger trading areas means more overall redevelopment in a trading area, more opportunities to sell credits, and therefore more potential for implementation of a credit generator in a DAC. Second, larger trading areas will allow for more credit generating projects to be implemented in a trading area, resulting in reduced pricing of credits.

The Fact Sheet states that

Because credit trading is tied closely to redevelopment investment, and redevelopment does not tend to be evenly distributed among communities, there is a risk that credit trading at larger-than-watershed scales would concentrate the benefits and risks across different communities. This could result in pollution hotspots that disproportionately affect disadvantaged communities.

In other words, the Fact Sheet argues that a smaller credit trading area is more likely to avoid pollution hotspots, which disproportionately affect DACs. On the contrary, successful credit trading programs benefit DACs in the following ways: (1) DACs are typically older communities with more opportunity for multiple benefit Credit Generator projects (e.g. Flood Control, Urban Heat Island Effects, Park/Green Space) which receive additional funding for infrastructure making projects more attractive; (2) Many grants which can support the implementation of stormwater capture projects that can serve as a Credit Generator target DACs, therefore incentivizing projects to be located in these communities; (3) DACs frequently have higher density development and more impervious surfaces resulting in a higher concentration of contaminants in runoff, and therefore more provide more “bang for the buck” and generate more credits for a credit generator project relative to their size than less dense areas; (4) Many DACs are adjacent to industrial areas which make these areas more attractive for Credit Generators as the amount of contaminants that can be captured is likely greater due to the higher concentration; and (5) DACs often have lower property values making land acquisition for a Credit Generator more attractive. For these benefits to be realized, credit trading programs must encompass a large enough area to encompass both redevelopment projects that need credits and the credit generators themselves.

These benefits aside, Coastkeeper is concerned with a scenario of when credits are purchased for a development project within a disadvantaged community, but the credit funds from that purchase are used for implementation of a regional stormwater capture project outside of a disadvantaged community. In other words, Coastkeeper wants to avoid a credit trading program that allows disinvestment from DACs. OCCCK has collaborated with the City of Anaheim and the County of Orange to develop language that removes the constrain of the default language of smaller trading areas currently in the revised tentative order, while also protecting and benefiting disadvantaged communities.

Therefore, in collaboration with the City of Anaheim and the County of Orange, Coastkeeper suggests the following changes to the existing language:

Modify Section VIII.H.3 to read:

“The credits must be generated by an LID treatment control measure, such as a retention basin, which is located on property owned or controlled by the proposed credit generator. The property on which the credit generating facility is located and the property which intends to use the credits need not be contiguous. However, credits must not be allowed to be applied to projects outside of the credit trading area ~~watershed of the nearest receiving waters of the U.S.~~ in which the LID treatment control measure is located. ~~, unless an alternative watershed~~

scale Credit trading areas shall be defined in the Credit Program, approved by the Executive Officer. Funds from Credits purchased for a development in a disadvantaged community shall be used towards the implementation of LID treatment control measures located within disadvantaged communities."

Modify Fact Sheet Section X.G. to read:

"Because credit trading is tied closely to redevelopment investment, and redevelopment does not tend to be evenly distributed among communities, there is a risk that credit trading at ~~larger~~ smaller-than-watershed scales would concentrate the benefits and risks across different communities. This could result in pollutions hotspots that disproportionately affect disadvantaged communities. While a single watershed may include communities with differing socioeconomic characteristics, limiting trading to projects that discharge to the same watershed of the nearest receiving water constrains trading

that may unnecessarily have unintended consequences for disadvantaged communities. to hydrologically connect areas. The Order therefore ~~limits trading programs to projects that discharge to the same receiving water in which the treatment facility is located, unless allows the Credit Program to define a trading area that is required to be approved by the~~ Executive Officer ~~to approves an alternative watershed scale. This limitation is also necessary at this time because~~ To protect disadvantaged communities a provision has been added to require funds from credit purchases in disadvantaged communities to be used towards the implementation of LID treatment control measures located within disadvantaged communities. The Department of Water Resources DAC Mapping Tool located at: <https://gis.water.ca.gov/app/dacs/> should be referred to for identifying DAC locations. Additionally, permitting ~~a larger smaller~~ more numerous trading markets would require a more complex system of accounting and controls potentially coordinated across multiple Permittees."

Response: Section VII.H.3 has been modified to include the suggested revisions. However, while the Board does want to preserve environmental justice protection as the default, the suggested language may be unnecessarily restrictive and preclude other ways of protecting disadvantaged communities. Therefore, a credit program is allowed to propose an alternative approach that can be demonstrated to provide equivalent or greater water quality benefits to the affected disadvantaged community.

Risks to disadvantaged communities may arise from credit trading areas that are either too large, as discussed in the existing fact sheet language, or too small, as discussed by the commenter. Both overly broad and overly narrow trading areas may create unintended consequences. The important protection is therefore how the trading area is defined and reviewed. Accordingly, the Tentative Order does not prescribe a single geographic scale that will necessarily be appropriate for every Credit Program. Instead, the Credit Program must propose the credit

trading area for Executive Officer approval. This allows the program proponent, the Santa Ana Water Board, and the public to evaluate the proposed trading area in light of watershed conditions, available credit-generating opportunities, administrative feasibility, and the distribution of benefits and potential impacts among communities, including disadvantaged communities. This approach provides flexibility to establish an appropriate trading area while retaining oversight necessary to avoid unintended consequences. The appropriate scale depends on the circumstances of the individual program, which could be different than the individual program discussed by the commenter. The Fact Sheet section X.G. has been revised to better reflect this, including recognition of the potential benefits of larger trading areas.

23.1. Comment: The Revised TO added the following language to Section VIII.H.3.:

“The credits must be generated by an LID treatment control measure, such as a retention basin, which is located on property owned or controlled by the proposed credit generator. The property on which the credit generating facility is located and the property which intends to use the credits need not be contiguous. However, credits must not be allowed to be applied to projects outside of the watershed of the nearest receiving waters of the U.S. in which the LID treatment control measure is located, unless an alternative watershed scale is approved by the Executive Officer.”

The redline modifications to the revised Tentative Order which added language that allows a pathway to larger trading areas is appreciated, however there are significant concerns about leaving the default language for size of credit program of watershed of nearest receiving waters of the U.S., which is limiting and provides a significant barrier to the development of viable stormwater credit programs in the Santa Ana Region. Additionally, this limiting language could set a precedent for other regions and MS4 Permits in California.

Response: See [Response 18.1](#).

26.2. Comment:

In April 2024 the SCTT developed the Stormwater Credit Basic Principles & Conceptual Model White Paper, available at <https://casctt.com>. In this white paper in the subsection Key Elements and Decision Points the following is identified related to credit trading areas:

“Credit Trading Area – The area in which credits can be generated and used is often identified as the “credit trading area.” A key decision point is the scale of the credit trading area. Many SCPs use medium scale watersheds as the trading area; municipal boundaries may be another option. Regulatory agencies will be most interested in ensuring that water quality is protected and improving throughout the trading area. There may be permit language that limits the extent of the area where credits can be used in relation to where credits are generated. Regulatory agencies should realize that limiting the scale of trades limits the success and growth of SCPs and the ability to implement more credit generation facilities and therefore slows the improvement of water quality and watershed health. Both credit program administrators and credit generators would likely have a desire for the largest credit trading area possible as larger credit trading areas means more potential credit users, the use/sale of credits more quickly, and more credit sales is SCP sustainability. Larger credit trading areas results in a quicker return on investment (ROI) for credit generators. A quicker ROI for credit generators and program administrators may mean the ability to construct more credit generation facilities more rapidly and provide improved water quality and watershed health quicker.”

The major concern is that the default language in the RTO of: *“However, credits must not be allowed to be applied to projects outside of the watershed of the nearest receiving waters of the U.S. in which the LID treatment control measure is located...”* severely limits the viability of the development of stormwater credit programs as well as the success and growth of stormwater credit programs and the ability to implement more credit generation facilities and therefore slows the improvement of water quality and watershed health. Credit trading areas should be defined by Stormwater Credit Programs in their proposed credit program documents submitted to Regional Boards for review and approval. Credit trading area size should not be defined in MS4 Permits.

Response: See [Response 18.1](#).

23.3. Comment:

Additionally, the State Water Board STORMS Unit has convened a small group of stakeholders that have experience in the development of stormwater credit programs, including the SCTT Co-leads, to discuss the development of high-level guidance for stormwater credit programs. Based on feedback from this group, the State Water Board STORMS Unit is leaning toward not specifying a trading area size for stormwater credit

programs in their guidance but rather identifying in their guidance the factors that should be considered for identifying trading area size by stormwater credit programs and leave it to stormwater credit programs to propose a trading area size as part of development of their programs.

It is recommended that the Santa Ana Regional Water Quality Control Board take the same approach in the Santa Ana Regional MS4 Permit that the State Water Board STORMS Unit is leaning towards taking in their guidance and remove the language that specifies the trading area size of “watershed of the nearest receiving waters of the U.S.” and identify that it is up to stormwater credit programs to propose a trading area size.

Modify Section VIII.H.3 to read:

“The credits must be generated by an LID treatment control measure, such as a retention basin, which is located on property owned or controlled by the proposed credit generator. The property on which the credit generating facility is located and the property which intends to use the credits need not be contiguous. However, credits must not be allowed to be applied to projects outside of the credit trading area ~~watershed of the nearest receiving waters of the U.S.~~ in which the LID treatment control measure is located. ~~unless an alternative watershed scale is~~ Credit trading areas shall be defined in the Credit Program, approved by the Executive Officer.”

Response: See [Response 18.1](#).

17.14. Comment: Modify Section VIII.G.4.a. “Fourth Priority Consideration of Offsets through Retrofit of Existing Development” to remove a conflict with Section VIII.H.3 “Post-Construction Treatment Control Credit Programs “

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The RTO, Section VIII.G.4. identifies the Fourth Priority Consideration of Offsets through Retrofit of Existing Development and Section VIII.G.4.a. states:

“The retrofit, treatment control measure site must be located within the same watershed of the nearest receiving water as the priority project.”

Concern and Rationale

The current language of Section VIII.G.4.a. creates a conflict with Section VIII.H.3, which allows the use of an alternate watershed scale as an offset associated with a stormwater credit program, whereas Section VIII.G.4.a. does not recognize this option.

Recommendation

Modify Section VIII.G.4.a. to read:

“The retrofit, treatment control measure site must be located within the same watershed of the nearest receiving water as the priority project unless an alternative watershed scale is approved by the Executive Officer as part of a Post-Construction Treatment Control Credit Program.”

Response: The language has been modified to be consistent with the revisions to VIII.H.3. The provision now says “The retrofit treatment control measure site must be located within the same watershed of the nearest receiving water as the priority project, unless the priority project and retrofit treatment control measure site are located within the credit trading area defined in an approved credit program (according to section VIII.H).”

17.15. Comment: Modify Section VIII.H.3. “Post-Construction Treatment Control Credit Programs” to remove the credit program trading area size default of the watershed of the nearest receiving waters of the U.S. and modify Attachment D (Fact Sheet) related to Section VIII.H.3. to identify that larger credit trading areas provide more benefit to disadvantaged communities than smaller credit trading areas.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The RTO added language that allows a pathway to larger trading areas, which is appreciated. However, there are still concerns about retaining the language for trading area size for a credit program “of the watershed of the nearest receiving waters of the U.S”.

The RTO added the following language to Section VIII.H.3.:

“The credits must be generated by an LID treatment control measure, such as a retention basin, which is located on property owned or controlled by the proposed credit generator. The property on which the credit generating facility is located and the property which intends to use the credits need not be contiguous. However, credits must not be allowed to be applied to projects outside of the watershed of the nearest

receiving waters of the U.S. in which the LID treatment control measure is located, unless an alternative watershed scale is approved by the Executive Officer.”

The Fact Sheet in Section X.G. identifies:

“Because credit trading is tied closely to redevelopment investment, and redevelopment does not tend to be evenly distributed among communities, there is a risk that credit trading at larger-than-watershed scales would concentrate the benefits and risks across different communities. This could result in pollution hotspots that disproportionately affect disadvantaged communities. ~~The limitation that the discharge be to the same nearest receiving waterbody.~~ While a single watershed may include communities with differing socioeconomic characteristics, limiting trading to projects that discharge to the same watershed of the nearest receiving water constrains trading to hydrologically connected areas. The Order therefore limits trading programs to projects that discharge to the same receiving water in which the treatment facility is located, unless the Executive Officer approves an alternative watershed scale. This limitation is also necessary at this time because permitting a larger trading market would require a more complex system of accounting and controls coordinated across multiple Permittees.”

In the RTC 1.1, the Regional Water Board stated:

“The Permittees’ strategy to provide pollution controls, post construction for areas of new development and significant redevelopment generally relies on the economic drivers of investment in neighborhoods. Since all communities are not equally attractive to those investments due to factors such as zoning restrictions and availability of land, the benefits of new pollution controls that come with new development and significant redevelopment are unlikely to be evenly distributed in a watershed...”

Concern and Rationale

The concern that disadvantaged communities (DACs) may be less attractive for redevelopment is understood; however, larger trading areas will benefit DACs more than smaller ones for a number of reasons. The first two points below describe why a small watershed may limit the implementation of a Credit Generator. Points 3-7 illustrate why Credit Generators are inherently more likely to be sited in a DAC, but may be precluded in a small watershed where there is less demand for credits. Points 8-9 illustrate why Credit Programs (not just the Credit Generators) are a benefit in general to DACs.

1. Credit generating projects are selected for implementation based on several factors, not the least of which is an assessment of the demand or market for credit purchases (i.e., “economic drivers” as noted in the response to comments). In smaller trading

areas there is generally proportionately less redevelopment, and therefore less market demand. Alternatively, with larger trading areas there are more opportunities to sell credits, and therefore more market demand.

2. Larger watersheds will allow for more credit generators to be implemented in those watersheds. This will reduce the likelihood that a single or fewer generators will result in expensive credits, that may not get purchased, crippling a Credit Program. Larger watersheds will more likely include more Credit Generators, thereby lessening the potential that Credits may be prohibitively expensive due to the amalgamation of the Credit price of multiple Credit Generators or competition between Credit Generators.

3. Because DACs are generally older communities with older and generally more undersized infrastructure, there are more opportunities for Credit Generating projects that are inherently multiple benefit projects that can also address Flood Control, Urban Heat Island Effects,

Park/Green Space, are credit generating projects (e.g., stormwater park projects) that will actually make a significant improvement on the standard of living in the DACs, which as identified above may only be realized with larger trading areas due to lack of redevelopment attractiveness in some DACs. 4. Many grants can support the implementation of stormwater capture projects that can serve as a Credit Generator target DACs, therefore incentivizing projects to be located in these communities.

5. DACs typically are higher density areas with a higher percent of impervious surface. This results in higher concentration of contaminants in runoff, and therefore more “bang for the buck” relative to their size than less dense areas. The unit of trade in many stormwater credit programs is volume, specifically the design capture volume associated with the new and redevelopment/post construction requirements. Many DACs have higher densities associated with multi-family residential zones, which presents an advantage for integrating a credit generator project. These higher density areas translate into a high design capture volume, translating into more credits generated than would be generated in lower density areas, which means a higher return on investment for credit generator projects. As identified above, this benefit may only be realized with larger trading areas due to lack of redevelopment attractiveness in some DACs.

6. Similar to the prior point, many DACs are adjacent to industrial areas which make these areas more attractive for Credit Generators as the amount of contaminants that can be captured is likely greater due to the higher concentration, and therefore more “bang for the buck” relative to the capture volume of the Credit Generator.

7. Most DACs have less expensive land prices, so if land needs to be acquired for the construction of a Credit Generator, making a Credit Generator in a DAC can be economically more attractive than building it elsewhere.

8. Credit Programs are a benefit to DACs since they make housing development less expensive, both by reducing the cost of design, construction, and implementation of structural BMPs relative to WQMP requirements, as well as potentially reducing the time required to go through the development process, by decreasing the requirements of the design and approval process

9. DACs are subject, as mentioned earlier, to more deficient infrastructure. Whether it is localized flooding, a lack of park space, depleted groundwater resources, a Credit Program will address these issues faster and more comprehensively than without a Credit Program. Credit Generators are multi-benefit projects that offer these benefits that might not exist otherwise and will be delivered more quickly and more extensively than without the Credit Program.

Additionally, the State Water Board STORMS Unit has convened a small group of stakeholders that have experience in the development of stormwater credit programs to discuss the development of high-level guidance for stormwater credit programs. Based on feedback from this group, the State Water Board STORMS Unit is leaning toward not specifying a trading area size for stormwater credit programs in their guidance, but rather identifying in their guidance the factors that should be considered for identifying trading area size by stormwater credit programs. This would leave it up to stormwater credit programs to propose a trading area size as part of the development of their programs.

The Fact Sheet statement that the limitation of trading area size is also necessary because permitting a larger trading market would require a more complex system of accounting and controls is incorrect, and the opposite is actually true. The task of managing smaller credit program watersheds, and more of them, is far more complicated and much less effective and efficient than managing larger trading areas. This increased complexity of managing smaller and more numerous credit program watersheds would disincentivize the development of future credit programs.

Recommendations

It is recommended that the Regional Water Board take the same approach in the RTO that the State Water Board STORMS Unit is leaning towards taking in their guidance and remove the language that specifies the trading area size of “watershed of the nearest receiving waters of the U.S.” and, instead, identify that it is up to the stormwater credit program to propose a trading area size with justifications for that size.

Additionally, it is recommended to include language to ensure that credit programs also benefit DACs when credits are used for development projects within a DAC. The following credit trading language recommendation was developed in coordination with Orange County Coastkeeper and jointly presented at the public workshop to Regional Board staff on July 15, 2026.

Modify Section VIII.H.3 to read:

“The credits must be generated by an LID treatment control measure, such as a retention basin, which is located on property owned or controlled by the proposed credit generator. The property on which the credit generating facility is located and the property which intends to use the credits need not be contiguous. However, credits must not be allowed to be applied to projects outside of the ~~credit trading area watershed of the nearest receiving waters of the U.S.~~ in which the LID treatment control measure is located. ~~unless an alternative~~ Credit trading areas shall be defined in the Credit Program, approved by the Executive Officer. Funds from Credits purchased for a development in a disadvantaged community shall be used towards the implementation of LID treatment control measures located within disadvantaged communities.” It is recommended that the Regional Water Board make the following modifications to the Fact Sheet to more accurately reflect the relationship between credit trading areas and DACs and the complexity of managing smaller trading areas.

Modify Fact Sheet Section X.G. to read:

“Because credit trading is tied closely to redevelopment investment, and redevelopment does not tend to be evenly distributed among communities, there is a risk that credit trading at ~~larger~~ smaller-than-watershed scales would concentrate the benefits and risks across different communities. This could result in pollutions hotspots that disproportionately affect disadvantaged communities. While a single watershed may include communities with differing socioeconomic characteristics, limiting trading to projects that discharge to the same watershed of the nearest receiving water constrains trading ~~that may unnecessarily have unintended consequences for disadvantaged communities. to hydrologically connect areas.~~ The Order therefore ~~limits trading programs to projects that discharge to the same receiving water in which the treatment facility is located, unless allows the Credit Program to define a credit trading area that is required to be approved by~~ the Executive Officer.~~to approves an alternative watershed scale~~This limitation is also necessary at this time because To protect disadvantaged communities, a provision has been added to require funds from credit purchases in disadvantaged communities to be used towards the implementation of LID treatment control measures located within disadvantaged communities. The Department of Water Resources DAC Mapping Tool located at: <https://gis.water.ca.gov/app/dacs/> should be referred to for identifying DAC locations. Additionally, permitting a larger smaller more

numerous trading markets would require a more complex system of accounting and controls potentially coordinated across multiple Permittees.”

Response: See [Response 18.1](#).

Category 20 – Other Technical Comments

5.6. Comment: Watershed Boundaries -

Attachment B, Figure B.4 - Los Angeles County Permittees, does not accurately indicate which portions of the City of Claremont are hydrologically within the MSAR Watershed versus the East San Gabriel River Watershed. There is a concern with the inclusion of a map that misrepresents the portions of the City of Claremont within the Middle Santa Ana River Watershed, which gives the impression that the City has a larger impact on water quality in Chino Creek than the facts support.

