Response to Comments
Section C: Total Maximum Daily Loads (TMDLs)

Sub-section #	Comments Category
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The below table includes all significant comments on the tentative permit sections described above and the corresponding Fact Sheet sections.

#	Commenter(s)	Comment	Response
C.1.1	Rutan & Tucker, LLP on behalf of City of Duarte	**The Draft Permit's Core Legal Conclusions Are Incorrect and Misleading – The Regional Board is not Preempted from Adopting a BMP-based on the Discretion to Provide Relief to the Permittees as it is Not Preempted from Doing So.** The Fact Sheet's discussion of the Trial Court's decision in the Duarte case is incorrect as a matter of law. It is misleading,	**No change.** See response to comment numbers H.1.1 and H.1.2.a; H.1.2.d, H.1.2.f and H.1.2.g. The Los Angeles Water Board finds that each of the requirements in the Order are not more stringent than what federal law requires for the control of MS4 discharges of pollutants in the Los Angeles Region. The Clean Water Act section 402(p)(3)(B) requires MS4 permits to include

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		as it assumes (with no analysis) that the Regional Board is preempted by federal law from complying with the requirements of California law. Through the Draft Permit, Regional Board staff and counsel have resurrected the same failed arguments offered in support of the 2012 MS4 permit, to the effect that imposing NELs and the relevant deadlines from their underlying TMDLs is a legal requirement, which the Board has no discretion to avoid. (*See e.g.*, Draft Permit, F-158 ["Therefore, permit compliance schedules for attaining WQBELs and receiving water limitations derived from WLAs [the NELs] must be based on a state-adopted TMDL programs of implementation and ***cannot exceed the maximum time that the implementation schedule [in the TMDL] allows***."; emphasis added.) Likewise, Regional Board staff and their counsel's Draft Permit erroneously argues that the Regional Board must impose the NELs, as opposed to a BMP-based approach, because federal law gives the State of California the *discretion* to impose terms that are not required by federal law. (*See e.g.*, Draft Permit, F-117 ["The permitting agency . . . must therefore include provisions in addition those based on the MEP standard	requirements to effectively prohibit non-storm water discharges through the MS4 to receiving waters, as well as "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, *and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants*" (emphasis added). The permitting agency, be it the Los Angeles Water Board or U.S. EPA, must therefore exercise its discretion to determine what permit conditions are necessary to control pollutants in a specific geographic area and include provisions for the control of such pollutants when it finds it is appropriate to do so. U.S. EPA has stated that, where the NPDES permitting authority determines that MS4 discharges have the reasonable potential to cause or contribute to a water quality standard exceedance, the permitting authority should exercise its discretion to include the necessary requirements to meet water quality standards. Federal law authorizes MS4 NPDES permits to require compliance with water quality standards (WQS) when

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		when it finds it is appropriate to do so and to exercise its discretion to determine what permit conditions are necessary to control pollutants in a specific geographic area."].) Each of these conclusions is wrong as a matter of law, and was rejected by the Trial Court in *City of Duarte v. State Water Resources Control Board, et al.,* Orange County Case Number 30- 2016-00833614-CU-WM-CJC (the "Duarte Case"), and the related case *of City of Gardena v. State Water Resources Control Board, et al.,* Orange County Case Number 30-2016-00833722 ("Gardena Case"). As an initial matter, the California Supreme Court has already found that the Clean Water Act (and thus federal law) does not require any specific permit term to be included in an MS4 permit. (*Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768	appropriate. (33 USC 1313(d)(1)(A), (C); 1342(p)(3)(B)(iii)) Many waterbodies in the Los Angeles Region do not meet applicable WQS, indicating that controls to reduce pollutants to the maximum extent practicable including management practices, control techniques and system, design and engineering methods have not been sufficient, and therefore other provisions to control pollutants are indeed appropriate. (U.S. EPA 2014 Memorandum, page 4.) Furthermore, the State Board has determined that MS4 permits must require compliance with WQS in two precedential orders. First, in Order WQ 99-05 (requiring inclusion of RWLs in MS4 permits) and again in Order WQ 2015-0075[1] (affirming inclusion of and compliance with WQS in the 2012 Los Angeles County MS4 permit).

[1] On April 21, 2021, the Los Angeles County Superior Court issued a final judgment in the case of Natural Resources Defense Council, Inc. and Los Angeles Waterkeeper v. State Water Resources Control Board and California Regional Water Quality Control Board, Los Angeles Region (Super. Ct. Los Angeles County, No. BS156962 (NRDC)). In furtherance of the judgment, the court will issue a writ ordering the State Water Board to set aside Order WQ 2015-0075. To date, the State Water Board has taken no action to set aside Order WQ 2015-0075. Even if Order WQ 2015-0075 is ultimately set aside, the trial court's ruling was based solely on the antidegradation analysis for high quality waters and did not call into question the propriety of the State Water Board's other holdings on the 2012 Los Angeles County MS4 Permit. Because these holdings have not been disturbed by the NRDC case, and because these holdings address matters relevant to the Regional MS4 Order, this response comment continues to cite and discuss Order WQ 2015-0075, as appropriate, for matters other than antidegradation concerning high quality waters.

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		[holding that under the Clean Water Act, "the State was not compelled by federal law to impose any particular requirement" into an MS4 permit].) Likewise, a TMDL's provisions, including its implementation schedule, does not need to be incorporated verbatim into an MS4 permit. (*See* State Board Order 2015-0075, pp. 56-57 [recognizing that imposition of the NELs to address applicable TMDLs was within the Regional Board's "policy discretion," and holding that "In the context of MS4 discharges, effluent limitations in NPDES permits may be expressed in the form of either numeric limitations *or* best management practices (BMPs)."]; emphasis added.) Additionally, while the Regional Board has the *discretion* to determine what is "appropriate" to include in an MS4 permit, in doing so, the Regional Board's discretion is controlled by California law, as it is an executive agency subject to the mandates of the California Legislature. (State Board Order Number 2015-0075, pp. 10-11 [interpreting 33 U.S.C. § 1342(p)(3)(B), and the "appropriate for the control of such pollutants" as giving the Boards discretion to impose additional terms but "MS4 discharges *must* meet a technology-based standard of prohibiting non-storm water discharges and reducing pollutants in the discharge to the Maximum	The Regional MS4 Permit includes 45 TMDLs, which identify MS4s as point sources of pollution and assign WLAs to MS4s based on a rigorous quantitative analysis. Once a TMDL is established, federal regulations require that all NPDES permits contain WQBELs consistent with the assumptions and requirements of the TMDL WLAs. In the Preamble to its Phase I Stormwater Regulations, U.S. EPA elaborated on these requirements stating that "permits for discharges from municipal separate storm sewer systems must require controls to reduce the discharge of pollutants to the maximum extent practicable, and *where necessary* water quality-based controls" (emphasis added) (55 Fed. Reg 47990, 47994 (Nov. 16, 1990); *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.4th 749, 768, n. 15.) TMDL WLAs are WQBELs (see 40 CFR § 130.2(h)); there are three ways to incorporate these WQBELs into MS4 permits: (1) as numeric effluent limitations; (2) as "a measurable, objective BMP-based limit that is projected to achieve" the waste load allocation, and (3), as a combination of NELs and BMPs to be used to achieve TMDLs. Among other places, these first