Response: The sub watersheds depicted in Attachment B are from the National Hydrography Dataset (NHD), which is based on natural topography. As shown in the legend, the map shows the political boundaries of Cities of Claremont and Pomona, the storm drains, and the NHD flow lines, waterbodies, and the Region 8 boundary. It's content is broader than described by the commenter, but it is presented accurately. Additionally, Attachment B provides that images are for illustrative purposes only. No determinations regarding hydrological connection or impacts on water quality are made from this map. No change has been made.

14.1. Comment: Clarify that Pomona is subject only to Appendix 11 and expressly incorporated provisions

Order R8-2026-0034 identifies the City of Pomona in Table 1 implying that the entire Order is applicable to the City of Pomona but later indicates that the term “Permittee” includes the City of Pomona only to the extent stated in Appendix 11. Findings Section II.A.3.c similarly explains that the City of Pomona is included for purposes of complying with Appendix 11 and that discharges of other pollutants are regulated through NPDES Permit No. CAS004004, Order R4-2021-0105, as subsequently amended. Permittee Responsibilities Section III.G further provides that the City of Pomona is responsible for compliance with the Order only as stated in Appendix 11.

Appendix 11, Section VI, then states that Appendix 11 applies to the City of Pomona in its entirety, except as explicitly stated otherwise, and incorporates the Notification Requirements in Section III.E and all Standard Provisions in Attachment F.

The City requests that the final Order include clear and consistent language confirming that Pomona is not subject to the full suite of Santa Ana Regional MS4 Permit requirements outside Appendix 11, except for provisions expressly incorporated by Appendix 11. This clarification is important because the regional permit contains extensive requirements for trash control, new development, hydromodification, inspections, municipal facilities, program effectiveness, and other MS4 program elements that are otherwise addressed through the Los Angeles Regional MS4 Permit.

Requested revision or clarification:

Add or retain language in Appendix 11, Section VI, or the Fact Sheet stating that the City of Pomona is subject only to:

1. Appendix 11 requirements applicable to bacteria discharges to the Middle Santa Ana River watershed;
2. Notification Requirements in Section III.E;
3. Standard Provisions in Attachment F;
4. Monitoring and reporting requirements expressly required by Appendix 11 or the Monitoring and Reporting Program for Appendix 11 compliance; and
5. Any other provisions expressly identified as applicable to the City of Pomona.

Response: Staff agree that Claremont and Pomona are only subject to Middle Santa Ana River Bacterial Indicator TMDL related requirements, and not other program elements otherwise addressed through the Los Angeles Regional MS4 Permit, as suggested by the commenter. Section II.A.3.c already included that “The Cities of Claremont and Pomona are not subject to the requirements of this Order except as explicitly stated in Appendix 11.”

Section III.G has been revised to say “The Cities of Claremont and Pomona shall only be responsible for compliance with this Order as explicitly stated in Appendix 11, including Notification Requirements in section III.E, Standard Provisions in Attachment F of this Order, and Monitoring and Reporting requirements only as necessary to demonstrate compliance with Appendix 11. The Cities of Claremont and Pomona are not otherwise subject to the requirements of this Order. Discharges

other than bacteria to the Middle Santa Ana River remain regulated under Order R4-2021-0105, including subsequent amendments.”

Additionally, a provision has been added to Appendix 11, section VI, to clarify that Monitoring and Reporting requirements only apply to bacteria discharges to the Middle Santa Ana River. This includes recognition that monitoring and reporting can be coordinated with other Permittees that are subject to Appendix 11.

14.2. Comment: Confirm that non-bacteria pollutants remain regulated under the Los Angeles Regional MS4 Permit

Prior Order R8-2013-0043 regulated only implementation of the Middle Santa Ana River Bacterial Indicator TMDL for the City of Pomona. The new Order appears to maintain that same pollutant-specific structure. Appendix 11, Section VI.C states that discharges of all other pollutants are regulated through NPDES Permit No. CAS004004, Order R4-2021-0105, as subsequently amended.

The City requests that the final Order and Fact Sheet continue to state this limitation clearly and consistently. This is necessary to avoid confusion among City staff, permittees, the public, and inspectors regarding whether Santa Ana Regional MS4 Permit requirements for other pollutants or program areas apply within Pomona.

Requested revision or clarification:

Confirm in Appendix 11 and the Fact Sheet that the Santa Ana Water Board’s regulation of Pomona under Order R8-2026-0034 is limited to bacteria discharges to Middle Santa Ana River watershed waterbodies, and that non-bacteria pollutants and general MS4 program requirements remain regulated under Order R4-2021-0105, as amended.

Response: Staff agree with the commenter that the Order intends to only regulate the city of Pomona regarding bacteria discharges to Middle Santa Ana River. See [Response 14.1](#).

14.9. Comment: Coordinate with the Los Angeles Regional Water Quality Control Board to avoid overlapping or conflicting directives

Pomona is located in Los Angeles County and remains subject to the Los Angeles Regional MS4 Permit for LA waterbody-specific bacteria pollutants and general MS4 program implementation. Appendix 11, Section VI.B also references exceptions in Order R8-2026-0034 and Order R4-2021-0105 for non-stormwater discharges.

The City requests continued coordination between the Santa Ana and Los Angeles Regional Water Quality Control Boards to ensure that Pomona receives consistent direction regarding non-stormwater discharges, IDDE procedures, bacteria source control, monitoring, reporting, enforcement, and public outreach.

Requested revision or clarification:

Include language in the Fact Sheet confirming that the Santa Ana Water Board will coordinate with the Los Angeles Water Board, as appropriate, regarding implementation issues affecting the City of Pomona where the requirements of Order R8-2026-0034 and Order R4-2021-0105 intersect.

Response: Staff agree that coordination between Regional Water Boards is important where regulatory jurisdictions overlap. However, the requested revision is unnecessary. The Tentative Order applies to the Cities of Claremont and Pomona only with respect to implementation of the Middle Santa Ana River Bacteria TMDL for discharges to the Middle Santa Ana River watershed. The Los Angeles Regional MS4 Permit continues to govern the remainder of the cities' MS4 program requirements and recognizes implementation of the Middle Santa Ana River Bacteria TMDL through the Santa Ana Regional Water Board's permit. Accordingly, no revisions have been made in response to this comment.

15.8. Comment: Attachment A – Definition of Impervious Surface

The City appreciates the Regional Board's revisions to the definition of "Impervious Surface" in response to stakeholder comments, including the removal of language that appeared to classify gravel surfaces as impervious. However, the revised definition remains ambiguous because it specifically identifies certain permeable pavement systems, such as porous concrete, porous asphalt, and permeable interlocking pavers, but does not expressly address gravel or other aggregate surfaces.

Under the current Riverside County WQMP program, gravel surfaces have generally been treated as pervious unless specifically designed or stabilized to function as an impervious surface. This longstanding interpretation recognizes that gravel surfaces typically allow stormwater infiltration and do not exhibit the same runoff characteristics as traditional impervious materials such as asphalt or concrete. The proposed definition creates uncertainty by omitting gravel altogether, leaving open the possibility that different Permittees could apply the definition inconsistently.

This ambiguity could result in inconsistent determinations of impervious surface calculations, Priority Project applicability, WQMP requirements, treatment control sizing,

and HCOC analyses throughout the Santa Ana Region. The City is concerned that, absent clear direction, applicants may be required to conservatively classify gravel as impervious during project review, increasing project costs and unnecessarily expanding WQMP requirements without a corresponding water quality benefit.

The City believes that gravel surfaces should continue to be treated as pervious consistent with longstanding regional practice, unless the surface has been intentionally stabilized or otherwise designed to function as an impervious surface. This approach is consistent with the hydrologic characteristics of typical gravel installations and provides a clear, objective standard that can be uniformly applied by all Permittees.

Recommendation: Revise the definition of "Impervious Surface" to expressly state that gravel and other conventional aggregate surfaces are considered pervious unless they have been stabilized, compacted, or otherwise constructed to function as an impervious surface. This clarification will preserve consistency with existing WQMP implementation practices, eliminate ambiguity during project review, and promote uniform application of the permit throughout the Santa Ana Region.

Response: The existing impervious surface definition does include that “pervious storage material, such as a gravel layer sufficient to hold the specified volume of rainfall runoff” are not impervious. “Other conventional aggregate” and “...that have not been stabilized, compacted, or otherwise constructed to function as an impervious surface...” has been added to reduce ambiguity as recommended.

7.5. and 19.10 Comment: Modify Section VIII.G.2.a and Attachment A (Glossary) to Clarify or Remove the Added Term: “Filtration” in the Definition of Biotreatment Control Measures.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The Revised TO adds the term “filtration” within the definition of biotreatment in a way that could significantly restrict the use of effective biotreatment control measures, such as constructed wetlands and natural treatment systems (NTS). The following edit was added to Section VIII.G.2.a and Attachment A of the Revised TO:

“[Biotreatment control measures are] treatment control measures that employ filtration and biological uptake, transformation, or degradation of pollutants and incidental infiltration and/or evapotranspiration...”

Comment

From the Water Board's Response to Comments, it has been noted that this modification was added to address a comment from Contech Engineered Solutions (a vendor of proprietary filtration systems) asking the RWB to state that some biotreatment control measures utilize filtration as a primary unit process. The response to this comment (Comment 21.8) states:

*"Section VIII.G.2.a and the definition of Biotreatment Control Measure in the Glossary have been changed to **include** filtration as a mechanism for pollutant removal."*

Additionally, later in the Glossary definition, the definition states:

"...the principal of operation involves the discharge of the treated stormwater after detention in a vegetated basin or after passing through porous, biologically active medium, vegetation, or both." [emphasis added]

Given the Response to Comments and the second part of this definition, it is understood that the intent of the modification is to identify filtration as one of the acceptable treatment processes used in biotreatment controls, but not to impose a new requirement that all biotreatment controls must have filtration through media. Consistent with scientific understanding of BMP effectiveness, filtration is not a mandatory element to achieve effective pollutant removal. Effective biotreatment control measures may provide either filtration through biologically active media or other effective biological processes, such as those provided in a constructed wetland, NTS, or vegetated detention basins. The Uniform Technical Guidance will provide guidance on selection of BMPs to address pollutants of concern.

This language should be clarified in the first part of the definition such that it does not create confusion or otherwise limit the use of effective biotreatment BMPs.

Recommendation

The phrasing of these sections should be modified to clarify that filtration is one process that can be used as part of a biotreatment control measure:

Section VIII.G.2.a:

The Permittees must require that treatment control measures that employ filtration, and biological uptake, transformation, and/or degradation of pollutants and incidental

infiltration and/or evapotranspiration (biotreatment control measures) be given secondary consideration..."

Glossary:

“[Biotreatment control measures are] treatment control measures that employ filtration, and biological uptake, transformation, and/or degradation of pollutants and incidental infiltration and/or evapotranspiration...”

Response: Staff agree that the intention was to include, not require, filtration. The proposed clarification has been made.

1.3. **Comment:** Edit Definition of Biotreatment Control Measure (See Attachment A, Glossary)

We appreciate changes that have been made to the definition of Biotreatment Control Measure in the proposed Order Glossary. For additional clarity and simplicity in the first sentence of the definition, we recommend that the word “and” be replaced with a comma. The definition’s first sentence would then read: “A subcategory of treatment control measures that employ filtration, biological uptake, transformation, or degradation of pollutants as their mechanisms of pollutant removal.”

Response: See [Response 7.5 and 19.10](#).

17.13. **Comment:** Modify Section VIII.G.2.a “Second Priority Consideration of Biotreatment Control Measures in WQMPs” and Attachment A (Glossary) to clarify or remove the added term: “Filtration” in the definition of biotreatment control measures.

Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The RTO adds the term “filtration” within the definition of biotreatment in a way that could significantly restrict the use of effective biotreatment control measures, such as constructed wetlands and natural treatment systems (NTS). The following edit was added to Section VIII.G.2.a and Attachment A of the RTO:

“[Biotreatment control measures are] treatment control measures that employ filtration and biological uptake, transformation, or degradation of pollutants and incidental infiltration and/or evapotranspiration...”

Concern and Rationale

RTC 21.8 addresses a comment from Contech Engineered Solutions (a vendor of proprietary filtration systems) asking the Regional Water Board to state that some

biotreatment control measures utilize filtration as a primary unit process. In response to this comment, RTC 21.8 states [emphasis added]:

“Section VIII.G.2.a and the definition of Biotreatment Control Measure in the Glossary have been changed to include filtration as a mechanism for pollutant removal.”

Additionally, the Glossary definition for Biotreatment Control Measure states:

“...the principal of operation involves the discharge of the treated stormwater after detention in a vegetated basin or after passing through porous, biologically active medium, vegetation, or both.” [emphasis added]

Given the RTC and the second part of this definition, it is understood that the intent of the modification is to identify filtration as one of the acceptable treatment processes used in biotreatment controls, but not to impose a new requirement that all biotreatment controls must have filtration through media.

Consistent with scientific understanding of BMP effectiveness, filtration is not a mandatory element to achieve effective pollutant removal. Effective biotreatment control measures may provide either filtration through biologically active media or other effective biological processes, such as those provided in a constructed wetland, NTS, or vegetated detention basins. The Uniform Technical Guidance will provide guidance on selection of BMPs to address pollutants of concern.

This language should be clarified in the first part of the definition such that it does not create confusion or otherwise limit the use of effective biotreatment BMPs.

Recommendations

Section VIII.G.2.a and the Glossary should be modified to clarify that filtration is one process that can be used as part of a biotreatment control measure:

Section VIII.G.2.a:

Section VIII.G.2.a: The Permittees must require that treatment control measures that employ filtration, ~~and~~ biological uptake, transformation, and/or degradation of pollutants and incidental infiltration and/or evapotranspiration (biotreatment control measures) be given secondary consideration...”

Glossary [Biotreatment Control Measure]:

“[Biotreatment control measures are] treatment control measures that employ filtration, ~~and~~ biological uptake, transformation, and/or degradation of pollutants and incidental infiltration and/or evapotranspiration...”

Response: See [Response 7.5 and 19.10](#).

21.43. Comment: XIV.B.2.c

“When a Permittee receives a complaint or observes nuisance odors, ponding, or other indicators of reduced hydraulic capacity within storm sewer conveyance lines that are not directly observable, the Permittee shall investigate the affected line and remove any material causing a condition of nuisance or impairing capacity.”

How does a nuisance odor affect water quality or hydraulic capacity? For example, it might influence cows in Chino regarding the smell and it is under a separate permit. These situations might get us involved under other ordinances or permits. Why are we obligated to take the actions described in this language? We might not be the qualified group to take these actions in certain situations.

Recommendation: Please Remove Section.

Please remove language.

Response: This provision does not say that nuisance odors themselves impact water quality or hydraulic capacity. It says that nuisance odors, ponding, and are indicators of conditions that may impair proper operation of the MS4. It does not require Permittees to resolve situations outside of their legal authority. It requires complaints and observations to trigger reasonable investigation. No changes have been made.

21.47. Comment: Attachment A Glossary

“Best Management Practices (BMPs) –A subset of stormwater control measures that are non-structural. BMPs include schedules of activities, prohibitions of practices, maintenance procedures, policies and other management practices that are effective to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage (40 CFR § 122.2).”

Recommendation: Add, “Site, Source and Treatment Control BMPs”. BMP’s are structural too.

Response: The definition is taken directly from the federal regulatory definition of "Best Management Practices" in 40 CFR § 122.2 and has not been revised.

While the term "BMP" is commonly used in MS4 programs to describe both structural and non-structural stormwater controls, this definition is intended to reflect the federal regulatory definition. Structural control measures are addressed elsewhere in the Tentative Order, including in the Glossary.

21.48. Comment: Attachment A Glossary

"Control Measure – The broadest term to describe all measures that control pollution of stormwater. Control measures are either structural or non-structural (i.e. BMPs). See definitions for structural control measures and BMPs."

Please provide more clarification on this definition and where it might apply.

Recommendation: Please provide more clarification on this definition and where it might apply.

Response: The definition is intended to distinguish the general term "control measure" from its two categories, structural control measures and non-structural control measures. The definition already directs the reader to the corresponding glossary definitions, which provide additional detail. No changes have been made.

17.56. Comment: Regional Water Board Modification from the Tentative Order (March 2024) to the Revised Tentative Order (May 2026)

The language in the Glossary for the term Iterative Process was significantly revised in the RTO as follows:

Iterative Process - ~~The~~ A term that describes a form of adaptive management to comply with requirements in Receiving Water Limitations in section VI of this Order to modify pollution controls in response to conditions of nuisance or exceedances of water quality standards. In general terms, an iterative process is the practice of building, refining, and improving a project, product, or initiative. The purpose of an iterative process is to continually improve to ~~ultimately achieve some decision or desired outcome.~~ comply with Receiving Water Limitations; however, engaging in the iterative process does not constitute compliance with Receiving Water Limitations. An iterative process is typically applied in circumstances where there is great uncertainty; where costs of errors are high; or where a full commitment of resources to achieve a risky outcome is undesirable. ~~This Order requires the execution of an iterative process for the continual improvement of projects and programs, Watershed Management Plans, and the~~

~~Monitoring and Reporting Program during the permit term to achieve compliance with the WQBELs and receiving water limitations. The iterative process is driven by a set of permit provisions in section III.A. that require the Permittees to establish objective performance metrics that provide feedback on the performance of their BMPs and make improvements. See also Adaptive Management~~

Concern and Rationale

The last sentence is extraneous to the regulatory purpose of the definition and introduces language that creates ambiguity that the Order does not otherwise support. The Revised TO imposes no threshold showing of "great uncertainty" or undesirable risk as a precondition for invoking the iterative process.

However, a third party or future enforcement proceeding could use this language to argue that the mechanism is only available when a Permittee can affirmatively demonstrate such conditions, effectively importing an eligibility test that the Regional Water Board has not established through the Order.

In addition, the framing of the iterative process as suited to circumstances where "a full commitment of resources to achieve a risky outcome is undesirable" is inconsistent with the good-faith compliance that has been demonstrated by the Permittees. Permittees engaging in the iterative process are not hedging against unfavorable outcomes, rather, they are committing to a structured, adaptive methodology aimed at continual improvement toward compliance with the Receiving Water Limitations.

Characterizing the mechanism in terms of resource reluctance and risk aversion misrepresents the nature of that commitment.

Recommendations

Revise the definition as follows:

Iterative Process - A term that describes a form of adaptive management to comply with requirements in Receiving Water Limitations in section VI of this Order to modify pollution controls in response to conditions of nuisance or exceedances of water quality standards. In general terms, an iterative process is the practice of building, refining, and improving a project, product, or initiative. The purpose of an iterative process is to continually improve to comply with Receiving Water Limitations; however, engaging in the iterative process does not constitute compliance with Receiving Water Limitations. ~~An iterative process is typically applied in circumstances where there is great uncertainty; where costs of errors are high; or where a full commitment of resources to achieve a risky outcome is undesirable.~~

Response: The definition provides a general description of types of circumstances in which iterative process approaches are commonly employed. Where the appropriate course of action is known with confidence and is unlikely to require adjustment based on new information, the iterative process generally provides less value than in circumstances involving uncertainty. The language is descriptive, not regulatory, and does not establish any eligibility requirements. No changes have been made.

Category 21 – General Statements

6.4. Comment: 4. Insufficient Transparency during Permit Development

The Regional Board has not explained why the new regulations are needed, why the previous work supporting the last permit is not included in this Permit, or addressed the concerns raised by the municipalities.

Many stormwater planning and implementation documents (such as the Drainage Area Management Plan [DAMP]/Local Implementation Plan [LIP]/Water Quality Management Plan [WQMP] Guidance Documents) developed over the past 16-years are not included in the MS4 Permit without explanation as to why these documents cannot be used. Essentially, these documents are thrown away, and instead, the Permit favors generation of new guidance documents and stormwater plans.

Additionally, to help reduce pollutants to the Santa Ana River, the City is a member of the MSAR Task Force and completes watershed-wide tasks implementing BMPs to address pollutants through a Comprehensive Bacteria Reduction Plan (CBRP). This Plan includes: mitigating transient camps; implementing/enforcing an illicit discharge detection and elimination program; mitigating septic systems; implementing/enforcing pet wastes management programs; street sweeping; etc. CBRP is an effective program that reduces bacteria levels in the MSAR. Additionally, the task force enables an effective cost-share payment system, while maintaining partnership with other agencies – all having similar goals to improve water quality. Despite the success of the CBRP, this is not carried through to this version of the Permit which hampers the City's ability to help reduce pollutants to the Santa Ana River.

As described above, municipalities have brought forth their concerns on the implementation, and the Regional Board has done little to dissuade these concerns.

Response: The purpose of an MS4 permit is to establish enforceable permit requirements for the upcoming permit term. The Tentative Order shifts from

relying on broad incorporation by reference of legacy planning documents to establishing the minimum enforceable requirements directly in the permit. The Tentative Order allows permittees to use or adapt existing technical work products where they remain technically justified and consistent with the requirements of the Order.

The Tentative Order does not invalidate or "throw away" existing DAMPs, LIPs, Comprehensive Bacteria Reduction Plans, or other technical documentation. Existing programs and supporting technical information remain available for permittees to rely upon where they continue to satisfy the requirements of the Tentative Order. To the extent existing programs effectively reduce bacteria and demonstrate compliance with the applicable permit requirements, they may continue to serve as part of a permittee's overall compliance strategy.

Staff disagree that concerns raised by municipalities have not been addressed. Staff have provided over 200 days of written comment solicitation on the Staff Working Proposal, Tentative Order, and Revised Tentative Order, held five public workshops with the Santa Ana Water Board, and participated in 36 meetings with stakeholders as of July 2026, since the release of the first draft Staff Working Proposal. The Fact Sheet and the RTC#1 document the rationale for the permit provisions, including where requirements have been retained, clarified, or revised based on implementation experience gained over prior permit terms. Staff remain committed to continuing implementation discussions with permittees following permit adoption.

6.5. Comment: 5. Other Items

The City is concerned with the timing relating to some of the submittals and timely review given that the City's future actions rely on these documents getting reviewed and adopted in a timely manner. Land development documents, such as the WQMP Guidance Document and Transportation Project Guidance [TPG] document have no timeline for when these documents will be reviewed and approved. Without the approval of these documents, it is unclear how these projects should be completed until the City receives the approval of these land development projects.

Additionally, the City is concerned about the feasibility of some of the requirements given the rigidity of the permit. For example, if street projects are required to have a WQMP (and Permittees are uncertain on whether they will or not), in older, built-out communities, street resurfacing and rehabilitation projects within constrained rights-of-way have little available space to install a stormwater treatment control. Installing

treatment controls may not be possible in these circumstances and if they are, they would increase costs of street projects and require more resources from the City to operate and maintain.

The City of Corona recognizes and appreciates the diligent work performed by the Regional Board to improve water quality and enhance beneficial uses in the Santa Ana watershed. We hope that the Regional Board will consider the above comments and continue to work closely with Permittees to refine the TO into a feasible, practical, and effective Permit. The City respectfully reserves its rights to make additional comments on the TO as well as to supplement or raise additional comments in response to the release of a subsequent iteration of Permit documents, as well as at any hearings before the Regional Board.

Response: Regarding timelines for submittal and review, staff have revised the Tentative Order to provide that, “the Executive Officer shall approve, conditionally approve, or provide written notice identifying revisions necessary for approval within 60 days following the close of the public comment period,” for the Uniform Technical Guidance Documents and Program Monitoring and Reporting Plan. The Executive Officer retains authority to changes where necessary.

Regarding the concern about street projects, RTC#1 contains written responses: Responses 6.4, 13.4, 35.53, 35.54, 35.65, 35.342, 35.345, 35.508, and 35.509. The Tentative Order does not require installation of treatment controls where they “may not be possible,” but rather, a process for the consideration of treatment controls and their feasibility.

3.8. and 9.8. Comment: The Permit’s Technical Feasibility Findings Are Inadequate

The Tentative Order contains regional conclusions that the required control measures are technically feasible and generally accepted. Those conclusions do not establish that the measures can be implemented within Canyon Lake, at the required scale, within the prescribed time, or at a cost the City can lawfully finance.

A defensible feasibility analysis must consider actual site conditions, including: (i) available public land and rights-of-way; (ii) existing storm drain configurations and capacity; (iii) soil infiltration characteristics; (iv) groundwater elevations and groundwater-quality concerns; (v) utility conflicts; (vi) geotechnical constraints; (vii) flood-control requirements; (viii) land-acquisition and easement needs; (ix) environmental permitting requirements; (x) operation, maintenance, and replacement obligations; (xi) construction and supply-chain constraints; (xii) availability of qualified

staff, consultants, and contractors; and (xiii) the competing need to maintain existing infrastructure and public services.

The Permit should not assume that every acre-foot of runoff can be captured, infiltrated, retained, or treated through standardized regional solutions. Measures appropriate in coastal Orange County may not be feasible or cost-effective in inland Riverside County. A single regional permit must recognize meaningful physical, hydrologic, economic, and institutional differences among jurisdictions.

The City requests a permit provision allowing a permittee to demonstrate technical infeasibility, disproportionate cost, lack of jurisdiction, or lack of available land and to obtain an alternative requirement that provides comparable environmental benefit. The determination should be based on objective criteria, made within a specified period, and subject to review by the Regional Board.

Response: The comment does not identify a specific provision of the Tentative Order for which the commenter believes implementation is technically infeasible. The Tentative Order does not assume that every acre-foot of runoff must be captured, infiltrated, retained, or treated, nor does it prescribe a single standardized approach applicable to all permittees. The Tentative Order establishes minimum regional requirements while providing flexibility for permittees to develop site-specific implementation approaches. Numerous provisions already allow permittees to propose technical approaches through Executive Officer approved documents, as applicable. Where the Tentative Order requires compliance with applicable water quality standards, those requirements are established by state and federal law and cannot be waived through a generalized finding of technical infeasibility. Accordingly, no revisions have been made in response to this comment.

25.2. Comment:

The proposed Tentative Order also does not fully account for the diverse geographic, hydrologic, and economic realities that exist across the Santa Ana Region. Inland communities face challenges and watershed conditions that differ substantially from those of coastal jurisdictions. Effective water quality regulation should recognize those differences and provide local agencies with sufficient flexibility to implement solutions that achieve environmental objectives while reflecting local conditions and priorities, particularly in Watershed Management Plan provisions which have no regional considerations for issues like bacteria.

Response: See responses to similar written comments in [Category 8 – Bacteria Compliance, Including Appendix 11](#).

25.3. Comment:

Additional refinement of the Tentative Order is warranted. Before adopting a permit with potentially far-reaching consequences for local governments and residents, it is important that the Regional Board carefully consider whether proposed requirements are supported by adequate technical justification, recognize the significant water quality improvements already achieved by local agencies, and appropriately balance environmental objectives with statewide housing, climate resiliency, public infrastructure, and disadvantaged community lift goals. State and federal law uniquely give this Board incredible latitude to consider and balance these competing goals for MS4 permits because of the significant ramifications of MS4 programs on broader state and federal policy goals.

Response: Comment noted. Responses to specific requests for changes to the Tentative Order are found elsewhere in this document.

25.4. Comment:

Accordingly, the Regional Board should direct staff to continue working collaboratively with counties, cities, flood control districts, and other stakeholders to refine the Tentative Order and address outstanding technical, economic, and implementation concerns before final adoption, specifically:

1. Remove hydromodification requirements for small development projects (1 acre and under). The concern is that they may unduly increase infill housing costs and unnecessarily constrain California's broad goals to accelerate housing production;
2. Exempt flood control infrastructure projects from land development requirements. It is important to consider California's broader flood risk and climate resiliency goals, as noted in the 2025 Assembly Select Committee Report on Permit Reform and consistent with the Los Angeles Regional MS4 Permit; and
3. Ensure the Watershed Management Plan provisions include viable pathways to compliance, particularly for bacteria. The San Francisco Bay Regional MS4 Permit includes BMP-based pathways that would better balance beneficial uses and competing environmental objectives of the Santa Ana River watershed.

Response: For point (1), see [Response 19.2](#). For point (2), see [Response 19.1](#). For point 3, see responses in [Category 8 – Bacteria Compliance, Including Appendix 11](#).

12.3. Comment: Compliance Deadlines

Realistic Implementation Timelines.

Many of the compliance deadlines in the Revised Tentative Order are not achievable given the City of Moreno Valley's operational realities. The City operates on a two-year budget cycle and a five-year Capital Improvement Program, and stormwater-related capital work - MDP line extensions, capacity upgrades, catch-basin retrofits, and water-quality basin construction - is programmed years in advance in coordination with RCFC&WCD, adjacent cities, Caltrans, and the March Joint Powers Authority. New or accelerated obligations under the Revised Tentative Order will require the City to hire and train staff, procure consultants, adopt or update ordinances, revise the WQMP guidance and permit-review workflows used by City engineers, and align with the RCFC&WCD countywide framework, none of which can be completed within the compressed timeframes currently proposed. The City requests that the Regional Board extend the compliance deadlines consistent with the schedule recommendations in the RCFC&WCD comment letter and better align key milestones with the City's biennial budget adoption and CIP update cycles so that funding decisions can be made through the City Council in an orderly manner. This would provide the City with a better opportunity to plan, fund, and implement the required measures without disrupting essential services to its residents.

Response: See Responses [Response 2.1](#), [Response 15.9](#), [19.13](#). Other than matters addressed by these responses, the commenter does request specific changes to the Tentative Order.

21.16. and 9.16. Comment: Specific Revisions Requested By the City

Before adopting the Tentative Order, the City requests that the Regional Board:

A. Continue the adoption proceeding and reopen the administrative record after publication of a clean proposed order, the final Response to Comments, and all supporting materials.

B. Prepare a provision-by-provision legal matrix identifying the precise federal and state authority for each requirement and whether the requirement is federally compelled or state discretionary.

C. Conduct and respond to a meaningful Canyon Lake-specific or similarly situated permittee analysis of capital costs, annual operating costs, technical feasibility, fiscal capacity, housing impacts, economic impacts, and available funding.

D. Establish realistic phased compliance schedules tied to funding, design, permitting, land acquisition, and construction feasibility. Provide an enforceable safe harbor under which full and timely implementation of approved BMPs, programs, Watershed Management Plans, adaptive-management measures, and schedules constitutes compliance.

F. Delete or substantially revise receiving-water limitations that impose undefined end-result responsibility.

G. Delete joint-responsibility language for commingled discharges and require an individualized showing of ownership, operation, causation, and material contribution.

H. Establish clear and individualized TMDL allocations, monitoring points, accounting methods, credits, offsets, and procedures for revising allocations.

I. Adopt objective standards, review deadlines, cure periods, appeal rights, and continued compliance protection for Watershed Management Plans and reasonable assurance analyses.

J. Require Regional Board approval through a noticed public process for material changes to permittee obligations, compliance schedules, monitoring locations, or required capital projects.

K. Include an infeasibility and disproportionate-cost process providing equivalent alternative compliance measures.

L. Grandfather vested and substantially complete development projects and provide sufficient time to amend local ordinances, technical manuals, application materials, and procedures.

M. State expressly that the Permit does not require unconstitutional exactions, warrantless inspections, action beyond municipal jurisdiction, or violation of any other controlling law.

N. Distinguish mandatory permit requirements from goals, guidance, recommendations, and discretionary considerations.

O. Provide that a permittee is not responsible for a private party's noncompliance after the permittee has exhausted reasonable and legally available enforcement remedies.

P. Include funding, force-majeure, changed-circumstances, and regulatory reopener provisions.

Q. Identify requirements enforceable solely under state law and prohibit their enforcement as federal Clean Water Act conditions.

R. Include a robust severability clause so that an invalid condition does not impair lawful portions of the Permit.

S. Commit to meaningful state and federal funding sufficient to prevent substantial impairment of essential local services.

T. Provide written responses to each significant legal, technical, economic, and procedural issue raised in this letter.

Response: The commenter requests that the Santa Ana Water Board delay adoption of the Tentative Order and undertake additional actions before proceeding with adoption. Staff do not agree that further delay is necessary or appropriate. Many of the individual requests concern provisions addressed in other comments and responses, including receiving water limitations, TMDL implementation, Watershed Management Plans, reasonable assurance analyses, compliance schedules, new development requirements, and the Lake Elsinore/Canyon Lake TMDLs.

The Tentative Order is the product of an extensive public process and is intended to replace municipal stormwater permits that have been administratively extended well beyond their original five-year terms. Further delaying permit adoption would also delay implementation of updated monitoring, planning, minimum control measures, new development, and other requirements intended to improve water quality and permit implementation. The Clean Water Act contemplates NPDES permits with terms not exceeding five years, followed by permit reissuance. Adoption of the Tentative Order will allow the Santa Ana Water Board and Permittees to implement the updated framework, evaluate its effectiveness based on actual implementation experience, and make appropriate

modifications through future permit actions rather than continuing indefinitely under outdated permits.

Where other comments have not addressed the concerns already, responses are as follows:

A. The Santa Ana Water Board is not required to continue the proceeding and conduct an additional public comment period merely to publish a clean proposed order, final Response to Comments, or supporting materials. The applicable NPDES procedures require a minimum public comment period and require the permitting authority to issue its response to significant comments at the time the final permit decision is issued. 40 C.F.R. § 124.17(a). The public process provided for the Tentative Order satisfies the applicable requirements. See also 40 C.F.R. § 124.10(b)(1); Water Code § 13167.5(c); State Water Board Order WQ 2012-0013, pp. 39–40. Accordingly, an additional public review period is not required.

B–C. Neither federal nor state law requires preparation of the requested provision-by-provision legal matrix or the particularized economic analysis described by the commenter as a prerequisite to permit adoption. The legal, technical, economic, and factual bases for the Tentative Order are addressed in the Order, Fact Sheet, administrative record, and responses to significant comments.

D. The Tentative Order already provides phased implementation, WMPs, reasonable assurance analyses, milestones, adaptive management, and other mechanisms to develop technically appropriate compliance strategies to the extent authorized by applicable law. However, compliance deadlines cannot be made contingent upon the future availability of funding where doing so would conflict with applicable water quality requirements. The scope of WMP-based deemed compliance is consistent with the principles established in State Water Board Orders WQ 2015-0075 and WQ 2020-0038.

F–G. Responses related to Receiving Water Limitations are in Categories 3 and 4.

H. The Tentative Order implements TMDLs adopted through the applicable Basin Plans. The MS4 permit is not required to establish individualized allocations where the governing TMDL establishes a collective allocation. State Water Board Order WQ 2015-0075 recognizes the use of group or watershed-based allocations and compliance approaches.

I–K. The Tentative Order establishes procedures and standards for development, review, approval, implementation, reevaluation, and modification of WMPs and RAAs, including opportunities for adaptive management and Executive Officer review. Material modifications to NPDES permit requirements remain subject to applicable federal and state procedures.

L. Comments concerning new development and redevelopment requirements are un Category 9.

M. Sections II.A.8 and II.B.3 further address the scope of Permittee authority and implementation responsibilities.

N–O. The Tentative Order identifies enforceable requirements through mandatory language and distinguishes those requirements from recommendations as appropriate.

P. Attachment F, Standard Provision VIII.A, provides for modification, revocation and reissuance, and related actions consistent with applicable law. See also 40 C.F.R. §§ 122.62–122.63.

Q. The Tentative Order identifies the federal and state authorities supporting its requirements as appropriate. The legal character and enforceability of individual requirements are governed by applicable law.

R. A severability provision has been added to Attachment F, Standard Provision VIII.D.

S.. The availability of outside funding does not determine whether applicable Clean Water Act and water quality requirements apply.

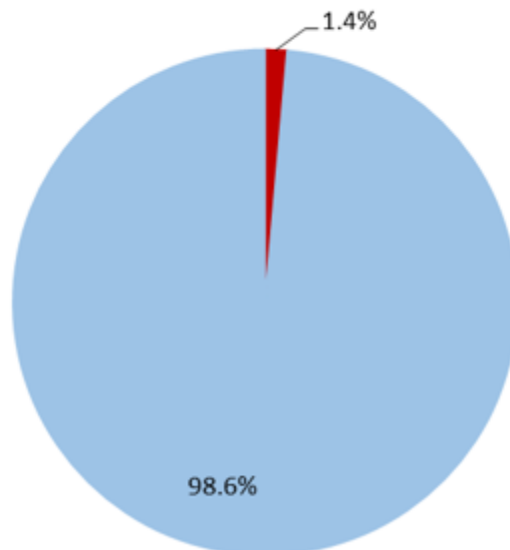
Category 22 – Oral Comments made at July 24, 2026 Board Hearing

The following comments are summarized from the speakers' oral presentations at the July 24, 2026, Board Meeting. For more details on the comments in video, audio, and/or transcript format, including those from commenters who provided visual presentations, visit [Cal-Span](#) to obtain the files. No additional responses are required for oral comments where the Santa Ana Water Board responded to similar written comments in the June 4, 2026, Response to Comments or this document.

Tri-County Group Comment 1: The Tri-County Group comprises the Orange County Flood Control District (OCFCD), Riverside County Flood Control and Water Conservation District (RCFCWCD), and the San Bernardino County Flood Control District (SBCFCD). The Tri-County Group representatives delivered a presentation based on the submitted written comments, led by Ryan Kerns from the RCFCWCD, followed by James Fortuna from OCFCD, Christopher Bland from SBCFCD, Dr. Niree Kodaverdian from Beacon Economics, and finally Greg Newmark from the County of San Bernardino Legal Counsel. The Tri-County Group presentation and oral comments can be viewed and/or downloaded at [Cal-Span](#). The Tri-County Group provided various pie charts that contain conflict information that required clarification.

Dry Weather Samples

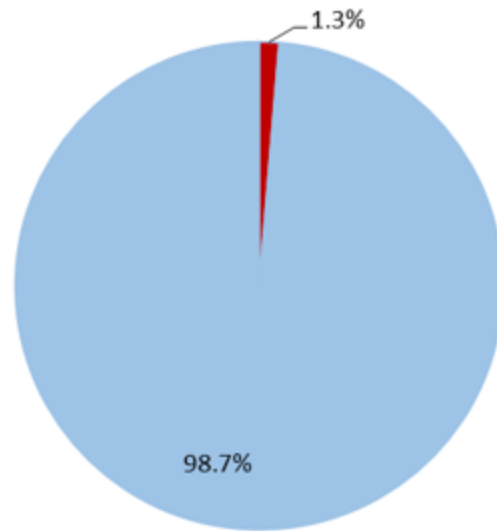
■ % Exceeds WQO/CTR ■ % Does not exceed WQO/CTR*



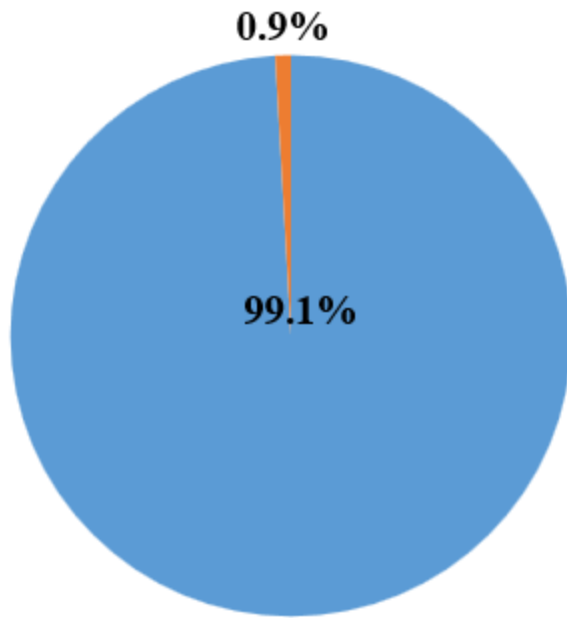
*includes non-detects, detections below WQO limits, and parameters without WQOs

Wet Weather Samples

■ % Exceeds WQO/CTR ■ % Does not exceed WQO/CTR*



*includes non-detects, detections below WQO limits, and parameters without WQOs



Count = 14,529 results

* Bacteria results excluded

■ # In Compliance

■ # Exceedances

Response: The pie charts seen above were provided in the Tri county Group's presentation and were not included in submitted written comments.