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		Extent Practicable (MEP) in all cases, but *requiring strict compliance with water quality standards (e.g., by imposing numeric effluent limitations) is at the discretion of the permitting agency*", and citing Defenders of Wildlife v. Browner (9th Cir. 1999) 191 F.3d 1159].) In other words, when exercising its discretion, the Regional Board does not have the absolute authority to impose any terms it wants, but must demonstrate that it exercised its discretion in a reasonable manner as defined by California law. (Code of Civil Procedure § 1094.5.) The only way the Regional Board could be excused from complying with State law would be to prove that their compliance is preempted by federal law, a burden it cannot meet. (*Quesada v. Herb Thyme Farms, Inc.* (2015) 62 Cal.4th 298, 308 ["The burden is on . . . the party asserting preemption, to demonstrate [it] applies."].) Lastly, from a practical perspective if the imposition of NELs and deadlines were required whenever a TMDL included an implementation plan, as alleged in the Draft Permit, such requirements would be in MS4 permits throughout the State. However, even in the LA County region, Caltrans, a State agency, was issued an MS4 permit that	two ways are specifically identified in the U.S. EPA 2014 Memorandum, and the last approach has been affirmed by both U.S. EPA and the State Water Board. In all cases, no matter how these WLAs are incorporated, the WQBELs must be consistent with the assumptions and requirements of the TMDL WLAs assigned to the MS4 discharges. Federal regulations indicate that BMPs can be used in MS4 permits, and where it is infeasible to develop numeric effluent limitations. U.S. EPA guidance explains that, where BMPs are used they must be clear, specific, measurable and enforceable. As such, the MS4 permit's administrative record needs to provide an adequate demonstration that, where a BMP-based approach to water quality-based effluent limitations is selected, the BMPs required by the permit will be sufficient to implement applicable WLAs in the TMDLs. One way to do that is by conducting a reasonable assurance analysis, or RAA which is based on watershed modeling or other appropriate quantitative analysis. Both federal regulations (40 CFR 122.44(k)(3)) and U.S. EPA guidance indicate that numeric WQBELs should be

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		included no such NELs and final compliance deadlines, despite being subject to the very same TMDLs at issue in this instance. In light of the foregoing, the Draft Permit must be revised to properly reflect the law, and recognize that the Regional Board is purporting to impose these requirements pursuant to State law, and then comply with the same. As drafted, the permit gives the impression that the Regional Board had no other option under federal law. This is simply not true, and a decision based on that erroneous conclusion would be an abuse of discretion.	used when they are feasible to calculate, and when the facts show that they are appropriate and/or necessary to achieve WQS. The Los Angeles Water Board has concluded that for most TMDLs incorporated into the Regional MS4 Permit it is feasible to translate TMDL waste load allocations assigned to MS4 discharges into numeric WQBELs or receiving water limitations, consistent with the assumptions and requirements of the TMDL WLAs, in order to restore water quality and meet beneficial uses. The Regional MS4 Permit includes 45 TMDLs, the oldest of which has been in place for 20 years. The Los Angeles Region has more TMDLs than any other Region in California. The Los Angeles Region also has more waterbodies that are impaired by MS4 discharges than any other region. The TMDLs address many different types of pollutants and there are many watersheds with multiple TMDLs. However, despite the number of TMDLs, and the number of years the TMDLs have been in place, the water bodies in both Los Angeles and Ventura Counties continued to be impaired. The iterative BMP-based approach based on the MEP standard that was largely employed in the

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			early generations of the MS4 permits for Los Angeles County, Ventura County and Long Beach has not been effective in addressing water quality impairments due to MS4 discharges. For these reasons, and because the TMDLs are written such that calculation of numeric effluent limitations is feasible, the Los Angeles Water Board has included numeric water quality-based effluent limitations in the Regional MS4 Permit to ensure that BMPs are implemented, and that the BMPs are designed and employed in a way to achieve the TMDL waste load allocations in the required timeframes. This approach is consistent with the evolution of MS4 permitting as included in U.S. EPA policy and guidance, and as affirmed in State Board Order WQ 2015-0075 on the 2012 LA County MS4 Permit. The Regional MS4 Permit uses a hybrid approach, which includes numeric effluent limitations and provides the option of developing a Watershed Management Program consisting of BMPs selected based on a reasonable assurance analysis to ensure compliance with the applicable waste load allocations. In this option, permittees may comply with

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			interim BMP-based WQBELs and must comply with final numeric WQBELs at the end of the TMDL implementation schedules, or alternatively, capture the 85th percentile, 24-hour stormwater volume for the drainage area. The numeric WQBELs serve as a backstop if BMP implementation is insufficient and provide assurance that final water quality outcomes will be achieved. The Los Angeles Water Board believes that this approach provides the greatest flexibility to permittees to comply with the TMDL provisions of the permit, while being consistent with federal law, regulation, and guidance considering the specific facts in the Los Angeles Region. This approach is also supported by the State Board in its 2015 Order on the 2012 LA County Permit, and by U.S. EPA Region IX in its comments on the Tentative Regional Permit.[2] MS4 discharges in the Los Angeles Region are a continuing and significant source of pollutants to receiving waters, many of them impaired. As such, the Board finds that inclusion of all of the requirements in the Order are necessary

[2] Letter from Elizabeth Sablad, Manager, NPDES Permits Section, U.S. EPA Region IX, dated April 28, 2021.

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			and appropriate to control MS4 discharges in the Los Angeles Region including, but not limited to, requirements for non-stormwater discharges, technology and water quality-based effluent limitations, TMDLs, receiving water limitations, stormwater management program minimum control measures, and monitoring and reporting to ensure that the requirements of the Order are being met. See Parts IV, V, VI, VII, IX, and XII of the Fact Sheet, in particular. The requirements have been designed to be consistent with and within the federal statutory mandates described in Clean Water Act section 402(p)(3)(B) and the related federal regulations and guidance. Consistent with federal law, all the requirements in the Order could have been included in a permit adopted by U.S. EPA in the absence of California's delegated authority to issue NPDES permits. U.S. EPA has itself included NELs in some of the MS4 permits it has issued to ensure consistency with available WLAs. Two recent examples are the 2018 MS4 permit issued to Guam DPW (NPDES permit No. GUS040001) that incorporates applicable WLAs for enterococcus and sediment as NELs; another example is the 2018 MS4 permit for the District of Columbia (NPDES

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			permit No. DC0000221) that includes NELs for “acres managed” that are projected to achieve compliance with applicable WLAs through stormwater retention. (See *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1166.) Each of the requirements in the Order, especially when implemented together, constitute the critical means towards achieving the requirements and goals of the Clean Water Act. On January 28, 2021, the Court of Appeal issued a unanimous, published decision in the *Duarte* case and a companion unpublished decision in the *Gardena* case reversing the trial court’s ruling that had directed the Los Angeles Water Board to set aside the numeric effluent limitations (NELs) in the 2012 permit for failure to adequately consider economics under California Water Code section 13241. The Appellate Court concluded that “The Regional Board developed an economic analysis of the Permit's requirements, consistent with Water Code section 13241.” (*City of Duarte v. State Water Resources Control Board* (2021) 60 Cal.App.5th 258 [274 Cal.Rptr.3d 471, 60 Cal.App.5th 258], *as modified on denial of reh'g* (Feb. 19, 2021), review denied (Apr. 28, 2021).) The appellate court ruled in

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			favor of the Water Boards and upheld the 2012 permit, but it did not rule on whether NELs were more stringent than required by federal law. On April 28, 2021, the California Supreme Court denied the cities' Petitions for Review, upholding the appellate court's ruling. The Los Angeles Water Board maintains that the inclusion of numeric WQBELs in the Order is not more stringent than federal law, and no court has decided to the contrary. Regarding the Caltrans MS4 permit, the State Board included BMP-based TMDL requirements rather than numeric WQBELs based on a number of factors, including the fact that Caltrans, a single discharger, was named in over 80 TMDLs state-wide, and these TMDLs vary greatly in detail, specificity and implementation requirements, which rendered numeric effluent limits infeasible. State Board also considered the fact that Caltrans had relatively little contribution to the exceedances in each of those TMDLs, and that there was significant efficiency to be gained by streamlining and standardizing control measure implementation throughout Caltrans' state-wide stormwater program. This is in stark contrast to the MS4s regulated by the Tentative Regional MS4 Permit, which