Commenters presented the charts to show approximately 98 to 99 percent compliance. Staff believe these pie charts are misleading when regarding the status of attainment of waste load allocations and receiving water limitations in the region. The charts collapse thousands of measurements of different pollutants and parameters into one "percent compliance" number. Measurements of compliance for one parameter do not offset exceedances of another parameter. Each parameter and water body has its own standard to protect beneficial uses. Evaluations of compliance are based on comparisons of monitoring data and analysis with the water bodies' water quality objectives and waste load or load allocations. They are not done by lumping multiple parameters and water bodies together.

Many of the comments about costs and compliance options specifically relate to bacteria. The comments do not present a clear relationship between the alleged

compliance rates and costs. The inference seems to be that a few pollutants will require a disproportionate share of resources to achieve attainment of water quality objectives and waste load allocations. Otherwise, these pie charts mask bacteria exceedances by diluting their impact with the results of other parameters that have higher rates of compliance. For San Bernardino County, bacteria measurements are explicitly excluded. Annual Reports show that exceedances of the waste load allocation in the Middle Santa Ana River watershed are far greater than the pie charts suggest. Some areas are reported to have up to 100% noncompliance for bacteria in certain water bodies during the dry season.

However, the pie charts and the Annual Report data suggest that a small number of pollutant-water body scenarios make up a large part of noncompliance. To address this, the Monitoring and Reporting Program provides the Permittees with the flexibility to establish a monitoring, analysis, and reporting schedule that can prioritize problem areas and pollutants. Similarly, the requirements for public education allow Permittees to establish programs that target priorities.

Tri-County Group Comment 2: Key issue: Flood Control District Exemption - The additional EO certification process needs to be removed for Flood Control Projects

Flood Control Districts require certainty when planning projects designed to protect public safety and communities

Response: While the Los Angeles Regional MS4 Permit takes a different approach by providing an exemption for Flood Control Districts, permit requirements are developed based on the structure and implementation framework of the individual permit. The Santa Ana Water Board is not required to adopt identical provisions. Staff also believe it is more appropriate for Flood Control Districts to identify the extent of their authority under the Permit than for the Santa Ana Water Board to make categorical determinations regarding the applicability of Section VIII on their behalf. The opening paragraph of Section VIII already limits its applicability to "development that is subject to a Permittee's authority," which encompasses the applicable authority exercised by each Permittee under this Order.

However, incorporating this determination where Flood Control Districts are the lead agency into the Uniform Technical Guidance Document process is consistent with the intent of the Tentative Order. The opening paragraph of Section VIII has been revised to allow Flood Control Districts to identify the applicable policies and procedures through Executive Officer approved Uniform Technical Guidance Documents instead of requiring a separate certification in the

Annual Report. The revised permit allows Flood Control Districts to identify the applicable policies and procedures through Executive Officer-approved Uniform Technical Guidance Documents when they are the lead agency. This provides greater certainty for planning and implementing Flood Control District projects while still addressing the requirements of Section VIII.

Tri-County Group Comment 3: Key issue: Redevelopment Project Exemptions - Exclusion of Drainage Facilities

Response: The existing permits do not have the blanket exemption the commenter is requesting. The facilities discussed by the commenter can be, and in some cases already are, critical infrastructure that conveys runoff to regional treatment controls. Replacement or upgrade projects may provide opportunities to incorporate features that support regional treatment controls or improve water quality. A blanket exemption could eliminate the opportunity to evaluate projects where those opportunities exist.

However, staff made revisions in section VIII that address the underlying concern about applying requirements designed for traditional development to public drainage projects. The revised Permit allows the Uniform Technical Guidance Documents to establish streamlined procedures and documentation requirements for different categories of projects, including public drainage projects. This allows Permittees to develop a simplified process appropriate for drainage projects without creating a blanket exemption for projects that may have opportunities to improve water quality.

A new provision VIII.C.7 has been added that is consistent with 40 CFR Section 122.26(d)(2)(iv)(A)(4), and states “Permittees may develop uniform technical guidance for public drainage projects, including projects that meet the Priority Project criteria. Such guidance shall establish standardized procedures for assessing the impacts of public drainage projects on the water quality of receiving waters and for evaluating whether existing structural flood control facilities can feasibly be retrofitted to provide additional pollutant removal from stormwater. Uniform technical guidance documents developed pursuant to this provision must be approved by the Executive Officer.”

Section IX.B of the fact sheet has the following language added “Section VIII.C.5 allows for the submittal of uniform technical guidance specific to categories of projects. It allows the uniform technical guidance to define procedures and documentation requirements specific to these projects, including adaptation of

other requirements within Section VIII.C such that barriers to the use of simplified, category specific WQMPs can be removed. The purpose of this allowance is to improve efficiency, consistency, and transparency for categories of projects that have particular requirements and opportunities such as transportation projects, public drainage improvement projects, and small residential projects. These documents will be subject to approval by the Executive Officer.”

Tri-County Group Comment 4: Key issue: 1-acre Hydromodification Exemption

Response: See [Response 19.2](#).

Tri-County Group Comment 5: Bacteria Standards are Challenging - Limited retrofit opportunities in Middle SAR watershed

Example – Region 2 MS4 Permit:

"There are no current available and viable treatment controls, including green infrastructure, that can reduce concentrations of fecal bacteria to low levels consistent with applicable water quality objectives." (page A-302) Many water bodies in Riverside County, including engineered channels, are REC-1

Example – Region 2 MS4 Permit:

"Due to impossibilities or limitations of modeling or conducting quantitative analysis for bacteria MS4 discharges...the expectation to comply with the receiving water limitation....is not expressed in the Permit as an enforceable final deadline" (page A-300)

Establish BMP-based compliance pathways and prepare region-specific findings to provide flexibility for Watershed Management Plans, in alignment with State Board Order 2015-0075

- a) Emphasize source control and targeted investigations on controllable sources as the primary strategy for bacteria
- b) Acknowledge scientific and technological limitations behind viable treatment controls for bacteria
- c) Acknowledge impossibilities and limitations of modeling bacteria

Response: The Tentative Order provides flexibility through the Watershed Management Plan, Reasonable Assurance Analysis, and Program Monitoring and Reporting Plan processes. The Tentative Order does not require an infrastructure or retrofit only approach. Permittees can use a suite of feasible controls, including nonstructural controls, source identification and elimination, sanitation measures, maintenance, public education, and other measures appropriate for the watershed.

The Tentative Order allows for targeted source investigation and abatement of controllable bacteria sources as a proposed strategy. Staff have added source investigation and abatement as a watershed control measure example in section XI.B.4.b to support this pathway.

The Tentative Order does not assume that a conventional quantitative model will always be technically appropriate. Provision XII.B.4.f.ii and correlated Fact Sheet language have been revised to more clearly recognize that reasonable assurance analyses shall use modeling where appropriate, but where a model is not ideal, Permittees may rely on the best available methods and information, including but not limited to, published BMP effectiveness studies, monitoring-based analysis, and other quantitative lines of evidence. The reasonable assurance analysis is intended to transparently predict the likelihood that the proposed controls will achieve the intended water-quality result and requires that the assumptions and risks of failure be disclosed.

It is not appropriate to include a general finding that bacteria cannot be modeled or that viable bacteria controls do not exist throughout the Santa Ana Region. The Region 2 language cited by the commenter reflects the administrative record, watershed conditions, and permit structure considered by that Regional Board. The Tentative Order must make findings based on the record and conditions in our own Region. The beneficial uses and water quality objectives come from the Basin Plan and applicable statewide standards. The MS4 Permit cannot disregard those standards because achieving them may be difficult in a particular watershed. An exceedance of a receiving water bacteria objective also does not, by itself, establish that an individual Permittee violated the Permit. The PMRP is intended to resolve questions regarding where exceedances correlate to permit violations related to MS4 discharges.

The Tentative Order already provides the BMP-based compliance pathway the commenter is requesting for receiving water limitations. This compliance pathway does not exist under the existing permits. The currently used implementation of iterative BMP-based planning does not provide a safe harbor. Where there are exceedances of receiving water limitations, the statewide numeric water quality

objectives are enforceable. Under the Watershed Management Plan provisions, a Permittee can access deemed-compliance with receiving water limitations by developing an enforceable BMP-based program supported by a Reasonable Assurance Analysis, milestones, monitoring, and adaptive management. That is consistent with the principles in State Water Board Order WQ 2015-0075. Therefore, for receiving water limitations without an established compliance date, the Tentative Order provides the WMP BMP-based compliance pathway, which may include watershed control measure proposals similar to what is contained in the Region 2 permit.

Where a TMDL establishes a final compliance date, the MS4 Permit cannot extend that Basin Plan compliance date. The Tentative Order provides multiple compliance options for bacteria TMDLs, including a human health risk assessment pathway. Where additional time is necessary after a TMDL compliance date has passed, the appropriate mechanism is a Time Schedule Order. Region 2 also abides by adopted TMDL compliance dates and issues Time Schedule Orders where appropriate. Where it can be demonstrated that the numeric objectives and compliance dates adopted in the Basin Plan are infeasible, the appropriate mechanism is to pursue a Basin Plan amendment. Permittees may pursue Basin Plan amendments concurrently with Time Schedule Orders and Watershed Management Plan efforts, and analysis related to these may serve dual purposes where appropriate.

Tri-County Group Comment 6: Land Development Key Requests

WQMP policies and procedures - Achieve streamlining goals by allowing discretion for Permittees to define the policies and procedures in the EO-approved Uniform Technical Guidance.

Redevelopment and routine maintenance definitions - Achieve alignment with statewide and regional definitions: CGP, Draft Phase II MS4, Region 9, and Region 7 to reduce confusion and uncertainty

Hydromodification monitoring - Revise requirements so that they meet actual needs and will produce meaningful outcomes.

Credit program trading areas - Remove default credit trading area size to incentivize credit program development and add provisions to protect disadvantaged communities.

Response: Regarding WQMP policies and procedures, staff agree with the goal of allowing more flexibility and streamlining for different types of projects. The Tentative Order has been revised. The Uniform Technical Guidance Documents can establish alternative review, approval, and documentation procedures for

different categories of projects, subject to Executive Officer approval. Other revisions are made to reduce barriers to that streamlining, including requirements related to who may prepare and approve WQMPs and revisions to section IX.B of the Fact sheet and the glossary definition for Water Quality Management Plans. These changes reflect the intent of existing provisions and provide clarity without changing the underlying requirements. These changes should provide more flexibility for projects like road improvements, public drainage projects, and small residential projects. The goal is to allow Permittees to develop streamlined templates, checklists, and procedures that fit the type of project while still meeting the Permit requirements.

Regarding redevelopment and routine maintenance definitions, see Response [21.23](#). The Construction General Permit definition is not directly comparable as it does not establish WQMP requirements. WQMP requirements are in MS4 Permits. The redevelopment language in our Tentative Order is also substantially the same as the language in the existing Riverside and San Bernardino County MS4 permits, so this is not a new redevelopment framework for our Region. A blanket routine-maintenance exemption is not appropriate. Some replacement or upgrade projects may provide opportunities to incorporate water quality control improvements or support regional treatment controls, and a blanket exemption could prevent those opportunities from even being evaluated. The Permit now allows categorical waivers from structural treatment controls for categories of projects where those controls can be shown to be infeasible (See [staff revision 1](#)). These changes provide flexibility for projects with limited treatment opportunities without broadly exempting them from review.

Regarding hydromodification monitoring, see Responses [1.1](#), [17.17](#), and [19.19](#).

Regarding credit programs, see [Category 19](#).

Tri-County Group Comment 7: Technical comments relate to older TMDLs that have not been updated

Response: Specific requests are addressed in [Category 15](#).

Tri-County Group Comment 8: Challenges of Bacteria.

Newport Bay Fecal Coliform TMDL – Revert to 2024 draft language for Appendix 3 Section III.F (Compliance Determination)

2026 RTO Appendix 3 Section III.F limits Permittees to one approach for using alternative indicators

The permit needs to remove the restrictive language and allow flexibility for future innovation in other alternative indicators or thresholds that may be developed during the permit term

Coyote Creek Bacteria TMDL

Add the two risk-based compliance pathways allowed for Newport Bay TMDL (App. 3, III.F & G)

Allow a 10-year compliance schedule for dry weather

Provide sufficient time to develop the implementation plan (or equivalent)

Prepare findings to support using a risk-based approach for compliance with bacteria TMDLs and receiving water limitations

Acknowledge limitations of modeling bacteria and allow a simplified RAA to be done for bacteria in the WMPs

Emphasize source control and targeted investigations as the primary control strategy for bacteria

Response: For the Newport Bay Fecal Coliform TMDL, see Response [17.30](#). The change has been made.

For the Coyote Creek risk-based compliance pathways, see Response [17.52](#). The change has been made.

Regarding the 10-year compliance schedule for dry weather/time to develop an implementation plan, see Response [17.51](#). For an implementation plan that is not being used as a Watershed Management Plan, Permittees have 180 days from the effective date to submit. This gives Permittees 1 year from the date of adoption (180 days until permit is effective + 180 days to submit). The implementation plan only requires a description of proposed pollution controls that will be used and their level of effort, a schedule for implementation, and proposed milestones.

Regarding bacteria compliance, see [Tri-County Group Comment 5](#) and [Category 5](#).

Tri-County Group Comment 9: Discussion of Beacon Economics Report.

Response: See [Response 15.3](#).

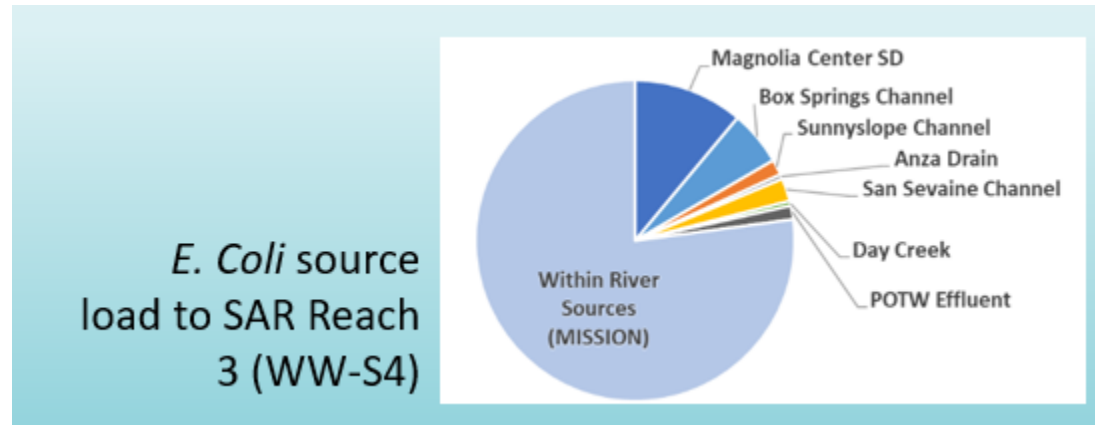
Tri-County Group Comment 10: BMP-based approach/Source investigations (alternative compliance)

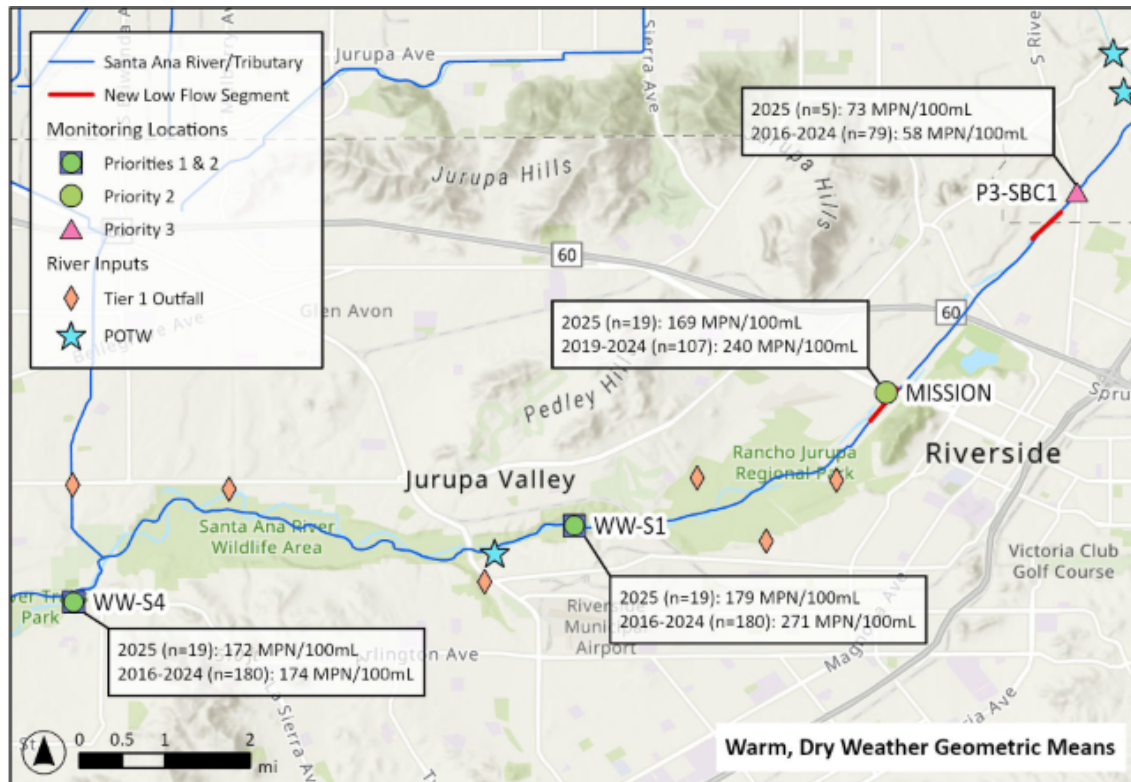
Continued work through task forces like the MSAR Bacteria TMDL Task Force

Response: Regarding “BMP-based approach/Source Investigations (alternative compliance), see [Tri-County Group Comment 5](#) and [Category 5](#).

Nothing in the Tentative Order precludes work from being done through task forces like the MSAR Bacteria TMDL Task Force.

Tri-County Group Comment 11:





Commenters stated the “E.coli source load to SAR reach 3 (WW-S4)” graphic, this was used to state that “Implementation of the Tentative Order is not going to do anything to address 77% of the bacteria load in the river. That is, we’ve documented that its coming from in-river sources. Theres no factual basis to believe that the TMDL would be achieved by implementation of this Order because it would leave 77% of the bacteria unaddressed.”

Commenters stated “The river already exceeds the 113 MPN number during dry weather before it even reaches areas that are influenced by MS4 discharges. So in that figure near the Mission monitoring station [...] the geometric mean was 169 MPN, that’s above the limit before it even gets to areas of influence by the MS4. [...] This shows is that the TMDL limit that the Board says is needed to protect the beneficial use will not be achieved even without any MS4 contribution at all.”

Response: Section III of Appendix 11 of the TO list different methods for demonstrating compliance with the WQBEL for bacteria indicators in the middle Santa Ana River. These methods do not preclude consideration of sources other than the MS4s as indicated by the commenter. Section III and the Monitoring and Reporting Program provide a process for Permittees to present information and/or propose processes to determine compliance through the development and approval of the Program Monitoring and Reporting Program (PMRP). The proposed method in the PMRP will be subject to public comment to ensure transparency, rigor, and accountability. The PMRP requires monitoring that is

representative of MS4 influence, and it allows upstream monitoring and other information to be used to evaluate other sources. If the explanation is that bacteria is coming from upstream, from in-river sources, or from sources that are not associated with the Permittee's MS4 discharge, the PMRP provides a formal and transparent framework to evaluate that explanation. Permittees are only responsible for pollutants associated with their MS4 discharges.

Otherwise, these claims highlight a basin planning concern that is outside the scope of this proceeding.

Tri-County Group Comment 12: Proposal: An effective date of 180 days (instead of 90) is needed in the permit to address many new and complex requirements post adoption

Response: The Permittees requested a 180-day after adoption date for the effective date of the Order to allow adequate time for Permittee internal processes. Staff have revised Table 2 of the Tentative Order to provide that the Order will become effective on Adoption + 180 days.

Orange County Coastkeeper team members Gary Brown, Ray Heimstra, and Sarah Spinuzzi provided comments to the Board Members based on the submitted written comments on July 20, 2026. The Orange County Coastkeeper/Inland Empire Waterkeeper's presentation and oral comments can be viewed and/or downloaded at [Cal-Span](#).