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			have contributed significantly to the erosion of water quality in the Los Angeles Region, and for which numeric effluent limits are feasible. (See, discussion at Fact Sheet pp. F-26-F-31; F-119-F-125.) Finally, with respect to Commenter's claim that somehow, the implementation schedules for TMDLs need not be complied with, that argument is fully addressed, and refuted, in the Fact Sheet at pp. F-161-F-162. Once a TMDL program of implementation, which is part of the Los Angeles Water Board's Basin Plan, becomes a regulation upon approval by the State of California Office of Administrative Law, the program of implementation becomes a regulation with which the Board must comply in its permitting actions.
C.1.2	Rutan & Tucker, LLP on behalf of City of Duarte 2nd Letter	**The Tentative Permit's NEL-Related Provisions Are Not Required by Federal Law.** As with the 2012 LA MS4 Permit, the Tentative Permit imposes a variety of provisions designed to require the permittees to strictly comply with the NELs, either through the incorporation of waste load allocations from total maximum daily loads ("TMDLs"), through numeric receiving water	**No change.** See response to comment numbers C.1.1; H.1.1 and H.1.2.a; H.1.2.d, H.1.2.f, H.1.2.g, and H.1.2.k. Importantly, and as noted above, the trial court's ruling in *City of Duarte v. State Water Resources Control Board* was overruled in its entirety, (2021) 60 Cal.App.5th 258 [274 Cal.Rptr.3d 471, 60 Cal.App.5th 258], *as modified on denial of reh'g* (Feb. 19, 2021, review denied (Apr. 28, 2021)) (Assuming without deciding

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		limits, or through the adoption of a zero non-stormwater discharge limitation. (Tentative Permit, Parts IV.A, IV.B, V, III.B, Attachments K-S [all of these are collectively referred to as "NELs"].) The Tentative Permit also imposes a variety of different monitoring and compliance metrics that are imposed to assess compliance with those NELs. (*See, e.g.*, IX.A.4, X [compliance being defined as meeting WQBELs and numeric receiving water limitations found in Attachments K-S] [collectively the NELs and these provisions, are referred to as the "NEL-Related Provisions"].) The Tentative Permit's Fact Sheet falsely claims that these NEL-Related Provisions are required by federal law, apparently in an attempt to justify the Regional Board's failure to comply with State law in adopting those terms. (*See* F-273.) However, both federal and state law make clear that the imposition of the NEL-Related Provisions is not required by federal law but is instead imposed pursuant to the State's discretion. (*Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1166; see also *Divers' Environmental Conservation Organization v. State Water Board* (2006) 145 Cal.App.4th 246; *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 874; *Department of Finance*	that, if the 2012 Los Angeles County MS4 Permit contained provisions more stringent than federal law required, the Los Angeles Water Board complied with its obligations to consider the Water Code section 13241 factors, including compliance costs, as a matter of law). As explained in the Fact Sheet, none of the Tentative Order's terms are more stringent than the requirements of the Clean Water Act, and none are unfunded mandates subject to subvention. Note that the discretion described by the commenter is the *permitting authority's* discretion. In the NPDES permitting program, U.S. EPA is the permitting authority where a State has not been delegated to implement the federal NPDES program. Thus, U.S. EPA has the authority and discretion under federal law to impose NELs. Were that not the case, U.S. EPA would not recommend use of NELs in its 2014 Memorandum on incorporating TMDL WLAs in NPDES permits for stormwater sources, including MS4 discharges. As to the comment on the non-stormwater discharge prohibition provisions, which the commenter erroneously characterizes as a "zero NEL," the commenter made the same arguments on the 2001 and 2012 Los

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		v. Commission on State Mandates (2016) 1 Cal.5th 749, 767-68; DOF v. *Commission on State Mandates, County of San Diego et al.* (2017) 18 Cal.App.5th 661.) Indeed, this exact issue was reaffirmed in Duarte's lawsuit challenging the Regional Board's and State Board's decision to include NELs in the 2012 MS4 Permit without first complying with the mandates of California Water Code ("CWC") §§ 13241 and 13263. The trial court ruled in favor of Duarte, finding that (1) ***the NELs were not required by federal law***, and (2) that this Regional Board and the State Board therefore failed to comply with State law by adopting the NELs without first complying with the rigors of CWC § 13241, namely considering the permittees' costs of complying with the 2012 MS4 Permit's NEL-related terms. (*See also City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 628.) The Tentative Permit should eliminate the NELs and NEL-Related Provisions altogether. To the extent the Regional Board refuses to do so, however, it must at a minimum revise the Tentative Permit and its Fact Sheet to reflect that the imposition of the NEL-Related Provisions is a product of the Regional Board's discretion, and therefore, must be enacted in accordance with the requirements	Angeles County MS4 Permits. The arguments lacked merit then and they lack merit now. For non-stormwater discharges, the Clean Water Act requires MS4 permits to "include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." (33 U.S.C. § 1342(p)(3)(B)(ii) (emphasis added).) Accordingly, the Revised Order states: Each Permittee for the portion of the MS4 for which it is an owner or operator shall prohibit *non-storm water* discharges *through the MS4* to receiving waters". (Part III.A.1, Revised Tentative Order. emphasis added.) However, Part III.A.2 of the Revised Tentative Order includes a number of exceptions to the discharge prohibition for discharges that are exempted, conditionally exempted, or authorized by a separate NPDES permit. Read together these provisions do not create a "zero" non-discharge prohibition as by its term the Order authorizes numerous classes of eligible non-stormwater discharges. This approach is consistent with the Clean Water Act and its implementing regulations. EPA regulations define "stormwater" as "stormwater runoff, snow melt runoff, and surface runoff and drainage." (40 C.F.R. § 122.26(b)(13).) While non-stormwater is not defined in the regulations, EPA refers

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		of State law. Furthermore, the Regional Board would also have to be revised to recognize that the imposition of those terms would be a state mandate, subject to mandatory subvention of funds to the permittees. (*See* Fact Sheet Section XIV – "State Mandates" [failing to recognize that the NEL-Related Provisions of the Tentative Permit are unfunded state mandates].)	to "non-stormwater" as "illicit discharges" or any discharge "that is not composed entirely of stormwater and that is not covered by an NPDES permit. Such [] discharges are not authorized ... Ultimately, such non-storm water discharges through a [MS4] must either be removed from the system or become subject to an NPDES permit...." (55 Fed. Reg. 47990, 47995 (Nov. 16, 1990) [EPA Preamble]; 40 C.F.R. § 122.26(b)(2) (emphasis added).) The Order tracks this language. For additional discussion on this issue see response to comment numbers A.3.2 and H.1.2.k. See also response to comment numbers C.1.1, H.8.1 and H.8.2.
C.1.3	VCSQMP	*The federal CWA does not require water quality based effluent limits to be imposed in MS4 permits.* The Draft Fact Sheet improperly suggests that the CWA requires water quality based effluent limitations for municipal stormwater discharges. (Draft Fact Sheet, p. F-114, ["The Clean Water Act generally requires NPDES permits to include technology-based effluent limitations and any more stringent water quality-based effluent limitations necessary to meet water quality standards."].) While the sentence included in the Draft Fact Sheet is taken directly from the State Water Board's Order WQ 2015-0075[1], the Draft Fact Sheet fails to include the	**No change.** See response to comment numbers C.1.1 and C.1.6; and response to comments H.1.1 and H.1.2.a, H.1.2.d, H.1.2.f and H.1.2.g. The CWA requires water quality based effluent limits for MS4 permits when appropriate for the control of pollutants. The appropriateness of water quality based effluent limits is well documented in the Fact Sheet. The Board disagrees that the need for water quality based effluent limits is only triggered under CWA section 301(b)(1)(C). While CWA section 402(p)(3)(B)(iii) does not cross reference

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		subsequent text that provides further context as to the CWA requirements for municipal stormwater. [footnote 1: *In the Matter of Review of Order Number R4-2012-0175, NPDES Permit Number CAS004001, Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4*] Order WQ 2015-0075 states as follows: "The Clean Water Act generally requires NPDES permits to include technology-based effluent limitations and any more stringent limitations necessary to meet water quality standards. In the context of NPDES permits for MS4s, *however*, the Clean Water Act does not explicitly reference the requirement to meet water quality standards. MS4 discharges must meet a technology-based standard of prohibiting non-storm water discharges and reducing pollutants in the discharge to the Maximum Extent Practicable (MEP) in all cases, but 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, p. 10, emphases added.) The State Water Board's position is	CWA section 301(b)(1)(C)'s requirement for water quality based effluent limits, it clearly states that permits for discharges from municipal storm sewers shall require "such other provisions as the Administrator… determines appropriate for the control of such pollutants." This provision has been interpreted as allowing the permitting authority to require compliance with water quality standards in NPDES permits when appropriate. (*Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1166-1167). Many waterbodies in the Los Angeles Region do not meet applicable water quality standards, indicating that requirements to implement controls to the maximum extent practicable has not been sufficient, and therefore other provisions to control pollutants, such as WQBELs and receiving water limitations to achieve water quality standards, are indeed appropriate. (U.S. EPA 2014 Memorandum, page 4; *Defenders of Wildlife, supra,* at pp. 1166-67 (U.S. EPA's choice to include either management practices or numeric limitations in the permits to attain water quality standards was within its discretion, and under the circumstances, appropriate). Here, the Los Angeles Water Board has found, repeatedly, that

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		supported by both the actual language of the CWA as well as caselaw interpreting relevant CWA language. The Ninth Circuit Court of Appeals firmly stated that "[CWA section 402(p)(3)(B)] does not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C)." (*Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1165.) Section 1311(b)(1)(C) (i.e., CWA section 301(b)(1)(C)) is the provision of the CWA that otherwise triggers the need to strictly comply with water quality standards. In reaching its decision, the Ninth Circuit rejected arguments brought forward by EPA and the Defenders of Wildlife and clearly found that the statute "unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. . § 1311(b)(1)(C)." (*Defenders* 191 F.3d, 1165.) The Draft Fact Sheet further alleges that the need to include water quality based effluent limits (WQBELs) stems from the following: 1) discharges from MS4s are point source discharges; 2) WQBELs are required if the discharge has reasonable potential to cause, or contribute to an excursion above water quality standards; 3) reasonable potential is demonstrated through the assignment of wasteload allocations (WLAs) in TMDLs; and 4) where there is a WLA in a TMDL, a	WQBELs (and receiving water limits) are appropriate and necessary to achieve water quality standards. There are numerous facts supporting this throughout the Fact Sheet. (See, e.g., Fact Sheet, Part II.E; Part V.B, and Part VI.) In addition, the reasonable potential provisions at section 40 CFR § 122.44(d)(1) do in fact apply to MS4 discharges. Section 122.44(d)(1)(i) is clear that any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards established pursuant to other sections of the CWA may be imposed to "[a]chieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality." The plain language of the regulation does not restrict its application to permits established pursuant to CWA section 301(b)(C). Rather, the plain language of the regulation requires that, if water quality standards are established (under State or federal law) pursuant to section 303 of the CWA, and more stringent effluent limitations than those already promulgated under sections 301, 304, 306, 307, 318, and 405 of the CWA are necessary to achieve those water quality

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		WQBEL must be developed. The logic provided here, however, fails for many reasons. First, the need for WQBELs is triggered under CWA section 301(b)(1)(C) and the requirement that limitations be imposed on point source dischargers when necessary to meet water quality standards. As already noted above, municipal stormwater discharges are *not* required by the CWA to meet the provisions of section 301 of the CWA, including water quality standards. Next, with respect to Draft Fact Sheet's reliance on the "reasonable potential" provisions of the federal regulations, this argument also fails. The reasonable potential provisions at section 122.44(d)(1) in Title 40 of the Code of Federal Regulations (40 CFR) apply when applicable. (See 40 CFR §122.44, ["In addition to the conditions established under § 122.43(a), each NPDES permit shall include conditions meeting the following requirements when applicable."].) The provisions of 40 CFR § 122.44(d) become applicable when additional requirements are necessary to achieve water quality standards as is required, in part, by CWA section 301(b)(1)(C). (40 CFR § 122.44(d), ["…: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, … of the CWA …."].) The	standards, then additional limitations or requirements are necessary. Here, there are TMDLs with WLAs assigned to MS4 dischargers, which were established pursuant to CWA section 303(d). Therefore, limitations in permits must control all pollutants or pollutant parameters that have the reasonable potential to cause or contribute to any excursion above water quality standards. To read this any other way would be contrary to the objective of the CWA "to restore and maintain the chemical, physical and biological integrity of the Nation's waters" by controlling the discharge of pollutants. (CWA § 101(a); 40 CFR § 122.44(d)(1).) See, discussion in Fact Sheet at Parts V.B, VI.A, and VI.B. The Fact Sheet's determination that the existence of waste load allocations provides reasonable potential for water quality based effluent limits is consistent with federal law. Regardless of the applicability of 301(b)(1)(C), the permitting authority has separate, additional authority to implement TMDLs through water quality-based effluent limits [40 CFR § 122.44(d)(1)(vii)(B)]. The Fact Sheet also correctly reflects the findings of State Water Board Order WQ

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		Courts have clearly found that municipal stormwater discharges are not required to comply strictly with section 301(b)(1)(C) of the CWA. Thus, regulatory provisions tied directly to 301(b)(1)(C) would also not be applicable. Declaring that reasonable potential exists because WLAs for municipal stormwater are assigned, or that the existence of a WLA requires the need for WQBELs is contrary to the federal CWA and its regulations for the same reasons already provided. In short, these two conclusions in the Draft Fact Sheet can only be reached if section 301(b)(1)(C) of the CWA requires strict compliance with water quality standards for municipal stormwater discharges. The answer to that question is clearly NO – as previously demonstrated in applicable case law and Order WQ 2015-0075. (State Board Order, 2015-0075, p. 10, ["MS4 discharges must meet a technology-based standard of prohibiting non-stormwater discharges and reducing pollutants in the discharge to the Maximum Extent Practicable (MEP) in all cases, but requiring strict compliance with water quality standards (e.g., by imposing numeric effluent limitations) is at the discretion of the permitting agency."].) As noted above, courts have continued to find that CWA section 402(p)(3)(B) does not	2015-0075. The commenter mischaracterizes the State Board's position in the 2015 Order. If, as suggested by the comment, we include the subsequent text in the 2015 Order for further context, it states, "Thus, a permitting agency imposes requirements related to attainment of water quality standards where it determines that those provisions are "appropriate for the control of [relevant] pollutants" pursuant to the Clean Water Act municipal storm water provisions." The 2015 Order explicitly states, "To the extent the [applicable law] could be read to preclude mandatory incorporation of wasteload allocations into an MS4 permit, effluent limitations consistent with those load allocations should nevertheless be required under Clean Water Act section 402, subsection (p)'s direction that the MS4 permits shall require 'such other controls' as the permitting authority determines 'appropriate for the control of such pollutants.'" Finally, as explained in response to comment C.1.6, the Los Angeles Water Board does not dispute that, as the permitting authority, it has discretion to under 402(p) to include WQBELs. In this case, the Fact Sheet and the TMDL

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		compel or require municipal stormwater to strictly comply with water quality standards. (*Defenders* 191 F.3d, 1165.) This is further emphasized in *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, where the court found that both the underlying purposes of the CWA 1987 amendments and section 402(b)(3)(B) provide EPA (or the regulatory agency of an approved state) with the discretion to require compliance with water quality standards – but such agencies are not required to include provisions beyond those based on the MEP standard. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, (4th District 2004) 124 Cal.App.4th 866, 883.) State Water Board Order 2015-0075 dances precariously around this position. In short, rather than answer the question if the Los Angeles Water Board was required by federal law to effectuate TMDL compliance through the MS4 permit, Order 2015-0075 largely punts on this issue and instead states that it does not matter because the State Water Board will continue to require water quality standards compliance in MS4 permits. (Order 2015-0075, p. 56.) In other words, the State Water Board will continue to require compliance with water quality standards through its discretion, and pursuant to state	WLAs establish that discharges from MS4s are contributing to poor water quality, and there are water quality standards in place that are not being met. Therefore, and pursuant to U.S. EPA's guidance, numeric effluent limitations were established because they were clear, measurable standards, and because they were feasible to calculate.