Orange County Coastkeeper/Inland Empire Waterkeeper Comment 1: Credit Trading Program Recommendation

Response: Responses are found in [Category 19](#).

Orange County Coastkeeper/Inland Empire Waterkeeper Comment 2: Receiving Water Limitations are identical to those struck down in SF v. EPA.

Response: Responses are found in [Category 3](#).

Orange County Coastkeeper/Inland Empire Waterkeeper Comment 3: 2. Monitoring Program Is Inadequate to Determine Compliance for Non-TMDL Waterbody Pollutant Combinations. No criteria for evaluating compliance for pollutants not subject to a TMDL. According to the 2024 303(d) list, 69 receiving waters in Region 8 are listed as

impaired for between 1 and 12 pollutants, each in the 5A category and each requiring but lacking a TMDL. By definition, discharges of impairing pollutants above water quality standards to impaired water bodies causes or contributes to impairment. Commenter provided the example of San Diego Creek reaches 1 and 2 are listed as impaired for benthic community effects. Solution: Include Criteria for Compliance for Pollutants Not Subject to TMDL.

Response: For waters without an applicable TMDL, compliance is governed by the receiving water limitations in section VI. Those provisions prohibit MS4 discharges from causing or contributing to an exceedance of applicable water quality standards. The 303(d) list establishes that a receiving water is impaired. The 303(d) list does not establish that MS4 discharges are causing or contributing to the impairment. A compliance determination therefore requires consideration of both the receiving water condition and the relationship between that condition and the Permittee's MS4 discharge.

Attachment C establishes the monitoring framework for making those determinations. It requires Permittees to characterize receiving water conditions relative to applicable water quality standards and provides for receiving water and outfall monitoring and escalating investigations where appropriate. Permittees must also evaluate other pollutant sources that may adversely affect beneficial uses. Through the Program Monitoring and Reporting Plan, Permittees may propose technically appropriate monitoring locations, assessment methods, and alternative indicators for evaluating individual pollutant-waterbody combinations.

The Tentative Order does not prescribe a single compliance assessment method for all 69 impaired waters identified by the commenter because the appropriate method depends on the pollutant, applicable water quality objective, receiving-water conditions, available monitoring information, and characteristics of the MS4 discharge. The PMRP provides a process to establish appropriate methods while maintaining the enforceable receiving water limitation.

Orange County Coastkeeper/Inland Empire Waterkeeper Comment 4:

Implementation Schedule Ensures No Progress On Pollution Reduction For the Permit Term. Solution: Determine Compliance Now.

Response: Existing monitoring and reporting programs must continue upon the effective date of the Tentative Order until the PMRP is approved. The Santa Ana Water Board therefore continues to receive monitoring data and retains its existing authority to determine compliance and pursue enforcement based on

available information. Development of the PMRP does not create a period during which violations cannot occur or be enforced. Development of a Watershed Management Plan does not delay pollution-control activities until later in the Permit term. For a reactive WMP developed in response to a receiving water limitation violation, section XII.A.9 does not provide deemed compliance while the WMP is being developed. Potential violations therefore remain subject to enforcement during that period. Although the Permit allows up to 24 months for WMP development, section XII.A.4 requires schedules to be as short as practical and to include enforceable critical milestones tied to receiving-water indicators.

The PMRP and WMP are only part of the permit. Permittees remain subject to the minimum control measures, TMDL requirements, and other provisions requiring implementation of pollution controls. The Tentative Order therefore does not defer pollution reduction until completion of the PMRP or WMP processes. Rather, those processes improve the tools available to determine the causes of exceedances and develop additional controls where necessary.

Orange County Coastkeeper/Inland Empire Waterkeeper Comment 5: The 2026 Permit Still Provides No Facts or Analysis to Support the Antidegradation Findings, quotes Fact Sheet “The permit still does not provide facts or analysis to support the antidegradation findings. The permit states that water will continue to be degraded. However, there's this conclusory statement that this may manifest itself in the reduction of some public services or prevent other services from being provided. It also says that service levels could harm the quality of life of residents and affect the efficiency of businesses' economic activity. These conclusory findings, first of all, are unlawful, but they also ignore the benefits of clean water on business economic activity and ignore what we all know as Southern Californians: that the draw of our state is directly tied to the health of our environment, the ability to enjoy the days of sunshine, and the proximity to clean coastlines and healthy rivers. These conclusory findings are misguided and need to be supported by evidence.”

Response: See RTC#1 Response 32.12. Staff have reviewed Fact Sheet section III.G and reviewed antidegradation analyses from other Region's MS4 Permits and have added additional discussion on Attachment D pages 245 and 251.

The statement quoted by the commenter is part of a broader antidegradation analysis and should not be read in isolation. For impaired waters, the Fact Sheet explains that the permit is designed to halt further degradation and improve water quality through receiving water limitations, TMDL-based WQBELs, minimum

control measures, monitoring, Watershed Management Plans with schedules that are as short as possible, Reasonable Assurance Analyses, and an adaptive management process. The Fact Sheet recognizes that some impaired waters may remain the same or worsen before improvements from those controls are realized, but it does not authorize indefinite degradation. For high-quality waters, the Fact Sheet evaluates alternatives. Those range from complete prohibitions on pollutants in stormwater and non-stormwater, to Watershed Management Plans without deemed compliance, to the approach ultimately selected, Watershed Management Plans with conditional deemed compliance. The analysis explains why complete prohibition may not always be practicable, including flood-control and public-safety needs, the physical limitations of existing infrastructure, diminishing returns as pollutant loads approach zero, the role of other regulated and nonpoint sources, and circumstances where legacy pollutants or other sources are the dominant cause of degradation.

The Fact Sheet also acknowledges that there are significant environmental, public health, and economic costs associated with exceedances of WQOs. The Fact Sheet discusses multi-benefit projects that can provide water-quality improvements together with recreation, walkable communities, increased water supplies, wildlife habitat, and flood control, and it identifies the Mill Creek Wetlands project in Ontario as a specific example of a project providing both water-quality and recreational and educational benefits.

Oral comments without a visual presentation:

Joe Baca, Jr., Fifth District Supervisor and Vice Chair of the San Bernardino County Board of Supervisors, cited the Beacon Economics' potential \$11 billions of permit costs for San Bernardino County in the next 20 years. Mr. Baca expressed his concerns about the new compliance costs that can burden the disadvantaged residents and cities. He encouraged the Board Members to continue using proven methods to demonstrate compliance through the Best Management (BMP)-based approach, rather than adopting the new Regionwide MS4 Tentative Order requirements.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 5 – Bacteria Compliance, Including Appendix 11](#).

Kimberly Colbert from Colbert Environmental Group, who represents the City of Claremont, raised concern about numerical effluent limitations (NELs) for water quality based effluent limitations (WQBELs) rather than maintaining a BMP-based approach for

dry weather. She indicated that the NELs invalidate the compliance pathways offered through the individual permit for the dry weather. She pointed out that the City has met the compliance through a BMP-based approach since the City does not discharge during the dry weather. If the NELs are enforced, the City is required to develop the Watershed Management Plan not just for dry weather, but also wet weather. She explained that the City should have the flexibility to select the pathway of compliance for both dry and wet weather, by providing evidence with the capacity to retain 85th percentile of stormwater run-off. In addition, the City should have the option to develop the documents individually, or in collaboration with the Santa Ana Watershed Project Authority Task Force.

Response: See responses to similar written comments in [Category 5 – Bacteria Compliance, Including Appendix 11](#) and [Category 13 – Watershed Management Plans](#). Watershed Management Plans are not available for dry-weather compliance. The City of Claremont may continue to demonstrate compliance for dry weather by demonstrating that the City does not discharge. For wet weather, numeric effluent limitations are currently in effect and enforceable under existing permits since the Permittee did not submit a wet-weather Comprehensive Bacterial Reduction Plan and the Board did not adopt an alternative compliance pathway. Adoption of the Tentative Order does not change this condition. The City has flexibility under the Tentative Order to demonstrate compliance for wet-weather by demonstrating retention of the 85th percentile.

Nothing in the Tentative Order prevents the City from developing documents individually, or in collaboration with other entities.

Julie Carver, Environmental Compliance Supervisor for the City of Pomona, raised the concern that the City of Pomona is already being regulated under the Los Angeles Municipal Separate Storm Sewer System (MS4). Since a small part of the City drains into the Middle Santa Ana River, the City is required to comply with the bacteria Total Maximum Daily Load obligation under the Santa Ana Regional Water Quality Control Board's individual permit. Ms. Carver states that the City of Pomona is now obligated to comply with two overlapping permits with similar regulatory frameworks: trash and hydromodification, as well as new development/significant redevelopment and program effectiveness. She pointed out that the City staff are providing duplicate efforts, resulting in higher costs, rather than focusing only on bacteria reduction. The City requested the Board Members to consider removing duplicated efforts besides the bacteria reduction requirements. In addition, the City has already been working with the Santa Ana Watershed Project Authority for the bacterial monitoring program. The City of Pomona noted that, by requiring the City to submit the Program Monitoring & Reporting Plan

(PMRP), the Santa Ana Water Board forces the City to reset all past efforts to establish the data set, resulting in a discontinuity in the collected data. City requested a delay of requirements under wet weather until 2035 to prevent the taxpayers from funding two parallel programs under the PMRP, while establishing a compliance pathway that is potentially achievable.

Response: See responses to similar written comments in [Category 5 – Bacteria Compliance, Including Appendix 11](#) and comments by the City of Pomona in Responses [14.1](#), [14.2](#), [14.3](#), [14.4](#), [14.5](#), [14.6](#), [14.7](#), [14.8](#), [14.9](#), [14.10](#).

The PMRP does not require what the commenter suggests. The PMRP may rely on existing programs where they meet requirements of the Tentative Order and may include any updates to existing programs where necessary. Permittees must continue existing monitoring programs until the PMRP is approved and in effect. Wet weather compliance dates will be extended to 2035 when the adopted Basin Plan amendment for the Middle Santa Ana River Bacteria TMDLs is in effect.

Joe Baca, Sr., Mayor of the City of Rialto, expressed his concern about the \$527 million cost burden to comply with the program over the next 20 years. He explained that the millions of dollars per year needed for the programs could result in job losses, especially in the disadvantaged rural community.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#).

Phill Dupper, Mayor of the City of Loma Linda, highlighted key points on the City's current budget deficit, while facing an estimated \$207 to \$210 million in budgetary overruns over the next 20 years for a blue zone community. The City's facing a 111% increase in the annual general fund budget based on the estimated cost requirement, creating an extraordinary financial burden. City requested that the Board Members instruct the Santa Ana Water Board staff to engage in more meaningful collaboration to establish feasible requirements, rather than face new unfunded mandate lawsuits.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#).

Debra Porada, City Council for the City of Ontario, voiced concerns about a one-size-fits-all approach for all permittees, from coastal to inland watersheds. The Regionwide MS4 Tentative Order does not meet all the permittees' goals while generating

unnecessary costs and administrative burdens and causing implementation challenges. She indicated that the new Tentative Order requirements could result in each new home costing an additional \$26,000 in permitting fees. The program's overall extra cost reduces funding for public safety, road maintenance, libraries, parks, homeless services, and other essential community needs. She desired an internship program for state employees to work alongside city, county, and special district staff during the development of the regulatory policy, grounded in scientific, financial, and sustainable principles.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#).

Regarding the “\$26,000 in permitting costs for each new home,” that estimate was based on assumptions regarding application of the new-development requirements that do not reflect the flexibility provided by the Tentative Order. Revisions have been made to clarify the hydrologic conditions of concern exemption for projects under one acre and to provide greater flexibility for common project types through the Uniform Technical Guidance Documents, including streamlined review, approval, and documentation procedures.

Steven Robillard, City Council member for the City of Riverside, raised his concern about permit compliance that cannot be guaranteed. He brought the Board Members' attention to the fact that the City is held accountable for large investments in controlling issues that are beyond its control. Examples include trash, litter, leaking vehicle oil, pet waste, illegal dumping, and the challenges of homelessness, all of which ultimately affect water quality. He requested that the Tentative Order be practical, financially responsible, technically achievable, and provide rewards for measurable progress, without lowering compliance expectations.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#).

Cesar Barrera, Deputy Public Works Director and Water Resources Manager for the City of Santa Ana, stated that the Tentative Order establishes significant new regulation requirements without identifying sustainable funding mechanisms to support the program implementations. He noted that he had no concerns with the environmental objectives in the Tentative Order. The expected costs of complying with the Tentative Order requirements effectively constitute unfunded mandates that shift the costs to local governments and ratepayers. He explained that grant funding alone is insufficient to support long-term compliance obligations, even after the funded projects have been

completed and meet the Tentative Order requirements. He suggested that the Tentative Order should adopt a sustainable financial resource approach, identify financial resources, and provide a phased implementation framework that aligns with compliance milestones and is adjusted based on funding availability.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#). See also [Response 4.2](#).

Mario Salcedo, Mayor of the City of Redlands, expressed his anxiety about the \$574 to \$585 million in compliance costs over the next 20 years, based on Beacon Economics' estimate. The annual cost for program compliance would be 74% of the city's general fund budget, which competes with funding for infrastructure, public safety, transportation improvements, parks, and housing. He stated that the Tentative Order adds burdens and barriers to cities and counties facing the housing crisis, as the regulatory requirements result in higher costs. He asked the Board Members to build a progressive Tentative Order that adopts a balanced BMP-based approach to protect water quality while easing the burden of program costs.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 5 – Bacteria Compliance, Including Appendix 11](#) and [Tri-County Group Comment 5](#)

Nathan Mustafa, Director of Public Works for the City of Riverside, raised concerns about the numerical thresholds at the stormwater outfalls, noting that the requirement is infeasible given the scaling of existing technology for capital improvement projects to treat at every outfall.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 5 – Bacteria Compliance, Including Appendix 11](#).

There is no requirement for a Permittee to sample and monitor each of its outfalls. The monitoring must be adequate to achieve the goals in section II.A of Monitoring and Reporting Program R8-2026-0034. Monitoring locations must be representative. Monitoring frequencies may be proportional to the risk to beneficial uses. The requirements for the PMRP are designed provide flexibility to develop a cost effective monitoring program that protects water quality. Permittees retain multiple compliance options for TMDLs where there are numeric limitations, including demonstrations in the receiving water and human health risk assessments for bacteria compliance.

Peter Garcia, Mayor Pro Tem for the City of Fontana, presented Beacon Economics' findings that the City is facing a significant share of the program cost, especially for a vulnerable, disadvantaged community. The Tentative Order would make the affordable housing crisis even worse, reducing essential services to the City to achieve quality of life, while forcing low-income residents to face financial hardships as part of the program ratepayers.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#).

Acquanetta Warren, Mayor of the City of Fontana, expressed her anxiety about the City's overall costs, which range from \$960 to \$970 million over the next 20 years in meeting the Tentative Order's compliance. Based on her assessment, the costs could exceed the City's annual general fund budget by a factor of 4. The City's low-income residents cannot support the financial burdens.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#).

Nathan Marlinski, Environmental Compliance Supervisor for the City of Chino, brought the Board Members' attention to the recurring concern about the Tentative Order's one-size-fits-all framework. According to Mr. Marlinski, the Tentative Order's current language would create significant unintended negative consequences to the local geography, economy, and quality of life. The Tentative Order risks establishing rigid standards to regulate coastal and inland areas alike, despite significant differences in conditions between the two regions. He suggested that the Tentative Order be more explicitly flexible to account for regional differences, preventing limited public resources from pursuing engineering solutions that are physically infeasible or ineffective given local conditions. He also noted that municipalities are facing competing state mandates, such as regional housing needs allocation, and conflicts with housing obligations, such as infiltration requirements, when they're physically or economically infeasible or when the project's viability is significantly reduced. Mr. Marlinski also flagged concern about the rigid numeric bacterial limits, where the permittees have no systematic control over inputs from nature, wildlife, soil, and other natural sources. He pointed out that the natural background conditions cannot be eliminated through conventional stormwater infrastructures. With the Tentative Order requirements for numerical compliance at the end of pipe, the results would be unattainable even with the necessary effective implementation of stormwater controls. He elaborated that, based on the most recent

studies from the American Society of Civil Engineers and the Water Research Foundation, treating stormwater runoff to consistently achieve strict numerical bacteria targets is both technologically and economically infeasible. He suggested approaching the adopted Tentative Order with State Board precedent supporting the iterative BMP-based approach, using the established industrial guidance, and emphasizing the identification of sources to control human-borne bacteria.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 5 – Bacteria Compliance, Including Appendix 11 and Tri-County Group Comment 5](#).

Larry McAllen, City Council for the City of Highland, stressed that the City is facing a \$445 millions in compliance costs over the next 20 years. Mr. McAllen indicated that the City's general fund budget is \$28 million, and the program compliance costs would be \$22 million. He noted that the compliance with the program would sacrifice all public services to keep the city safe and functional. Even with the attempts to comply with the unattainable requirements, the City still faces enforcement action and financial penalties. He encouraged the Board Members to pursue a BMP-based approach to preserve the Tentative Order's flexibility while meeting compliance. He explained that the San Francisco Bay Regional Water Quality Control Board had already established such a precedent.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 5 – Bacteria Compliance, Including Appendix 11 and Tri-County Group Comment 5](#).

Doug Wilson, City Council member for the City of Grand Terrace, commented on the potential costs of \$123 to \$126 million, roughly 220% of the annual general fund budget. This places the City in an unsustainable position.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#).

Linda Krupa, City Council for the City of Hemet, expressed that the City is facing \$655 million in infrastructure for treatment control over the next 20 years, with \$12 million annually for ongoing operations [for the program implementation]. Hemet residents are facing a choice between clean water and a safe neighborhood. Council Krupa suggested that the Board Members not adopt the Tentative Order in its current form until it includes realistic, phased implementation schedules; flexible, cost-effective

compliance options; recognition of existing local and regional investments; and requirements that are both supported by sound science and deliver measurable water-quality benefits.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Response 4.2](#).

Katrina Kunkel, a representative for the City of Menifee, expressed the City's concern about the possible \$1 billion in costs over the next 20 years, based on Beacon Economics. The costs include \$780 in projects and \$14 million annually for maintenance of those projects. Ms. Kunkel explained that the City's annual general fund is \$14 million to support its essential services. Even though the City is currently one of the fastest growing cities in California, 37, needs to keep the community affordable. The current Tentative Order adds new costs on top of existing permit requirements' costs, while removing the feasible compliance paths and replacing them with stricter limits based on 30-year data. She stated that the projects take years to deliver, but the Tentative Order expects major compliance achievement every five years. She conveyed the City's anxiety about being penalized as it falls behind in compliance. She noted that the Water Code and subsequent court orders require that the Water Board perform a meaningful and sufficient cost analysis to evaluate the actual incremental costs of changes to the Tentative Order.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 5 – Bacteria Compliance, Including Appendix 11](#).

Dr. Sean Moore, representative for City Mayor and Council for the City of Yucaipa, commented on the findings from Beacon Economics, where the City is facing a \$470 million in compliance costs over the next 20 years. Dr. Moore suggested that the Board Members should reconsider the BMP-based approach being used by the San Francisco Bay Regional Water Quality Control Board, which is more affordable than numerical effluent limits.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 5 – Bacteria Compliance, Including Appendix 11](#).

Randal Putz, Mayor of the City of Big Bear Lake, noted that the City faces approximately \$140 million in compliance costs over the next 20 years, which is several times the City's annual budget (one-time comparative cost). Since the city is located in the alpine areas, he explained that the communities differ significantly from other

communities in their environmental outcomes. The alpine community is surrounded by nature, geographical settings, and seasonal weather patterns. He also stated that the natural community is surrounded by birds (a source of bacteria) and the San Bernardino National Forest (a source of nutrients). The city cannot control the contribution of pollutants from natural sources and other entities. He encouraged the Board Members to direct the Santa Ana Water Board staff to collaborate with the permittees in developing an achievable Tentative Order. At the same time, he wanted the Santa Ana Water Board staff to recognize the unique circumstances the alpine community faces in complying with the requirements.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and responses to the City of Big Bear Lake’s comments in Comment Number 2.