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		law under the Porter-Cologne Water Quality Control Act, so it is not necessary to opine on the issue of whether or not it is required by federal law. Finally, Order 2015-0075 relies on the incorporation of total maximum daily loads into water quality control plans as another reason. This position in Order 2015-0075 further undermines the Draft Fact Sheet's continued portrayal of such requirements being included in the Draft Regional Permit via the CWA. The Draft Fact Sheet further over-states requirements under the CWA in how it references and uses U.S. EPA's November 26, 2014 guidance.[2] Most notably, the U.S. EPA 2014 Guidance is just that – *guidance*. The document states up front that the memorandum is "… not a regulation and does not impose legally binding requirements on EPA or States." (U.S. EPA 2014 Guidance, p. 1.) The Draft Fact Sheet characterizes the U.S. EPA 2014 Guidance as promoting the concept that BMP-based WQBELs are appropriate only if it is infeasible to develop numeric effluent limitations. (Draft Fact Sheet, p. F-120.) This is incorrect. In fact, the U.S. EPA 2014 Guidance actually makes this statement in the opposite for MS4 discharges: "…, EPA recommends that the NPDES permitting authority exercise its discretion to include clear, specific, and measurable permit	

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		requirements and, where feasible, numeric effluent limitations as necessary to meet water quality standards." (U.S. EPA 2014 Guidance, p. 4.). There are two key provisions in this statement: 1) it is an EPA recommendation – not a CWA requirement; and, 2) clear, specific, and measurable permit requirements is the primary point while use of numeric effluent limitations is secondary. [footnote 2: *Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs* (U.S. EPA 2014 Guidance)] Ironically, nothing described above prohibits the Los Angeles Water Board from imposing permit provisions that require compliance with water quality standards (i.e., WQBELs). But, rather than admitting that the Los Angeles Water Board seeks to use its discretion to impose such requirements, the Draft Fact Sheet goes to great pains to allege that these water quality standard based provisions are not an exercise of regional board discretion but required by federal law. This position in the Draft Fact Sheet is unsupportable and must be revised.	
C.1.4	TECS Environmental	Third, she contends that the tentative MS4 permit is subject to CWA 402(p)(3)(B)(iii) and not CWA 301, which I believe is not the case.	**No change.** See response to C.1.1; C.1.3; C.1.6; and H.1.2.a. As an initial matter, the MS4 permit is enacted

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		402(p)(3)(B)(iii) addresses municipal dischargers. It is implemented by 40 CFR 122.26(d)(iv), which requires a stormwater management program (SWMP), governed by an iterative process. It does not extend to E/WMPs, which seem to fall under 301 because it requires compliance stringent as necessary to comply with water quality standards and TMDLs. Ms. Purdy also cites 40 CFR 122.44 to further support her case. Actually, this regulation does the opposite: it addresses 301 and makes no mention of 402(p)(3)(B)(iii). If Ms. Purdy truly believes that the tentative permit complies with 402(p)(3)(B)(iii), as implemented by the SWMP, the tentative permit should say so, unequivocally. **CWA 301 v. CWA 402(p)(3)(B)(iii).** Ms. Purdy stated to the board, contrary to my assertion that the current and tentative MS4 permit (permits), particularly with respect to E/WMPs, are subject to CWA 301. Instead, she claims that 402(p) actually determines compliance. [footnote 4:] The full citation is 402(p)(3)(B)(iii), which applies to municipal dischargers. She is correct that 402(p)(3)(B)(iii), is the legitimate compliance determine for MS4 Permits. However, the tentative permit, along with the current permit, do not support that claim. Ms. Purdy also	pursuant to CWA section 402(p)(3)(B), as set forth in the Fact Sheet. And, the Tentative Order does in fact include a "SWMP" or minimum control measures. That said, and as set forth above and in other responses to comments referenced herein, water quality-based controls or effluent limitations are required in this case. The Clean Water Act section 402(p)(3)(B) requires MS4 permits to include requirements to effectively prohibit non-stormwater discharges through the MS4 to receiving waters, as well as "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." Pursuant to CWA section 402(p)(3)(B), the NPDES permit system provides a two-step process for establishing effluent limitations in MS4 permits. The first step is to include controls to reduce the discharge of pollutants to the maximum extent practicable, or MEP. The second step in establishing effluent limitations in MS4 permits is to determine whether

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		cites 40 CFR §122.44 for further support. In fact, it does just the opposite. Here is some background. To begin, CWA 301 reads: *Permit-holders shall achieve any more stringent limitation, including those necessary to meet water quality standards, treatment standards or schedules of compliance, established pursuant to any State law or regulations.* 402(p)(3)(B)(iii), on the other hand, provides a more lenient standard; it requires pollutants to be reduced to the maximum extent practicable (MEP) through the implementation of control measures (effectively best management practices). Implementing 402(p)(3)(B)(iii), is CFR §122.26(d)(2)(iv) that requires a stormwater management program (SWMP) -- control measures contained in six sub-programs to achieve water quality standards and the TMDLs on which they are based. Both federal stormwater provisions are embodied in State Board Order 99-05, which is reflected in Part V.A of the tentative and current permit. All MS4 Permits issued in California are required to comply with Order 99-05. The permits, however, do not quite say that 402(p)(3)(B)(iii) and CFR 122.26(d)(2)(iv) determine compliance with water quality standards and TMDLs. Instead, they say that	there are any other provisions appropriate for the control of pollutants discharged from MS4s. In addition, all permits for discharges from MS4s shall include a requirement to effectively prohibit non-stormwater discharges. (CWA section 402(p)(3)(B)(ii).) Federal law authorizes MS4 permits to require compliance with water quality standards (WQS) when appropriate. (33 USC § 1313; 1342(p)(3)(B)(iii).) Many waterbodies in the Los Angeles Region do not meet applicable WQS, indicating that controls to reduce pollutants to the maximum extent practicable have not been sufficient; therefore, other provisions to control pollutants are indeed appropriate. (U.S. EPA 2014 Memorandum, p. 4) Furthermore, the State Board has determined that MS4 permits must require compliance with WQS in three precedential orders. First, in Order No. 99-05 (requiring inclusion of RWLs in MS4 permits) and again in Order No. WQ 2015-0075 (affirming inclusion of and compliance with WQS in 2012 Los Angeles County MS4 permit) and, lastly, in Order No. WQ-2020-0038 (same).

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		compliance with them is determined by the implementation of E/WMPs – despite the fact there is no MEP provision for an E/WMP as there is for the SWMP. [footnote 5:] Ironically, under IV.A.1, of the tentative permit, Technology-Based Effluent Limitations are required to reduce pollutants to the MEP, even though nothing in federal regulations say so. MEP is only associated with 402(p)(3)(B)(iii). Under the tentative and current permit, permittees can opt for a SWMP, but if an exceedance occurs, they will be in violation. This is what former EO Sam Unger asserted in a letter to the City of Gardena dated March 21, 2014. Because this is a "stringent as necessary" standard, which is not authorized under federal stormwater regulations, its authority can only be traced to 301. 301 also does not provide for an iterative process, which is also required by Order 99-05. The iterative process is triggered when exceedances are detected by monitoring. It requires an adjustment of BMPs to reduce or eliminate future exceedances. This is re-affirmed in State Board Order 2001-15, wherein the State Board said: *Our language requires that SWMPs be designed to comply with water quality standards. Compliance is to be achieved over time, through an iterative approach requiring*	With respect to compliance, the methods of compliance are set forth in Part X of the Tentative Order. The rationale for the compliance determination provisions is set forth in Part XI of the Fact Sheet. Further, as described in Parts V.B (WQBELs), VI (Rationale for TMDL Provisions), and VII (Rationale for Receiving Water Limitations) of the Fact Sheet, the Tentative Order incorporates WQBELs and receiving water limitations to ensure MS4 discharges do not cause or contribute to exceedances of water quality standards. Compliance is not determined by adherence to either section 402(p)(B)(iii) (describing permitting standards and what permits shall include, not compliance) of the CWA or 40 CFR section 122.26(d)(2)(iv) (setting forth requirements for applications and permit requirements, but not addressing compliance). Rather, compliance is determined by one of several paths described in full in the Fact Sheet at Parts XI.B, C, and D. Finally, with respect to the relationship between TBELs and the "maximum extent practicable" (MEP) standard, see Fact Sheet at Part V.A. The MEP standard is the applicable federal technology- based standard that MS4 owners and operators must attain to comply, in part, with their

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		improved BMPs. [footnote 6:] State Board Water Quality Order 2001-15, page 7. The apparent absence of the iterative process in the permits provides more evidence that 301 determines compliance in both permits. To further bolster her argument that the permits are based on 402(p)(3)(B)(iii), Ms. Purdy cites 40 CFR 122.44(d)(1). This regulation actually undermines her argument. To begin with, 122.44(d)(1) says: *d) Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of CWA necessary to:* (1) Achieve water quality standards established under section 303 of the CWA, including State narrative is not included criteria for water quality. Please note, 402 in "d", is not listed but 301 is. *Moreover, under §122.4(a)(1),* ***Technology-based effluent limitations*** *and standards are based on effluent limitations and standards promulgated under* ***section 301 of***	NPDES permits. Again, standards incorporated into permits are different than methods of compliance. No change is necessary here.

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		the CWA. Ironically, technology-based effluent limitations are referenced in the tentative permit under IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS. So how can Ms. Purdy conclude that the tentative permit is based on 402(p)(3)(B)(iii) and not subject to 301? Action Sought: Ms. Purdy must revise the tentative permit to clearly and unequivocally affirm that: (1) the MS4 Permit is only subject CWA 402(p)(3)(B)(iii), which is implemented by CFR 122.26(d)(2)(iv), and is incorporated into the permit under Part V.A (pursuant to Order 99-05); and (2) 301 only applies to general NPDES permits, including general industrial stormwater permits. So doing would also require her to affirm that the SWMP, governed by an iterative process, is the only compliance determinant for meeting water quality standards and TMDLs. To that end, she should also send-out a Lyris notice informing interested parties that Los Angeles County MS4 permittees may opt to implement a SWMP, governed by an iterative process and that E/WMPs serve no compliance purpose.	
C.1.5	Aleshire & Wynder, LLP on behalf of	**A BMP approach should be used, not a numeric effluent limitation (NEL) or water**	**No change.** See response to comment numbers C.1.2, G.10, H.1.1, F.12, and F.22. Regarding incorporation of BMP-

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	the cities of Bell, Carson, Flintridge, Glendora, Irwindale, La Cañada, and Rancho Palos Verdes	**quality based effluent limitations (WQBELs)** The inclusion of numeric effluent limits in a municipal separate storm sewer system (MS4) NPDES permit is not required under federal law, and therefore can only be imposed under the California Porter-Cologne Act when the factors set forth in California Water Code (CWC) sections 13241, 13263 and 13000 have first been fully considered and the Permit findings and terms have been developed consistent with these factors. As currently written, the Permit's use of numeric effluent limits poses two problems: 1. The inclusion of strict numeric effluent limits within the Permit (including as a measure of WMP and EWMP legal compliance) should be consistent with CWC sections 13000, 13263, and 13241. The WMP/EWMP process should therefore be revised to allow for deemed compliance through a BMP-based WMP/EWMP adaptive management process. 2. The numeric effluent limits in the Permit are, in many cases, impossible to comply with, technically and economically.	based WQBELs rather than numeric WQBELs, see response to comment numbers C.1.1, C.1.3, C.1.6, C.1.8, F.11, G.35, and H.1.2.a. U.S. EPA has clarified that the reference to the feasibility of numeric effluent limits in the 2014 Memorandum refers to the feasibility of their calculation, not their economic or technical feasibility, stating that "With regards to the meaning of 'feasible' in the 2014 TMDL Memorandum, it generally refers to the feasibility of deriving appropriate NELs from the information in the TMDL."[3] Nonetheless, the Los Angeles Water Board recognizes that costs of compliance are a serious issue for Permittees. The Fact Sheet contains a detailed analysis of the costs to permittees to implement the Tentative Order. The analysis recognizes that the Safe Clean Water Program (Measure W) is just one source of funding that permittees in Los Angeles County can pursue. Some examples of sources of funding that permittees have pursued in the past are Prop 1, Prop 12, Prop 13, Prop 84, the American Recovery and

[3] *Ibid.*

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		As explained herein, the Cities respectfully request that the numeric effluent limits in the Permit, which are currently imposed as strict compliance requirements, be omitted, and that the Draft Order and Permit be revised to instead include a WMP/EWMP process, whereby compliance may be achieved through the implementation of best management practices ("BMPs"), and adherence to the adaptive management process. Numeric effluent limits should only be used as goals or targets to measure BMP effectiveness, but not as legally enforceable requirements. As stated in the Fact Sheet, a 2014 memorandum from USEPA on incorporating TMDL WLAs into MS4 Permits constitutes the primary guidance relied upon for including numeric WQBELs. The 2014 memorandum provides the following guidance for incorporating the TMDLs into the permit: "Where the TMDL includes WLAs for stormwater sources that provide numeric pollutant loads, the WLA should, where feasible, be translated into effective, measurable WQBELs that will achieve this objective. This could take the form of a numeric limit, or *of a measurable, objective BMP-based limit* that is projected to achieve the WLA." (emphasis added) (page 6)	Reinvestment Act of 2009 [ARRA], and Caltrans cooperative implementation grants. See also changes made to Fact Sheet Part XIII.D.3 to specify additional sources of funding for Permittees. Additionally, the Los Angeles Water Board agrees that watershed control measures should consider cost-effectiveness as indicated in Part IX.A.4.f of the Revised Tentative Order. Regarding technical feasibility, the 2006 Blue Ribbon Panel report is now 15 years old. In the years since the release of the report, more information about setting waste load allocations and effluent limitations has been gained, as noted in U.S. EPA's 2014 Memorandum. Regarding the challenge of treating large storm events, this issue is addressed in two ways in the compliance determination section of the Order. First, one of the compliance pathways, which relies on a design storm approach, is for permittees to comply with final numeric WQBELs by capturing the 85th percentile, 24-hour stormwater volume for the drainage area. Second, the Revised Tentative Order clarifies that bacteria limitations do not apply in certain waterbodies during conditions of High Flow Suspension as

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		The guidance clearly allows for the use of a BMP-based limit and states that NPDES authorities have significant flexibility in how they express WQBELs in MS4 permits. (page 4) In Part 3 of this document, USEPA identified four different approaches that had been utilized in MS4 permits to incorporate TMDL requirements: 1. Listing of applicable TMDLs, Wasteload Allocations (WLAs), and/or the affected MS4s; 2. Numeric limits and other quantifiable approaches for the specific pollutants of concern; 3. Required implementation of specific stormwater controls or management measures; 4. Other types of water quality-based requirements: a. Permitting Authority Review and Approval of TMDL Plans; b. Monitoring & Modeling Requirements; c. TMDL-Related Annual Reporting Requirements. (USEPA, 2017. Compendium of MS4 Permitting Approaches. EPA-830-S-17-001. Office of Wastewater Management Water Permit Division. April 2017.)	defined in Attachment A to the Revised Tentative Order. (See Part X.A.3.) The waterbodies to which the High Flow Suspension provision applies are identified in Table 2-1a of the Basin Plan. Thus, the Order considers large storm events in determining compliance with numeric WQBELs. It should also be noted that the Tentative Order offers several compliance pathways: Participation in a WMP, a BMP-based compliance method wherein permittees may comply with interim narrative WQBELs and must comply with final numeric WQBELs at the end of the TMDL implementation schedules, or alternatively, capture of the 85th percentile, 24-hour stormwater volume for the drainage area; and compliance with numeric WQBELs and receiving water limitations in any manner otherwise effective. BMPs could be used for this latter method. See Tentative Order, Part X and Fact Sheet, Part XI. In MS4 permits, WQBELs may be expressed either in narrative form (e.g., as requirements to implement specified BMPs) or in numeric form (i.e., as numeric effluent limitations). In the latter, the choice of how to achieve the numeric effluent limitations is left to the permittee.