James Breitling, a member of the City Council for the City of Upland, reiterated the high cost of implementing the Tentative Order. He expressed deep concern that the compliance requirements far exceed the City's capacity to realistically implement or afford. The imposed compliance obligations placed the requirements into unfunded mandates. The timeline for the Tentative Order does not reflect the realities of planning, engineering, environmental reviews, permit funding, utility coordination, and competitive bidding, which can take years. According to Beacon Economics, Upland is facing \$389 million in compliance costs over the next 20 years, \$264 million in capital improvements, and \$6 million in annual operation and maintenance costs. He stated that it would consume well over 90% of the City’s annual discretionary resources. The City also rejected a one-cent sales tax measure to fund essential services. The City has already implemented five budget cuts and still cannot implement the current permit. He urged the Board Members to adopt realistic implementation schedules that provide a practicable pathway to compliance and to recognize the financial limitations faced by local governments.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Response 4.2](#).

John Pourkazemi, City Engineer for the City of Perris, echoed the concerns brought up by previous speakers. He suggested that the Board Members reconsider a Tentative Order with a realistic, feasible plan that would allow the permittees to achieve compliance. He also mentioned that bacterial monitoring and compliance should be further assessed using a feasible, practical framework that sets achievable scientific

compliance metrics, while keeping disadvantaged communities in mind during cost evaluations.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 5 – Bacteria Compliance, Including Appendix 11](#).

Brian Johsz, Mayor of the City of Chino Hills, spoke about the City's unique challenge in complying with two different regulatory oversight requirements due to the Coyote Creek bacteria Total Maximum Daily Load, potentially costing \$591 million over the next 20 years. That brings the City's annual general fund to 159%. The City raised the flag for an erroneous involvement with the Los Angeles Regional Water Quality Control Board, as it has not received any notification from the Los Angeles Water Board. The City requested that the Board Members vote to remove the City from the Coyote Creek bacteria TMDL requirement, while establishing a Tentative Order with a BMP-based approach to establish an achievable compliance pathway.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 5 – Bacteria Compliance, Including Appendix 11](#) and [Tri-County Group Comment 5](#).

Ruby Cornejo, representative for the City of Canyon Lake, stated that the City supported the Tri-County Group, and also suggested to the Board Members to reconsider not adopting the Tentative Order at the Board Meeting on August 21, 2026. She indicated that the new Tentative Order contains significant new legal findings, technical requirements, and compliance mechanisms, along with new adjustments and legal developments arising from the City of San Francisco vs US EPA case. In addition, the Tentative Order's technical feasibility is inadequate, as it fails to account for scalability, the scheduling timeline, and the costs the permittees can afford.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 3 – Receiving Water Limitations Findings](#)

Mark Gray, Director of Environmental Affairs for Building Industry Association of Southern California, conveyed the worries of homebuilders required to satisfy the requirements with more post-construction treatment controls, such as green infrastructures. He expressed that the previous collaborative efforts between Santa Ana Water Board staff provided substantial support for the language change favoring homebuilders, especially the impervious surface exclusion for gravel and rock products, offsetting calculations that would otherwise increase development costs. However, he

also noted that the two written items for the submitted comments remain to be addressed: the existing hydromodification control and hardened channel exemptions, both of which have been granted in the current MS4 Permits in all three counties, and a provision to allow credit generation and a credit trading program.

Response: See responses to similar written comments in [Category 19 – Credit Trading Programs](#), and also [Response 19.2](#) and [17.17](#).

Kathleen Brennan, President for Teamsters Local 1932, conveyed the stresses of the union as a whole, with more than 16,000 active members, as the Tentative Order requirements would increase the costs for new homes, reduce the total number of jobs available as the fundings are diverted to fulfill the requirements, and create hindrances for disadvantaged communities to receive services while struggle with the rising costs coming from the new requirements. She encouraged the Board Members to reconsider the language to prevent competition for priorities that place disadvantaged communities and municipalities further behind.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#).

Samuel Carlin, a Business Agent from Teamsters Local 952, brought the collective concerns about the lack of general funds for various agencies. The local agencies notified Teamsters Local 952 members that their general funds are experiencing deficits that will not meet upcoming cost requirements under the Tentative Order and that they have not entered into any bargaining with the union members. Furthermore, the local agencies notified the union members of possible layoffs before the Tentative Order is considered for adoption. He asked the Board Members to reconsider adopting the Tentative Order.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#).

Alfredo Miranda, a speaker on behalf of California State Senator Suzette Martinez Valladares, indicated that Senator Valladares requested that the Santa Ana Water Board collaborate with the permittees to develop better permitting language. She desired more meaningful dialogue between the Santa Ana Water Board and the permittees, to participate in providing detailed technical feedback, offer more transparency in the decision-making processes, and allot more time for the permittees to work together in reviewing the revisions, since the Santa Ana Water Board had more significant time to

work on the Tentative Order language. She encouraged the Board Members to focus on a permit that is implementable, achievable, and improves water quality without imposing on the communities.

Response: See responses to similar written comments in [Category 22 – General Statements](#).

Leticia Castillo, Assemblywoman for California's 58th Assembly District, expressed her concerns based on Beacon Economics' report, which places financial burdens on vulnerable, disadvantaged communities and struggling families. She pointed out that Beacon Economics' reports indicated that local governments would be absorbing billions of dollars to cover the new compliance obligations. She suggested that the Santa Ana Water Board pursue environmental policies that advance water quality goals, with language that allows for flexibility and measurable progress through practical, scientific, defensible solutions.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 22 – General Statements](#).

Caleb Reagan, Policy Director for the Inland Empire Labor Council, an American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), represented a union of over 400,000 working families and the collective concerns of funding resources needed for the new permit. He pointed out that the local agencies are already having general funding deficits, federal funding cuts, and an affordability crisis. As a collective plea, the union requested that the Santa Ana Water Board collaborate with stakeholders to reach a balanced permit that ensures clean water and gives working families a chance to thrive.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 22 – General Statements](#).

Jennifer Carey, Chief of Staff, spoke on behalf of Senator Tony Strickland and brought up the Senator's request to the Board Members to reconsider updating the requirements for the Tentative Order, while keeping costs down for the communities. His concerns are for the region's economic health, addressing the affordability crisis in California, providing essential services to communities, and not forgoing clean, healthy waterways. He asked that the Board Members not impose costly requirements that would further exacerbate financial hardships on local municipalities and result in financial hardship for the communities.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 22 – General Statements](#).

Joanna Gibson, Executive Director of Upper Santa Ana River Sustainable Resources Alliance at San Bernardino Valley Municipal Water District, sought a collaborative strategy among the Santa Ana Water Board, the permittees, the Department of Fish and Wildlife, various stakeholders, and the Habitat Conservation Plan partners on compliance pathways for dry-weather flows. She noted that the dry-weather flows are essential to habitats and threatened species. The Tentative Order language created a language barrier, potentially forcing local municipalities to divert dry-weather flow, creating challenges for safeguarding habitats of native and threatened species.

Response: The Tentative Order's requirement to effectively prohibit certain non-stormwater discharges implements 40 CFR §122.26(d)(2)(iv)(B) and Clean Water Act § 402(p)(3)(B)(ii). The Santa Ana Water Board does not have the discretion to remove this requirement. The requirement does not apply to all non-stormwater discharges, and it only applies to discharges into MS4s. It does not apply to sources such as treated effluent from wastewater treatment plants that discharge to waters of the United States under an NPDES permit. Point source discharges of recycled or reclaimed wastewater to waters of the United States require a separate NPDES permit, whether the facility discharges directly to a water of the United States or through a MS4. The Tentative Order explicitly allows those discharges that are covered by an appropriate NPDES permit. (Tentative Order, § IV.A.2.a.)

Thus, the requirement to effectively prohibit non-stormwater discharges is not anticipated to result in changes to water flows within the Middle Santa Ana River as this requirement predates the Tentative Order. See also, RTC#1, Response 33.14..

Ana Gonzalez, Executive Director of the Center for Community Action and Environmental Justice (CCA EJ), expressed collective concerns about the greater legal stringency imposed by the Tentative Order requirements. They asked the Board Members to increase public engagement with the communities and to delay the Tentative Order, as it is being rushed for adoption. The CCA EJ noted that the Tentative Order should include a realistic analysis of legitimate implementation capabilities, real-world enforcement, and economic sustainability before adoption. CCA EJ stated that true environmental justice encompasses social, environmental, and economic stability for hardworking communities. When the complex permit language is rushed, without

analyzing actual compliance mechanisms. The local jurisdictions often default to fragmented implementation. The costly administrative burdens are being passed onto the low-income residents or middle-class working families, while the actual pollution enforcement falls by the wayside.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 22 – General Statements](#). Regarding the adoption being rushed, see [Response 2.1](#).

Marven Norman, San Bernardino City resident and the Environmental Policy Analyst for CCAEJ, echoed the concerns from Orange County Waterkeeper and the Inland Empire Waterkeeper. He noted that the local agencies suddenly raised concerns about affordable housing, as they had not in the past, once the Tentative Order language focused on the water quality issue for housing development. However, he explained that the regulatory requirements would increase the costs of new housing development, creating barriers to affordable housing. He also encouraged the local agencies to look into the two measures for which the Orange County Transportation Agency has already provided funding mechanisms for roadways and stormwater-related infrastructure to meet the Tentative Order requirements.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 22 – General Statements](#).

Jennifer Degala, Policy Organizer for the CCAEJ, echoed Orange County Waterkeeper's concerns, including the lack of community engagement. The CCAEJ members are concerned about the high costs of permit compliance being passed down to taxpayers, with low-income and middle-income communities bearing the cost burdens.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 22 – General Statements](#).

Tatiana Flores, a public member, emphasized that true environmental justice includes the aspect of social justice and the involvement of community members. Community members desired to be informed and to have multiple opportunities to share their concerns through the workshops, with translation.

Response: See responses to similar written comments in [Category 22 – General Statements](#).

Eric Morgan, a resident of Colton, shared his concerns about access to clean water for vulnerable communities. He expressed the cost burdens imposed by regulatory language on municipalities, which ultimately and unfairly fall on vulnerable communities.

Response: See responses to similar written comments in [Category 1 – Cost of Compliance](#) and [Category 22 – General Statements](#).

Maribel Diaz, a public speaker, requested a case to be reviewed. However, Board Members pointed out that the case could not be discussed at this time and that they would revisit her later.

Response: Comment noted.

Category 23 – Procedural Matters

4.2. Comment: Accordingly, the City formally requests that the Regional Board defer the adoption of Tentative Order RS-2026-0036 until secure financial resources are identified and allocated to permittees. In the alternative, should the Board move forward with adoption, it is imperative that the Order incorporate a phased implementation framework. This framework must explicitly align compliance milestones with the availability of non-disruptive grant funding, prioritize high impact water quality projects, and afford local governments the necessary timeline to responsibly plan, design, fund, and construct the required infrastructure.

The City remains committed to being a partner in improving water quality throughout the Santa Ana Region. Achieving the next generation of water quality improvements will require regulatory commitments from local agencies and meaningful funding partnerships from the State. The long-term success of the Tentative Order is dependent on providing permittees with the financial tools necessary to translate regulatory requirements into practical and visible environmental improvements. Thank you for your consideration of these comments and for your continued commitment to protecting and improving water quality throughout the region.

Response: Staff does not recommend deferring adoption on the basis that additional funding sources have not yet been identified or allocated. The Tentative Order already includes implementation schedules, adaptive management provisions, and opportunities for permittees to develop watershed-specific implementation

approaches that provide flexibility for planning and prioritizing compliance measures over the permit term. The comment does not identify what a proposed "phased implementation framework" would include beyond the implementation schedules and flexibilities already incorporated into the Tentative Order. (Regarding the impact on WMP scheduling of the need to obtain funding, see State Water Board Order 2020-0038, pp. 83, 86-87 [text and n. 259], 90 ¶ 4, 98 ¶9, 114.) Deferring adoption solely to provide additional time to comply with anticipated permit requirements is inconsistent with Clean Water Act section 402(b)(1)(B) and State Water Board Order WQ 2015-0075. Accordingly, no changes have been made in response to this comment.

7.1. Comment: A small portion of the City lies within the Middle Santa Ana River watershed and was issued a separate municipal stormwater permit on September 13, 2013 (Order R8-2013-0043), which expired on September 13, 2018. The City submitted its Report of Waste Discharge on March 30, 2018, 180 days before the Order expired. In accordance with Order No. R8-20213-0043, Section 111.B.2.b, Claremont continued to implement the Order and to participate in the Middle Santa Ana River Watershed Group in good faith while awaiting a revised or new Order.

On November 15, 2024, Regional Board staff issued the "Working Proposal for the Cities of Claremont and Pomona to Implement the Bacterial Indicator Total Maximum Daily Load for the Middle Santa Ana River Waterbodies." The City submitted comments to the Regional Board on February 12, 2025. The City received no response or communication from the Regional Board regarding those comments or the development of a draft Order. On May 5, 2026, the City received an email notification of the release of the Redline Tentative Order R8-2026-0034. The City of Claremont was added as a Permittee to the Redline Tentative Order (Order R8-2025-0002), providing the City's first opportunity to consider the implications of this Order.

The comments below reflect the City's best efforts to provide complete and thoughtful responses within the timeframe provided. The City wishes to submit the following comments and requests an extension to allow additional opportunities to work with Regional Board permitting staff to identify clear pathways to achieve compliance with the Order that are sensitive to Permittees' limited staffing and financial resources.

Response: The draft language in the Staff Working Proposal transmitted on November 15, 2024, was retained in full in the Revised Tentative Order, only being updated for the Middle Santa Ana River Bacteria TMDL Basin Plan Amendment. Staff were not required to release responses to comments on the Staff Working Proposal, however, responses to those comments are in the

Administrative Record and have been considered for the release of the Revised Tentative Order. Staff are required to allow 30-days of public comment on the Revised Tentative Order, including the City of Claremont's inclusion in the Revised Tentative Order. Staff have provided 75-days of public comment. Requesting an extension to propose the Tentative Order for adoption is outside the scope of this comment period.

5.2. Comment: Request an Extension to Discuss the Regional Permit with Regional Board Staff - The City was not identified as a Permittee on April 14, 2022, in the "Staff Working Proposal of the National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges of Pollutants in Urban Runoff from the Municipal Storm Sewer Systems in the Counties of Orange, Riverside and San Bernardino with the Santa Ana Region." There is a concern that the City of Claremont has not been afforded adequate opportunity to review and comment on the Draft Order.

In addition, the City was not identified in the Draft NPDES Permit and Waste Discharge Requirements for Discharges of Pollutants from the Municipal Separate Storm Sewer System Within the Santa Ana Region, Tentative Order RB-2024-00, issued on May 1, 2024. The Regional Board staff issued the Staff Working Proposal for the Cities of Claremont and Pomona to Implement the Bacterial Indicator Total Maximum Daily Load for the Middle Santa Ana River Waterbodies to the cities of Claremont and Pomona (Order RB-2025-0004) on November 11, 2024. After the City submitted comments on February 12, 2025, there were no further opportunities for the City to provide input to Regional Board staff or to solicit input from them.

Order RB-2006-0034 marks the first time the City of Claremont has been identified as a Permittee under the Santa Ana Regional MS4 Permit. As a result, the City has not had the same opportunities as other Permittees to provide thoughtful comments on the draft permit would be inaccurate, nor has the City had the same opportunities to voice its concerns or propose alternative language for the Regional Permit. The City only became aware of the Board's intention to include it as a Permittee under the Regional Permit when the redline version of Order RB-2006-0034 was released on May 5, 2026, whereas other Permittees have had the opportunity to comment on the draft Regional Permit

since 2022.

Response: The cities of Claremont and Pomona have the same 75-day public comment period on the revised Tentative Order as all the other Permittees. In

contrast to the other Permittees, Claremont and Pomona are only subject to Appendix 11 of the Revised Tentative Order.

2.1. Comment: Request for Additional Time for Comments and Discussion

We appreciate the cooperative working relationship that has been forged between Board Staff and the Permittees and we value opportunity to review and comment on this important permitting action. That being said, the revised tentative order and supporting materials present complex technical, legal, and operational considerations that the City must fully review and vet. Being that this order will be in place for at least five (5) years and create operational and extreme budgetary impacts, we believe that the established public comment period is insufficient to allow permittees, such as the City of Big Bear Lake, the opportunity to conduct a thorough and informed review of the revised tentative order and the implications that all permittees will be responsible for.

The nuances of this proposed permit are wide-ranging. The City is unique, in that only half of the City is adjacent to Big Bear Lake, and there are multiple outflows on the north shore of the lake, that are outside of the City's jurisdiction. Additionally, the City comprises only 4,120 acres within 680,000 acres of the San Bernardino National Forest, in effect making the City surrounded by United States Forest Service (USFS) managed land. The "Big Bear Lake" waterbody is managed by Big Bear Lake Municipal Water District (BBLMWD) which is its own agency, with its own board therefore the City has no jurisdiction over lake water management plans. The lake land (bottom) is managed by US Army Corp of Engineers (USACOE). These important distinctions outline specifics on why the City cannot be responsible for lake water quality management, these factors will be discussed within other comments found in this letter.

We are requesting additional meetings to discuss the specifics related to our rural, small City that is unlike any other agency listed within the tentative order. Until the last round of workshops, which were compressed into 3 short weeks, there was no opportunity for open discussion regarding the tentative order, and the City still has many questions that have been left unanswered.

The City requests that the adoption hearing be postponed until these concerns are addressed in open dialogue. Additionally, the City is submitting the following specific comments as there were no response to many of these comments in the revised TO.

Response: The Tentative Order does not make the City responsible for activities or facilities outside of its ownership, operation, or legal authority.

The Santa Ana Water Board has provided numerous, meaningful opportunities for parties and interested persons to address the Tentative Order and participate in the adoption process. Since January 2022, the Santa Ana Water Board staff have issued three drafts of the Tentative Order, including a staff working proposal, and provided 285 days of written public comment. There have also been over 40 meetings with interested parties, including multiple before the Santa Ana Water Board. The RTC#1 was released to the public and addressed every comment submitted by the City for that comment period, and other specific comments submitted by the City are addressed in this document above.

The purpose of the public comment process is to provide interested persons an opportunity to identify significant legal, technical, and implementation concerns for consideration by the Santa Ana Water Board. It does not require that all questions or disagreements be resolved through meetings with individual Permittees before the Board may act. Implementation of the Tentative Order will continue to involve coordination between Permittees and Santa Ana Water Board staff. Adoption of the Permit does not end that process. The Tentative Order contains implementation mechanisms that allow issues to be addressed as programs, monitoring plans, and other documents are developed, submitted for public review and approval, and implemented. In addition, NPDES permits are generally issued for five-year terms, providing a regular opportunity to evaluate implementation experience and consider appropriate revisions during permit reissuance.

13.1. and 16.1 Comment: Request for Additional Time for Comments and Discussion

The nuances of this proposed permit are wide-ranging. Many of the requirements in this Tentative Order (TO) will trigger staffing changes and re-allocation of resources. The City must have a better understanding of the requirements. We point these facts out as there are particular permit and reporting requirements which are still not clear. We present those specifics in this letter.

The City requests additional meetings to discuss these specific concerns. Until the most recent public meeting, there had not been an opportunity for open dialogue, and many questions remain unresolved.

The City requests that the adoption hearing be postponed until these concerns are addressed in open dialogue.

Response: See [Response 2.1](#).

It is unclear what specific staffing changes or resource reallocations the commenter anticipates. The City is welcome to contact Santa Ana Water Board staff at any time for clarification regarding specific permit requirements.

3.1. and 9.1. Comment: The City Objects To The Restricted Comment Process And Incomplete Administrative Record

The Revised Notice limits written comments to revisions made since the 2024 draft and states that comments concerning the Response to Comments will neither be accepted nor included in the administrative record. The notice further states that no documentary evidence will be accepted at the July 24 hearing, that the hearing will be closed that day, and that the Regional Board intends to consider adoption on August 21, 2026.

That process does not provide the City a meaningful opportunity to address the entire legal and technical basis for the Permit.

The revised Tentative Order contains material new legal findings, technical requirements, compliance mechanisms, and responses to intervening legal developments, including the United States Supreme Court's 2025 decision in *City and County of San Francisco v. Environmental Protection Agency*, 604 U.S. 334 (2025). The Regional Board's new rationale for concluding that the Supreme Court's decision does not apply to MS4 permits directly affects the legality and enforceability of the Permit's receiving-water limitations. The Regional Board has also materially revised the Watershed Management Plan provisions, compliance pathways, TMDL implementation provisions, development requirements, monitoring provisions, and findings concerning state mandates and economic impacts.

Moreover, the Revised Notice was issued while the Response to Comments was still being finalized. A response document is not merely an informational summary. It may supply new reasoning, interpretations, evidence, or purported support for the Permit. Preventing permittees from commenting on new material contained in that document deprives the Regional Board of a complete record and denies affected parties a meaningful opportunity to respond before final agency action.

The City requests that the Regional Board release a clean proposed order, the final Response to Comments, all technical memoranda, cost materials, modeling assumptions, inspection and audit findings, and other documents relied upon by staff. The Regional Board should then provide at least 45 days for supplemental comments and hold a subsequent hearing at which parties may respond to the completed record.

Any material amendment made after the close of the comment period must be recirculated if it introduces a new requirement, materially alters a compliance obligation, changes an allocation of responsibility, or relies upon a new factual or legal rationale.

Response: See [Response 2.1.](#)

The Response to Comments is not itself a new draft subject to an additional public comment period. Under 40 CFR section 124.17, the permitting authority issues its response to significant comments at the time the final permit decision is issued. The Response to Comments explains how the Regional Board addressed significant comments and why changes were made to the draft permit. The public comment process anticipates that a final permit may change in response to public comments. 40 CFR section 124.17 requires the Santa Ana Water Board to identify changes made to the draft Permit and explain why those changes were made. Those changes do not, by themselves, require another public comment period.

The Revised Notice limited comments to changes made after the previous public review because the rest of the Tentative Order had already been available for public comment. The “material new legal findings, technical requirements, compliance mechanisms, and responses to intervening legal developments” identified by the commenter were included in the Revised Tentative Order and were available for review during the 75-day public comment period. Federal Clean Water Act regulations require a minimum public comment period of 30 days. Responses to the City's specific concerns are provided primarily in Categories 3, 4, 5, and 13.

The documents relied upon by the Santa Ana Water Board in taking final action will be included in the administrative record as required by law. There is no requirement to first circulate the completed administrative record, final Response to Comments, and clean proposed Order and then provide another 45-day public comment period before the Board takes final action. Additionally, there is not yet a complete administrative record as the Tentative Order remains pending and no final action has been taken.

Category 24 – Staff Non-Substantive Revisions to Revised Tentative Order, and Clarifications to June 4, 2026 Responses to Comments

Staff revision 1: Section VIII.E of the Tentative Order allowed for Permittees to waive requirements to require treatment controls for priority projects subject to certain conditions. Staff believe Executive Officer oversight of treatment control waivers is necessary component of the Tentative Order to promote consistent implementation and ensure that waivers are adequately supported. To minimize project delays, section VIII.E.4 allows for waivers to be automatically approved if not within 30 days.

However, to provide more certainty for Permittee projects and reduce frequency of waiver submissions, section VIII.E.2 has been added that authorizes the Executive Officer to issue a waiver for categories of projects. Any individual project that meets this category will not require an individual waiver. Permittees may request a categorical waiver, subject to a 30-day public review period, that allows appropriate oversight without creating unnecessary burden for common project types. This is intended to relieve concerns about unnecessary burdens on projects where structural treatment controls are consistently infeasible, including certain types of flood control projects or public roadway projects.

On June 4, 2026, staff released a draft Version 1 of Response to Comments (“RTC#1”) that contains the response to comments received on Draft Order R8-2024-0001 (Now Tentative Order R8-2026-0034), NPDES Permit No. CAS618000, NPDES Permit and Waste Discharge Requirements for Discharges of Pollutants in Runoff from the Municipal Separate Storm Sewer Systems in the Counties of Orange, Riverside, and San Bernardino within the Santa Ana Region (Tentative Order). The Tentative Santa Ana Regional MS4 Permit was posted for public comment on March 1, 2024. The comment period began on March 5, 2024 and ended on July 3, 2024. The full RTC#1 and the Revised RTC#1 documents are available upon request.

The following are revisions for responses in RTC#1:

Response to Comments Version 1: Comment 6.4: Subsection B.5.i reads as follows:

“Improvement of existing street, road, highway, and freeways affecting 5,000 square feet or more of paved surface used for the transportation of vehicles. This category excludes routine maintenance projects associated with operations and maintenance activities that are conducted on existing lines and facilities and within existing right-of-way or easements.” The City is not clear if a WQMP would be required for sidewalks constructed for gap closure and compliant ADA ramps exceeding 5,000 sq. ft. If a WQMP were required for this type of project, BMPs would be required to be implemented for older areas of town that are connecting sidewalks with no existing storm drain or adequate right-of-way needed to implement these types of BMPs. Most areas in already developed portions of the City do not have additional right-of way available to implement BMPs, and even the use of street trees would pose issues related to Americans with Disabilities Act (ADA) requirements where sidewalk is limited. Most older areas in the City of Hemet do not have a storm drain system to connect any BMPs into. The City of Hemet anticipates additional funding needs for BMP implementation since these sidewalk and ADA projects are not typically developer led. The City of Hemet requests that clear exemptions be included in the tentative order for projects located in already developed/older areas of the City intended to close sidewalk gaps and to comply with ADA requirements.

Response: The Tentative Order does not require WQMPs for roadway projects in general. The Permit requires WQMPs for priority projects. Priority projects exclude routine maintenance and projects that do not exceed certain thresholds under section VIII.B.5. This subsection also excludes projects that are not “used for the transportation of vehicles.” For further clarity, the language has been amended to indicate that redevelopment priority projects exclude repairs that return impervious surfaces to their original condition. An improvement project is one that adds value to an asset by increasing its capacity, function or improving its appearance. These distinctions mitigate the commenter’s concerns about the scope and impact on municipal roadway projects by excluding many of the projects they describe

The construction of sidewalks for gap closure and compliant ADA ramps would constitute a priority project if the project involves addition or replacement of 5000 square feet of impervious surface on a developed site (Section VIII.B.5.i). This is not a new requirement for the projects discussed by the commenter. It has been in place since the approval of the guidance for road projects – almost 15 years. During this period, the Permittees have not submitted waivers for any public or private projects that would indicate that the requirement has been a problem for the commenter’s projects. Permittees are not required to use the aggregate square footage when they “bundle” small sidewalk projects at dispersed sites for

purposes of planning, funding or contracting. For clarification, subsection B.5.i. has been modified to say “5,000 contiguous square feet.”

A project with a WQMP does not necessarily require permanent BMP installation and maintenance. Section VIII.E provides conditions under which treatment controls may be waived, and the Tentative Order places responsibility on the Permittee to justify such waivers. A WQMP documents the rationale for the selection of treatment control measures, or their exclusion in the case of a waiver, and does not alter feasibility standards. The Tentative Order does not compel an impracticable level of effort to overcome those limitations. It does change the level of analysis and disclosure needed to justify the selection of treatment controls. See also Responses 13.4 35.65, and 35.509.

It is important to keep in mind that The Tentative Order does not newly subject roadway projects to post-construction stormwater requirements. Streets and roads were not exempt under the previous municipal stormwater permits. Instead, roadway projects have historically been evaluated through transportation project guidance and other functionally equivalent review processes that considered the feasibility of incorporating post-construction treatment controls. The Tentative Order maintains the same underlying feasibility principles while providing a more transparent and consistent process for documenting the consideration of the feasibility of incorporating post-construction treatment controls. The Tentative Order does not require structural treatment controls where they are infeasible. Where structural treatment controls are not feasible, the Tentative Order provides mechanisms for documenting that determination consistent with the requirements.

The Tentative Order provides flexibility through the Uniform Technical Guidance Documents. Permittees may develop standardized methodologies, templates, and technical guidance for recurring project types, including roadways, to streamline implementation. Permittees are welcome to propose "Green Streets" style guidance as a part of this process. The Tentative order does not place limits on how "Green Streets" guidance is used in the Uniform Technical Guidance Documents.

Roadway projects should not be categorically excluded from Priority Project requirements. Roadway projects can create, replace, or substantially modify impervious surfaces and therefore have the potential to affect stormwater runoff and pollutant loading. Whether post-construction structural treatment controls are appropriate and feasible for a specific roadway project remains a project-specific determination. The existing definition for routine maintenance appropriately

distinguishes routine maintenance activities from projects that constitute redevelopment and therefore preserves consistent implementation of the Permit.

Response to Comments Version 1: Comment 13.8: Further, we are specifically concerned that the TO ignores the Basin Plan and existing MS4 permit language that directs MS4 Permittees to address “controllable sources” of bacteria for the MSAR TMDL. The TO requires regulation of all sources of bacteria – which include natural sources of bacteria that heavily contribute to bacterial exceedances. This would require Permittees to eliminate all dry weather flows from MS4 outfalls to the river at great cost and possibly in direct opposition with state and federal Endangered Species Act requirements.

Response: As a threshold matter, the “controllable source” in question is the MS4 itself, not the various sources of runoff into the MS4. The Clean Water Act regulates any discharges of any pollutant from a point source to a water of the United States. (CWA § 502(12), (14); 44 Fed. Reg. 47990-01, 47996-47997.) The permit regulates discharges of pollutants from the MS4. The difficulty in managing sources of bacteria may be relevant to determining the level of effort necessary to meet the MEP standard. It does not serve to rewrite waste load allocations in a TMDL.

The Tentative Order accommodates a process to demonstrate compliance in section VII.B, sections VI.B.6 and 7 of the Monitoring and Reporting Program, and in each of the Appendices. (For bacteria TMDLs, see sections III of Appendices 3 and 11.) These provisions allow Permittees to demonstrate their MS4s are not causing or contributing to exceedances of receiving water limitations or WQBELs. For example, outfall monitoring and/or upstream and downstream monitoring may demonstrate that a Permittee is not the source of in-stream excursions above a water quality standard. The Clean Water Act authorizes this approach to determining MS4 permit compliance. (NRDC v. County of L.A. (9th Cir. 2013) 725 F.3d 1194.)

The “controllable sources” concept is not part of the MSAR TMDL or the MS4s’ (“Urban Runoff”) waste load allocations. Nowhere does the TMDL implementation plan allow MS4 dischargers to avoid complying with the numeric waste load allocations by demonstrating their MS4 discharges include natural sources of bacteria. In fact, the TMDL addresses natural sources with a separate load allocation. The same is true of the Fecal Coliform TMDLs in Newport Bay. The TMDLs and their implementation plans, which were adopted in 1999 (Newport Bay) and 2005 (MSAR), were not revised when the Santa Ana Water Board

adopted the Controllable and Uncontrollable Sources of Bacteria amendment in 2012.

The Statewide Bacteria Provisions and Water Quality Standards Variance Policy superseded all numeric water quality objectives in the Basin Plan and any conflicting implementation provisions other than existing TMDLs. The “controllable sources” concept does not appear in the Statewide Bacteria Provisions and Water Quality Standards Variance Policy. ~~While the Bacteria Provisions did not supersede the TMDLs, they did supersede the numeric water quality objectives in the Basin Plan and any conflicting implementation provisions other than TMDLs.~~ The Natural Sources Exclusion Approach (NSEA) or the Reference System/Antidegradation Approach are the exclusive means to address uncontrollable sources in determining compliance with the statewide objectives. ~~In addition, Although not dispositive for interpreting preexisting TMDLs, the State Water Board concluded that~~ not all natural sources of bacteria are uncontrollable. (State Water Board, Comment Summary and Responses, (Aug. 7, 2019), responses 4.09, 13.02, 22.05 [addressing the Santa Ana Water Board’s basin plan], 23.05.) Any future TMDL revisions must comply with the Bacteria Provisions, including the implementation requirements

Further, MS4 permittees have been required to eliminate unauthorized dry weather flows (non-stormwater discharges) into the MS4 since the first round of permits implementing EPA’s 1990 regulations (55 Fed. Reg. 47990-01; Santa Ana Water Board Order No. 90-104 (requiring compliance no later than July 1, 1995)), and with receiving water limitations since 1996 (Santa Ana Water Board Order 96-30).

See Response 33.14, regarding the Endangered Species Act.

Response to Comments Version 1: Comment 22.1: A. The TO WQBEL Compliance Pathway does not Align with MSAR Bacteria TMDL.

Since joining the MSAR Task Force to cooperatively complete watershed-wide tasks on May 16, 2007, the City as well as all of the other MSAR permittees have spent considerable time, effort and money to comply with the MSAR BMP based bacteria TMDLs. As explained in detail in the MSAR Task Force comment letter and TCG comment letter Comment #52, the MSAR permittees have submitted various reports, complied with Comprehensive Bacteria Reduction Plan ("CBRP"), shown through the CBRP audit that BMP implementation has reduced the bacteria levels, and provided a report to explain the history behind, reasoning for, and benefits made by implementing the BMP based bacteria TMDLs for the MSAR.

To comply with the MSAR TMDLs through the CBRP, the City has implemented a number of BMPs that require ongoing upkeep in order to maintain and reduce the bacteria levels in the MSAR. These actions include:

- Reporting the location of transient camps which may impact MS4s and coordinating with the Riverside County Flood Control and Water Conservation District to close transient camps as needed;
- Implementing and enforcing an illicit discharge detection and elimination program;
- Bi-weekly residential and weekly industrial street sweeping;
- Implementing and enforcing water conservation BMPs;
- Monitoring, inspecting, and mitigating septic systems as needed; and
- Implementing and enforcing pet waste management programs.

The City and the other MSAR permittees are continuing to examine and identify structural BMPs needed to mitigate controllable urban sources of dry weather flows and bacterial indicators.

The work completed by the City and the other MSAR permittees has made considerable impacts on the bacteria concentrations in the MSAR as almost all watersheds are in compliance with the water quality standards through load reduction. Instead of acknowledging and encouraging the clearly effective BMP-based effluent limitations, the TO provides only for numeric based effluent limitations. Implementing the proposed numeric based effluent limitations would significantly increase costs, resources, and time for less benefit to the watershed.

Numeric based effluent limitations will not benefit the watershed because they are infeasible. The City and other permittees have shown through numerous Triennial Reports that numeric standards are not possible because there are a number of unaccounted for and potentially uncontrollable sources of bacteria in the MSAR watershed. These unaccounted for and uncontrollable sources make it impossible for a reasonable effluent limitation to be set. Therefore, numeric limits are infeasible under 40 C.F.R. § 122.45(f)(1) and 40 C.F.R. § 122.44(k)(3). For these reasons, the City requests the Regional Board to revise the TO pursuant to the TCG and MSAR Task Force comments to include BMP based effluent limitations and acknowledge the success the MSAR permittees have had reducing the bacteria levels in the MSAR.

Response: See Response 35.291. See Response 13.8, regarding controllable factors.

Permitting authorities have the discretion to impose either BMP-based or numeric effluent limits (Defenders of Wildlife v. Browner (9th Cir. 1999) 191 F.3d 1159; 33 U.S.C. § 1342(p)(3)(B)(iii)).) Numeric or narrative WQBELs must be consistent with the assumptions and requirements of the TMDL. (40 C.F.R. §

122.44(d)(1)(vii)(B)). Any BMP-based narrative WQBELs must meet standards for rigor, accountability, and transparency that apply to Watershed Management Plans, as well as align with the EPA's guidance on "clear, specific, and measurable permit requirements and, where feasible, numeric effluent limitations in NPDES permits for stormwater discharges." (State Water Board Order WQ 2015-0075; EPA Memo, November 26, 2014). Water Code section 13263 requires the Santa Ana Water Board to implement relevant water quality control plans. This includes implementing waste load allocations and the compliance schedules and dates in TMDLs.

WMPs are a type of narrative WQBEL. (See, Order WQ 2015-0075, pp. 60-61, p. 78 ¶ 15.) All BMP-based WQBELs and BMP-based compliance with receiving water limitations must meet the standards of rigor, accountability and transparency set forth in Order WQ 2015-0075 except where the permitting authority makes specific findings why one or more of these principles are inapplicable. (Id., p. 78.)

WQBELs must be consistent with the assumptions and requirements of TMDLs. (CWA section 303(d); 40 CFR § 122.44(d)(vii)(B)) The board must also implement water quality control plans, including WLAs and their compliance dates. (Water Code § 13263, subd. (a).) Numeric WQBELs are warranted where MS4s are a significant contributor of pollutants, BMP-based requirements have not resolved the exceedances, and the regional water board can feasibly develop numeric limits based on TMDLs. (Order WQ 2015-0075., pp. 57-58.)

The Santa Ana Water Board is not required to demonstrate that attainment of numeric WQBELs is feasible before including them in the Tentative Order. Even where this finding is necessary, "feasibility" refers to the permitting authority's ability to calculate appropriate limits, not the permittee's ability to comply. (Natural Resources Defense Council v. U.S. E.P.A. (2d Cir. 2015) 808 F.3d 556, 577–578; State Water Board Order WQ 2006-0012 (Boeing Co.), pp. 14-16.) In this case, the TMDLs provide an adequate basis to calculate numeric limits.

Permittees subject to BMP-based WQBELs must provide reasonable assurance that the BMPs will meet the WLAs by the TMDL compliance date. "Deemed compliance" with numeric WQBELs through a WMP is unavailable where the TMDL compliance date has passed. Similarly, BMP-based WQBELs cannot extend a final compliance date in a TMDL. TMDL compliance dates apply whether the permit requirements are narrative or numeric. The Santa Ana Water Board cannot extend the compliance date without amending the TMDL's program of implementation. (Order WQ 2023-0081, pp. 32-33.) Permittees that cannot provide reasonable assurance that BMP-based requirements will attain the WLAs

by the compliance dates must be subject to time schedule orders or cease and desist orders. (Order WQ 2023-0081, pp. 32-33; Order WQ 2015-0075, pp. 35-37; [see generally, State Water Resources Control Board Time Schedule Order 2022-0089-DWQ \[California Department of Transportation\].](#))

Continuing BMP-based WQBELs that have not attained WLAs by their compliance dates violates these principles. The current BMPs have not resulted in compliance with WLAs. There is no proposal for modified BMPs or a reasonable assurance analysis demonstrating the current or hypothetical future CBRPs would result in attainment. Assuming such documentation existed, the Permittees would still need -time schedule orders with a schedule for full compliance with WLAs. BMP-based WQBELs and WMP-based compliance are unavailable based on these facts and circumstances.

Response to Comments Version 1: Comment 33.6: The 4th term Orange County MS4 permit (RB-2009-0030) provided for consultation with the groundwater management agencies, such as OCWD, when infiltration BMPs are proposed for new developments and significant re-developments (XII.C.4). Some Orange County co-permittees have incorporated this consultation as part of the process of reviewing and approving Preliminary/Conceptual and Final Water Quality Management Plans (WQMPs). This allowed OCWD to review the plans and if necessary, recommend project modifications to provide greater protection of groundwater quality, if needed. It appears that this consultation process is not included in the new tentative order.

OCWD recommends that the Tentative Regional MS4 Permit continue this consultation process and require permittees to consult with the underlying groundwater management agencies for all WQMPs that incorporate the use of infiltration BMPs.

Response: In current MS4 Permit R8-2009-0030 (Orange County) section XII.B.5, requirements addressed potential groundwater impacts at the earlier planning stages and reviews due to shallow groundwater depths in conjunction with structural infiltration BMPs in the WQMPs. Section XII.C.4 of the current permit states that “All infiltration activities should be coordinated with the groundwater management agencies, such as the Orange County Water District”).

Current MS4 Permits R8-2010-0033 (Riverside County) sections XII.D.8 and XII.E.8.a and R8-2010-0036 (San Bernardino County) sections XI.D.8 and XI.E.3 contain similar permissive language as the MS4 Permit R8-2010-0033, stating that “The Permittees should work with local groundwater management agencies to ensure that infiltration Treatment Control BMPs are designed appropriately”. That language was permissive (e.g., ‘should coordinate’) and not an enforceable

requirement. The Tentative Order does not retain this provision because it instead establishes uniform, enforceable requirements for evaluating and protecting groundwater quality through section VIII.I, with requirements incorporate the requirements for evaluating potential groundwater impacts for the New Development (Including Significant Redevelopment) for all three Counties. While coordination with groundwater management agencies may still occur at the discretion of the Permittee as part of project review, the Tentative Order relies on enforceable technical criteria. Staff are generally supportive of this language being present in the Uniform Technical Guidance Documents.