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		The USEPA has provided alternative options to the use of numeric WQBELs. The Cities request that the Permit be revised to include an alternative method of compliance monitoring. **<u>Economic Infeasibility</u>** As you know the Permit requires the identification of Watershed Control Measures, which are strategies, institutional measures, and capital improvements that will be funded by the Cities. By way of example, regional BMPs are described in the City of Carson's EWMP Section 3, Figures 3-1 and 3-3. The estimated capital cost for all Watershed Control Measures (Low Impact Development, Green Streets, and Regional BMP) are described in the Carson's EWMP Section 7, Tables 7-2 (lower-boundary) and 7-3 (upper-boundary). It should be noted that the City has requirements in the permit to control both "dry weather" and "wet weather" runoff. The total cost for the City of Carson's EWMP implementation by the end of year 2040 will be an estimated $696 million, as shown on the City of Carson's EWMP Section 7, Figures 7-1 and 7-2. As a disadvantaged community, the City of Carson will be hard pressed to implement the $9 million annual investment required in the first ten years of	(CWA § 402(p)(3)(B)(iii); 40 CFR § 122.44(k); U.S. EPA. Memorandum, Revisions to the November 22, 2002 Memorandum "*Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*," (Nov. 26, 2014), p. 6.)

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		the permit, let alone the rest $606 million of total investment in the next twenty-five year period. The Safe Clean Water Program (Measure W) Regional funds provide potentially an estimated yearly amount of $18M which is *competitive* pot of money for which every Permittee in the watershed may apply. The City of Carson Municipal Fund has an allocation in the amount of $2.40M yearly. This amount is still not enough to meet the $696 Million required. The costs facing the City of Carson are indicative of the entire region. The Permit covers a number of disadvantaged communities, and the use of NELs and numeric WQBELs in the Permit will impose prohibitive costs upon the Cities. **Technical Infeasibility** In order to incorporate numeric WQBELs, the 2014 USEPA memo clearly states that numeric effluent limitations should only be included “where feasible.” In 2006, a Blue Ribbon Panel was directed by the State Water Board to evaluate whether numeric WQBELs for stormwater were feasible.[footnote 1] The Panel was directed to assess “technical feasibility” and assess a	

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		number of questions, such as how compliance determinations would be made, the ability to monitor for compliance, and the technical and financial ability of dischargers to comply. The Blue Ribbon Panel concluded it is not feasible to calculate numeric effluent limitations for municipal stormwater. [Footnote 1]: Storm Water Panel Recommendations to the California State Water Resources Control Board: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006 One of the challenges identified by the Blue Ribbon Panel was the variability of storm events and the fact that there will always be some storms that exceed the design capacity of BMPs. It is unclear how this issue will be addressed in assessing compliance with the numeric WQBELs. The Panel stated several times each year, the runoff volume or flow rate from a storm will exceed the design volume or rate capacity of the BMP and that stormwater agencies should not be held accountable for pollutant removal from storms beyond the size for which a BMP is designed.	

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		Nonetheless, the Tentative Order requires compliance with numeric WQBELs with no consideration or allowance for large storm events. **<u>BMP-based WQBELs and Watershed Planning</u>** Stormwater BMP design requires selection of a storm size to be captured or treated. The selection of the design parameters has impacts on the costs of the project. In some instances, building additional BMP-capacity could significantly increase the cost of the project for a miniscule increase in pollutant removal. Using BMP-based limitations provides more opportunities for optimizing BMP planning, resulting in more cost-effective TMDL implementation planning. Incorporating numeric WQBELs is not yet feasible and BMP-based approaches, which are allowed, will better support multi-benefit planning efforts. The Cities request the numeric WQBELs be removed from the Tentative Order to be replaced with a BMP-based approach.	
C.1.6	VCSQMP	*BMP-Based WQBELs Should Be the Default Standard – Not Numeric WQBELs* While not required by federal law to include WQBELs in MS4 permits, Ventura County Permittees understand that the Los Angeles Water Board has the discretion to include	**No change.** Regarding the comment that the Los Angeles Water Board has discretion under the Clean Water Act to incorporate BMPs-based (or narrative) WQBELs pursuant to 40 CFR § 122.44(k)(2) (specifically authorizing

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		such limits as "such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." (CWA §402(p)(3)(B)(iii).) More importantly, the Los Angeles Water Board has the discretion to express such "other provisions" in many ways, including in a narrative-best management practice (BMP) based format, or numerically. The Draft Fact Sheet recognizes that the Los Angeles Water Board has this discretion. (Draft Fact Sheet, p. F-120, ["In MS4 permits, WQBELs may be expressed either in narrative form (e.g., as requirements to implement specified BMPs) or in numeric form (i.e., as numeric effluent limitations)."].) However, even though the Draft Fact Sheet recognizes the discretion, it mischaracterizes federal regulations and U.S. EPA guidance to suggest that BMP-based WQBELs are only appropriate if it is "infeasible" to develop numeric effluent limitations. (Draft Fact Sheet, p. F-120.) This inference is not supported by the federal regulations at issue, U.S. EPA guidance, or Order WQ 2015-0075. As properly noted in Order WQ 2015-0075, "[t]he federal regulations specifically state that BMP-based effluent limitations may be used to control pollutants for storm water discharges." (Order WQ 2015-0075, p. 57; see 40 CFR § 122.44(k)(2).) Section 122.44(k)(2) clearly identifies that use of	BMPs where authorized under section 402(p) of the Clean Water Act), the Los Angeles Water Board does not dispute that it has discretion to under 402(p) to include BMP-based or narrative WQBELs. However, U.S. EPA's 2014 Memorandum recommends that "the NPDES permitting authority exercise its discretion to include clear, specific, and measurable permit requirements and, where feasible, *numeric effluent limitations* as necessary to meet water quality standards." (U.S. EPA Memorandum from Andrew D. Sawyers and Benita Best-Wong to Water Division Directors Regions 1-10, RE Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs," dated Nov. 26, 2014, emphasis added.) The Los Angeles Water Board has determined that numeric effluent limitations are feasible as discussed in response to comments #C.1.5, #F.11 and #H.1.2.a. Regarding the comment that BMP-based WQBELs should be the default because the TMDL schedules were adopted with little information, the Los Angeles Water

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		BMPs is specifically authorized for municipal stormwater under CWA section 402(p). The next provision in section 122.44(k)(3) then provides for an additional situation when BMPs are authorized, which is when numeric effluent limitations are infeasible. (40 CFR § 122.44(k)(3).) Section 122.44(k)(3) does not limit or condition the use of BMPs for municipal stormwater, nor could it do so as that would be inconsistent with the statutory provisions of the CWA. Thus, it is improper for the Draft Fact Sheet to suggest that BMP-based WQBELs are not appropriate because the Los Angeles Water Board considers numeric effluent limitations feasible. Considering the number of practical and technical challenges that municipal stormwater agencies encounter daily with respect to meeting water quality standards (and in particular TMDL WLAs for which time schedules may have already expired), BMP-based WQBELs should be the default standard versus numeric WQBELs. The Los Angeles Water Board has long recognized challenges associated with municipal stormwater, including those related to meeting TMDL compliance schedules that were adopted without much information at the time of development. Rather than imposing the application of numeric WQBELs when TMDL compliance schedules expire, the Los	Board disagrees. The TMDL schedules were developed in consultation with stakeholders and based on lessons learned from decades of stormwater pollution control. The TMDLs cite references from the California Stormwater Quality Association, the Southern California Coastal Research Project, U.S. EPA, the Federal Highway Administration, other municipalities, and Caltrans, to name a few, about the effectiveness of, siting and design considerations for, and time to implement various types of implementation actions. The comment provides no evidence for the conclusion that receiving water quality will improve with BMP-based limitations as opposed to numeric WQBELs. In fact, much of the progress made in implementing TMDLs in Ventura County has occurred after their incorporation into the 2010 Ventura County MS4 Permit. See for example, projects to implement the Malibu Creek (TMDL Deadline Extension Staff Report, pgs. 49-50.) Regarding the comment that another advantage of BMP-based WQBELs is that it allows the Board to adopt TSOs pursuant to Water Code section 13300 rather than section 13385(j)(3), the Los