The approved WQMP templates and the Technical Guidance Documents contain groundwater considerations, pre-treatment controls, and alternatives to infiltration.

Response to Comments Version 1: Comment 35.550: Appendix B Comment 52. Modify Appendix 11 - The WQBELs for Bacterial Indicator TMDL in the Middle Santa Ana River Watershed BMP-Based Compliance Should Continue.

The 2005 Middle Santa Ana River (MSAR) Bacteria Indicator TMDL is currently successfully implemented through the MSAR Task Force and the Riverside County and San Bernardino County Comprehensive Bacteria Reduction Plans (CBRP), which provide BMPs for the entire watershed, rather than numeric limits at individual outfalls. The BMP-based approach is the only approach set forth in the Basin Plan and administrative record for the MSAR TMDL⁵⁵. Permittees request continuation of this approach based on the extensive record explained in the White Paper Permittees submitted of the Office of Chief Counsel on September 15, 2023 (Appendix B-1a), as well as the comments of the MSAR Permittees previously provided to the Board.

The following discussion summarizes key points of the White Paper, which is hereby incorporated into these comments in full. References to pertinent White Paper sections are provided.

When the TMDL was finalized in 2005, December 15, 2015 was the dry weather compliance date. It was understood at the time, however, that ten years was simply not enough time to develop and implement strategies to reduce all sources of bacteria, including those from uncontrollable sources. In 2005, the Regional Board informed Permittees that the Board would reopen the TMDL in 2008 (if not sooner)⁵⁶ and that TMDL numeric targets (to be met by December 31, 2015) were not enforceable. (See White Paper §§ 1.2-1.3, 4.2-4.3).

In 2018, nearly three years after the dry weather compliance date listed in the TMDL, the Regional Board again informed Permittees in an October 11, 2018 Audit Report that:

- a. Permittees were not in violation of any requirements (see White Paper §§ 2.1, 7.1);
- b. Permittees should not update the CBRP until after “expected revisions of the Bacteria Indicator TMDL” (see White Paper § 2.1); and
- c. The Regional Board needed a process to determine whether the waste load allocation of the TMDL was met because many uncontrollable sources outside of Permittees’ control were degrading the water quality (see White Paper §§ 2.1, 5.3.2).

Unfortunately, the way the TO is currently written, this history is not captured. The TMDL requirements will now force the MSAR Permittees into the position of having the TMDL being considered “past due” and subject to having to comply with end-of-the-pipe numeric limits instead of a BMP-based watershed approach.

Permittees wish to continue their joint efforts under the CBRP and to re-open the TMDL to determine a revised schedule for implementation. Unfortunately, the TO states that a time schedule order (“TSO”) is needed to enforce what the TO classifies as “past-due” deadlines. As discussed above, these are actually deadlines that were subject to reassessment at least every three years, as required by the Basin Plan.

The approach in the TO is contrary to law. The State Water Board has stated that TSO enforcement is appropriate only when a Permittee fails to carry out a BMP implementation plan. (SWRCB Order No. 2020-0038 at p. 80.) Here, Permittees have in fact carried out the BMP implementation plan, and the Regional Board denoted the CBRP prepared by the Permittees as the final WQBEL for the dry weather provisions of the TMDL. Since incorporation of the TMDL in the current MS4 permits for Riverside and San Bernardino Counties, the MSAR Permittees have remained at all times in compliance with the obligations established by those permits for the TMDL.

It is important to note that a significant factor complicating attainment of WQS in the MSAR is the presence of many unaccounted, uncontrollable sources. Through decades of research, the MS4 permittees have learned that complete elimination of MS4 flows will not result in attainment of water quality standards, especially within Reach 3 of the Santa Ana River. This understanding is supported by routine monitoring from 2020-2022 for E. coli at a background site (Reach 4 of the Santa Ana River at Mission Avenue), which is upstream of Reach 3 and not a listed water body under the TMDL. The background site exceeded the TMDL numeric target in 36 of 42 (86%) rolling geomeans during the 2020- 2022 period. Considering that 100 percent of dry weather flows from Reach 4 comes from non-MS4 sources, elimination of dry weather flows from the MS4 to Santa Ana River Reach 3 would not result in attainment of water quality objectives. As noted in the MSAR Bacterial Indicator TMDLs: 2023 Triennial Report (Appendix B-1c) “it has been shown that even if upstream MS4s achieved all of their WLAs

applicable to urban runoff, the downstream impaired receiving waters would still not achieve the E. coli targets in the MSAR TMDLs.”

Now, if the Regional Board imposes the TO’s end-of-pipe numeric limits, as a consequence for what it believes to be the failure of Permittees to meet the dry weather WLA, it would be contradicting its prior findings in the 2018 audit, which concluded that “[t]here is no consensus process” for “determining if the source is anthropogenic versus natural, if the source is controllable, and if the source is from an MS4.” (Oct. 11, 2018 Regional Board Audit Report, White Paper Exh. 11 at p. 8.).

It is simply infeasible to calculate a numeric effluent limitation without first determining the source(s) of bacteria contributing to the MS4 discharge or receiving water and then determining whether they can be accounted for.

Infeasibility and Inconsistency of Numeric Limits (White Paper §§ 4.3, 5)

The proposed numeric limits are contrary to federal regulations because they are (i) inconsistent with the assumptions of the MSAR TMDL and (ii) infeasible. (See White Paper §§ 4.3 -5.) The TO Fact Sheet asserts that numeric limits are both consistent with the TMDL and feasible, but no evidence is cited to support this assertion. Further, it is well established that WQBELs can be expressed through BMPs and need not be numeric. (*Communities for a Better Environment v. SWRCB* (2003) 109 Cal.App.4th 1089, 1105.)

The MSAR Permittees submit that State Board Order No. 2015-0075 provides Regional Boards with discretion in adopting a WMP approach as an alternative to the imposition of numeric limits. The Order provided that each Regional Board must take a “TMDL-specific, region-specific, and permittee-specific” approach to determine the type of effluent limitations – numeric or narrative – in a permit. (State Water Resources Control Board Order No. 2015-0075 at p. 51.) The State Water Board found that, with regard to Los Angeles County MS4 Permittees, the Regional Board could “feasibly develop numeric WQBELs” for region-specific reasons. (Order No. 2015-0075 at p. 58; at p. 59, fn. 166, p. 63.) But this holding depended on a finding that the use of numeric limits was possible for region-specific and permit-specific reasons. Thus, the use of a BMP-based approach using or resembling the WMP may work for the MSAR TMDL but numeric limits will not.

In summary, therefore, the 2018 audit finding – which is still valid today – is that there is no way to determine the level of uncontrollable sources. As a result, even if numeric limits were consistent with the MSAR TMDL – which they are not, for the reasons previously expressed – it is infeasible to calculate a numeric effluent limit at this time because there are “unaccounted for” or “uncontrollable” sources of bacteria in the MSAR watershed in unknown quantities and no process to reach conclusions relevant

to the WLAs. Because numeric limits are not feasible, federal regulations provide for a BMP-based WQBELs.

Region- and Permit-Specific Approaches Support BMPs (White Paper §6)

As noted in Order 2015-0075, the State Water Board has required that Regional Board's considering achievement of TMDLs, must take a "TMDL-specific, region-specific, and permittee-specific" approach in determining whether numeric or narrative effluent limitations are appropriate.)⁵⁷ (See White Paper § 6.) The State Water Board encourages and supports BMP-based, watershed-based compliance methods in MS4 permits, methods like that adopted in the CBRP State Board Order No. 2020-0038 provides for "deemed compliance" BMP approaches, as explained on page 80 (emphasis supplied):

The purpose of the deemed compliance provisions is to encourage significant investment in collaborative regional- and watershed-based BMP implementation, leading eventually to all receiving waters meeting final receiving water limitations, while reserving enforcement to circumstances in which Permittees fail to implement approved plans, rather than any ongoing violations of water quality requirements during implementation.

The TO should, in its treatment of MSAR dry weather TMDL compliance, continue the Basin Plan- compliant CBRP approach adopted in the current MS4 permits and extend approach (as updated) for this Order. Such an approach is congruent with TMDL-specific, permit-specific, and region-specific approaches.

Enforcement Through a TSO is Inappropriate (White Paper §§ 7.1-7.2)

The TO proposes, because the MSAR dry weather TMDL is "past due," to allow the MSAR Permittees the option of complying with a TSO, as opposed to being able to continue the CBRP approach, either in a modified form or as part of a WMP. However, as set forth in the White Paper, the criteria for a TSO under Water Code sections 13300 and 13385(j)(3) do not support a TSO in this instance primarily because TSOs are reserved for situations where the Regional Board identifies a violation and identifies steps to cure it. (See White Paper §§ 7.1 – 7.2.) The TO's proposed TSO provision is not appropriate for the MSAR Permittees because when the TMDL dry weather deadline of December 31, 2015 passed, the MSAR Permittees satisfied the WQBEL through submission and implementation of the CBRP. The MS4 Permits required that prior to the dry weather compliance deadline, the MSAR Permittees had to submit and implement the CBRP in order for the CBRP to serve as the actual WQBEL, which Permittees have done.

By contrast, other regions have issued TSOs when a TMDL-related deadline had passed, including TSO No. R8-2019-0050 (Santa Ana Regional Water Quality Control

Board) and TSO No. R2-2022-0026 (San Francisco Bay Regional Water Quality Control Board). Both of these TSOs involve circumstances unique to compliance strategies that applied to the Permittees,⁵⁸ circumstances that are not present with respect to the MSAR TMDL requirements.

The fact that the Santa Ana River is not yet achieving the TMDL numeric targets does not mean that Permittees are not in compliance with their TMDL WLA nor does river non-attainment of numeric targets require change in a BMP-based approach. Imposing numeric limits shifts focus away from the MSAR watershed and joint MSAR TMDL Task Force efforts and instead promotes individual end-of-pipe compliance strategies that may make little difference to receiving water quality.

MSAR Permittees' Successes

Per the implementation of the CBRP, the MSAR Permittees have invested significant funds to find ways to reduce pollutants in urban dry weather and storm water discharges and to implement BMPs. The BMP-based approach called for in the Basin Plan and implemented through the CBRP (and through the complimentary efforts of the MSAR Task Force) has been successful because the water quality standard has been achieved through load reduction goals in all but one watershed.⁵⁹

Permittees have implemented hydrological disconnections to provide for dry weather and some storm water diversion and have pioneered various studies and approaches to reduce bacteria and other pollutants from dry weather and storm water by implementing an iterative prioritization of areas exhibiting higher levels of bacteria levels. Source evaluation and mitigation in conjunction with structural controls have reduced dry weather bacteria indicator loads to the TMDL water bodies beyond targets in the Regional Board approved reasonable assurance analysis in the CBRPs (Appendix B-1c).

The MSAR TMDL provisions should be revised to include a BMP-based compliance pathway without TSO enforcement. This allows Permittees to continue the hard efforts that have brought progress, including but not limited to:

- a. The Mill Creek Wetlands regional treatment project, which removes more than 95 percent of E. coli load;
- b. The MS4 load reduction efforts, which reduced the MS4 load from outfalls to Chino Creek by approximately 92 percent since 2007, with only one recent exception; and
- c. Several project completions, which have been constructed including the Phoenix Storm Drain Diversion.

(See White Paper § 2.2 [citing February 2023 Triennial Report for the MSAR, White Paper Exh. 16, at pp. 3-4, 40, 48-49].)

The MSAR Permittees have done more than simply submit and comply with the CBRP. Even before issuance of the current MS4 permits, MSAR Permittees embarked on the tasks outlined in 2005 in the Basin Plan for the MSAR TMDL, and they continued to undertake stormwater management measures required in the third-term MS4 Permits. The commitment of the MSAR Permittees has been substantial, as noted in Tables D.8 and D.9 of the Fact Sheet, with the expenditure of some \$13.6 million in 2022 dollars in MSAR TMDL compliance efforts.

Permittees have committed their financial resources to understand and implement bacteria control BMPs that make sense within the watershed and have made decisions based on the best information at the time, ensuring that reduction in E. coli results from joint watershed efforts. Permittees believe their efforts have been successful and recommend compliance strategies continue under the CBRP, as modified.

The modifications proposed for Appendix 11 are intended to continue to allow the MSAR Permittees to implement the CBRP without enforcement through a TSO.

It is the intent of the MSAR Permittees to develop a CBRP for wet winter weather conditions as well as a Revised CBRP for dry weather. The final compliance date for wet weather compliance is December 31, 2025. The Regional Board is working with the MSAR Permittees and the MSAR TMDL Task Force to amend the Basin Plan (through a Basin Plan Amendment (BPA)) to extend that compliance date to December 31, 2045. In light of these efforts, the MSAR Permittees request that work pause on finalizing this Order until that BPA is adopted. If the BPA is not effective (approved by the Regional Board, the State Board, the Office of Administrative Law (OAL) and USEPA), the MSAR Permittees face potential enforcement action. To avoid such a possibility, and to allow the MSAR Permittees to develop a wet weather CBRP and/or WMP, it is requested that work to complete the BPA be prioritized over finalization of the TO.

The Santa Ana Watershed Project Authority, on behalf of the MSAR Task Force, is submitting a separate comment letter specifically on Appendix 11. The MSAR Permittees request the Regional Board review the MSAR Task Force's letter and exhibits, which are endorsed by the MSAR Permittees, and incorporate the Permittees' comments and those of the Task Force into the TO.

Recommendations (proposed modifications are not yet provided in Appendix A)

- a. Modify Appendix 11 to continue and enhance the CBRPs.

- b. To avoid a situation where the MSAR Permittees might be found in violation of the TMDL requirements, Appendix 11 must be revised to recognize the pending BPA and to allow Permittees to pursue WMPs should the TMDL be revised.
- c. Review and incorporate the comments and exhibits from the MSAR White Paper (Appendix B-1a).

Response: The Santa Ana Water Board disagrees with the commenters' claim that "The BMP-based approach is the only approach set forth in the Basin Plan and administrative record for the MSAR TMDL". Their reference to Task 6 regarding the "TMDL 'Re-opener'" simply indicates a commitment to re-evaluate the TMDL. It is not a prescription for any permitting strategy for the waste load allocations for the periods before or after the re-evaluation. The TMDL has been periodically reevaluated through triennial reviews (for example, see the Triennial Review Priority Lists and Work Plan FY 24-27 Response to Comments [the MSAR TMDL update was pending but was assigned medium priority because more than three years would be needed to complete this project]; Triennial Review Medium Priority List [during 2024-2027, staff and Task Force will review data to support TMDL update]), updates to the Santa Ana Water Board, compliance audits, review of applicable studies, and, most recently, an update to the wet weather requirements.

As noted in Response 35.291, the Basin Plan's references to tasks and schedules prior to the compliance dates for the waste load allocations indicates that a BMP-based compliance approach is permissible prior to the compliance date. The Basin Plan does not directly reference a CBRP as the vehicle for this approach. But, as the commenters note in their White Paper and Santa Ana Water Board staff notes in Response 35.291, it is clear that the Board expected attainment of the waste load allocations by the compliance dates using this strategy.

The compliance dates are more than aspirations or expectations, compliance by these dates is required. Water Code section 13263 requires the Santa Ana Water Board to implement relevant water quality control plans. This includes implementing the compliance schedules and dates in Board-adopted TMDLs. It is important then, that implementing permits provide the regulatory assurance that this requirement is met.

Santa Ana Water Board staff disagree that they informed Permittees that targets were not enforceable but the commenters may be taking other statements out of context. TMDL numeric targets are not waste load allocations; rather, they are used to determine conditions that represent attainment of water quality standards. They are not waste load allocations. (Water Quality Control Policy for

Addressing Impaired Waters: Regulatory Structure and Options, p. 2.) Water quality standards and WLAs are not self-implementing or “directly enforceable,” but this does not mean standards or WLAs are not regulatory. Rather, they must be implemented through permit requirements. WQBELs must be consistent with the assumptions and requirements of WLAs, which are a type of effluent limitation. (40 CFR 122.44(d)(1)(vii)(B); see also, 130.3(h).)

To the extent that the argument applies to the waste load allocations, the argument is partially true. A BMP-based approach to compliance is permissible. A BMP based approach to compliance may be permissible where supported by adequate reasonable assurance and enforceable implementation measures. In such cases, the associated BMP requirements, milestones, schedules, and compliance dates remain enforceable components of the permit and are intended to achieve attainment of the applicable waste load allocations by the applicable compliance dates. Continued implementation of a BMP based approach beyond an applicable compliance date without attainment of the waste load allocations would require appropriate regulatory authorization, such as a Time Schedule Order. If such a plan was demonstrably successful at attaining the waste load allocation(s), there would be sufficient evidence in the record to support continuing this approach (see p. 6 of the November 26, 2014 USEPA Memorandum). However, the record does not show that the BMP-based approach has met the Board’s expectation of attaining compliance with the waste load allocations by the compliance date as discussed in Response 35.291.

The commenters have correctly noted that the CBRP and its underlying BMP-based approach has provided the Permittees with a mechanism to comply with the waste load allocations. But the CBRP has not fulfilled the requirement of compliance with the waste load allocations by their compliance dates, so success from this perspective has been elusive.

The commenters misstate the findings of Santa Ana Water Board staff’s October 2018 audit reports for Riverside and San Bernardino Counties. The reports do not assert that “there is no way to determine the level of uncontrollable sources”. Instead, the reports state, “There is no consensus process for reaching conclusions on [determining if the source is anthropogenic versus natural, if the source is controllable, and if the source is from an MS4] and for supporting a conclusive, transparent determination regarding compliance with waste load allocations”. This remains the case now and the point was repeated by Santa Ana Water Board staff during their presentation at the September 13, 2024 Board workshop. Provisions in draft Monitoring and Reporting Program R8-2026-0034 are designed to correct this problem. To clarify, the 2018 audit found no violations because the WQBELs only required permittees to comply with their dry-weather

CBRPs. The permittees were not out of compliance with the dry-weather CBRPs. As a result, permittees were in compliance with applicable narrative WQBELs even though they could not demonstrate attainment of WLAs, either in the receiving water or end-of-pipe. This weighs against using the CBRPs as narrative WQBELs.

The commenters indicate their desire to use a Watershed Management Plan as a BMP-based approach to comply with the waste load allocation. We have explained why this is inappropriate in Responses 35.505 and 35.520 and with improved language in the Fact Sheet. Even if a BMP-based approach were used to comply with the waste load allocations in a TMDL, Permittees must still comply with Receiving Water Limitations, requirements for effective prohibitions of non-stormwater runoff, and the maximum extent practicable standard.

The commenters are partly correct to note that, under the current permits, “Permittees satisfied the WQBEL through submission and implementation of the CBRP”. The current WQBELs were satisfied only upon approval of the CBRPs by the Santa Ana Water Board, not when the plans were submitted. However, as discussed earlier in this Response, the CBRPs have not achieved attainment of the waste load allocations by their compliance dates. Permittees have provided no reasonable assurance that a different outcome will occur by continuing a BMP-based approach, particularly when this approach would no longer have any target date for attainment of the waste load allocation.

The commenters have not explained how imposing numeric limits shifts focus away from watershed and joint efforts and instead promotes individual end-of-pipe strategies that may make little difference to receiving water quality. The current monitoring program in the middle Santa Ana River watershed is at the Metropolitan Water District Crossing (WW-S1) and at Pedley Avenue (WW-S4). These locations do not allow demonstrations of compliance at each of the Permittees’ outfalls. If some outfalls were not in compliance, then it would make sense to abandon a watershed wide approach. Abandoning ineffective strategies constitutes progress and is consistent with the iterative process specified in the Receiving Water Limitations. If Permittees pursue end-of-pipe compliance strategies that may make little difference to receiving water quality, this may be the result of haste. Permittees can mitigate the risk of such hasty decisions by requesting a TSO as they develop more effective methods. Even as it is carried out under a TSO, this work would be progress.

Permittees have proposed significant technical concerns with the waste load allocations. But the Santa Ana Water Board is required to implement the Basin Plan as it is written. It is not appropriate to develop a permit’s requirements

based on anticipated and speculative Basin Plan amendments. The appropriate method for modifying the waste load allocations or adjusting the compliance schedules is through the Basin Plan Amendment process. For Appendices 11 and 12, the Basin Plan amendments have been adopted by the Santa Ana Water Board and edits have been in the Tentative Order to reflect those amendments upon their effective date after final approval.