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		Angeles Water Board should rely on BMP-based WQBELs to ensure that municipal stormwater agencies are diligently implementing agreed on projects to address water quality issues associated with municipal stormwater. Without a doubt, receiving water quality will improve with the implementation of identified projects as compared to trying to show strict compliance with a numeric WQBELs. Another advantage with BMP-based WQBELs, is that it allows the Los Angeles Water Board to adopt Time Schedule Orders (TSOs) pursuant to Water Code section 13300 rather than via Water Code section 13385(j)(3). Where there is a numeric WQBEL, and the municipality seeks protection from mandatory minimum penalties, TSOs are limited to an initial five-years in duration, with the potential for an additional period not to exceed five years if the discharger is making diligent progress towards meeting the numeric WQBEL. (Wat. Code, §13385(j)(3)(C)(i)-(ii).) BMP-based WQBELs, and compliance therewith, do not trigger application of mandatory minimum penalties. (See Wat. Code, §13385.1(d), ["For the purposes of … subdivision (h), (i), and (j) of Section 13385 only, 'effluent limitation' means a numeric restriction or a numerically expressed narrative restriction, on the	Angeles Water Board acknowledges that TSOs issued under section 13000 do not have a statutory cap, however, the Board does not agree that the 5- to 10-year cap on TSOs issued under section 13385(j)(3) provides inadequate time for Permittee(s) to meet applicable WQBELs. TSOs issued under both section 13385(j)(3) or section 13000 provide time to comply with applicable limitations and are *in addition to* the compliance schedules that were incorporated as part of the TMDL implementation schedules. The TMDL implementation schedules typically range from 10 to over 20 years. Additionally, the Board has already approved some extensions of TMDL deadlines. There is nothing that bars the Board from doing so in the future, if it determines that such an extension is warranted. Additionally, the commenter should note that not all violations of numeric effluent limitations will trigger mandatory minimum penalties (MMPs). MMPs for serious violations are only issued for violations of a pollutant identified as a "Group I" or "Group II" pollutant in Appendix A to 40 CFR section 123.45 if the violation exceeds the applicable objective by 40 percent or 20 percent, respectively (Water Code § 13385 subd. (h)(2).)

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		quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants …. An effluent limitation, …, does not include a receiving water limitation, a compliance schedule, or a best management practice."].) Accordingly, this provides the Los Angeles Water Board with more latitude to adopt TSOs that are realistic and reflective of the time it takes municipalities to plan for and implement the type of infrastructure related BMPs that are likely needed for municipal stormwater to meet certain TMDL WLAs. Under Water Code section 13300, the TSO needs to include a detailed time schedule of specific actions that the discharger will take to meet waste discharge requirements, which includes water quality standards-based requirements (i.e., receiving water limitations, TMDL WLAs). If a discharger fails to comply with the time schedule, additional enforcement may be brought by the Los Angeles Water Board onto the discharger for failing to comply, thereby providing the Los Angeles Water Board and the public with the assurance that BMP commitments will be implemented. Notably, TSOs do not protect MS4s from potential citizen suit actions. By coupling BMP-based WQBELs with TSOs, the Los Angeles Water Board can provide MS4s with a realistic and practical pathway	(Trash and bacteria are not considered Group I or Group II pollutants.) MMPs for chronic violations are only issued where there are 4 or more violations in a six-month period. To the extent the commenter is concerned about citizen suits see response to comment #G.32.

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		towards compliance. This is particularly important where TMDL compliance schedules in the Water Quality Control Plan for the Los Angeles Region (Basin Plan) have expired. Otherwise, MS4s will not have a feasible path to demonstrating compliance with the permit conditions. For all of the reasons expressed above, BMP-based WQBELs should be the default standard.	
C.1.7	VCSQMP	*The Draft Fact Sheet Fails to Consider Ventura County Specific Facts and Circumstances, Which Supports the Use of BMP-based WQBELs* In addition to faulty legal representations, the Draft Fact Sheet also fails to support its findings for numeric WQBELs as applied to Ventura County. On pages F-121 through F-123, the Draft Fact Sheet includes a fairly high level and generic explanation as to why numeric WQBELs are appropriate for MS4 discharges in the Los Angeles Region. The rationale provided is directed to facts and circumstances with respect to Los Angeles County as is shown by reference to the 2012 permit, WMPs and EWMPs. It fails to consider any facts or circumstances specific to Ventura County, which are very different from those in Los Angeles County. Most notably, Ventura County permittees can show progress with meeting TMDL provisions and	**No change.** See, response to comments numbers C.1.5, G.4, H.4.1.b, I.1.37, and I.1.38. TMDL waste load allocations are incorporated into permits as water quality-based effluent limits. As stated in the 2010 Ventura County MS4 Permit finding D.5, "The TMDL WLAs in the Order are expressed as water quality-based effluent limits in a manner consistent with the assumptions and requirements of the TMDL from which they are derived." As noted by this finding, WQBELs for TMDL WLAs were included in the 2010 Ventura County MS4 Permit like the 2012 Los Angeles County MS4 Permit. The analysis in the Fact Sheet supporting the inclusion of WQBELs is not high level or generic and includes Ventura County-specific information. The Fact Sheet includes a detailed presentation of

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		removing water quality impairments through their BMP-based programs. The success for Ventura County is in part due to the multi-stakeholder watershed approaches that have been utilized to implement Ventura County TMDLs. This collaboration enables all dischargers in the watersheds (nonpoint and point sources) to work collectively to resolve water quality impairments. The numeric WQBELs create challenges for these collaborative approaches by forcing MS4 specific compliance determinations without a clear mechanism for accounting for joint efforts that provide multiple benefits to the watersheds. Consideration of permit conditions that support watershed approaches that include coordination with nonpoint sources was not evaluated for the 2012 permit. When the facts and circumstances specific to Ventura County are considered, BMP-based WQBELs are appropriate and should be incorporated into the Draft Regional Permit for ensuring compliance with TMDL WLAs and/or receiving water limits associated with TMDLs.	stormwater quality monitoring data from multiple monitoring locations in Ventura County. See Part II.E, pages F-30 to F-47 of the Fact Sheet. The Fact Sheet also notes in Part I.D on page F-9 that the Ventura County Permittees' reapplication package assumed that the future permit would follow the structure of the Los Angeles County MS4 Permit and therefore, the Permittees framed their proposals for changes to the permit accordingly. Note that neither BMP-based nor numeric WQBELs preclude Permittees from collaborating with non-MS4 Permittees. Either approach requires Permittees to implement BMPs and compliance is determined accordingly. Although NPDES permits do not regulate non-point sources, the Regional Permit includes provisions that support coordination with non-MS4 entities. The permit allows for compliance with numeric WQBELs to be demonstrated in receiving waters, so that permittees can work together and with other non-MS4 entities to collectively treat runoff. This is the case for every WQBEL as discussed in the compliance determination section of the Tentative Permit (Part X.B.2.a.ii). In

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			addition, for the Calleguas Creek TMDLs specifically (Attachment N), compliance can be demonstrated at the base of the subwatershed to which the MS4 permittees discharge to allow for a watershed-based, coordinated approach.
C.1.8	VCSQMP	*Remove the WQBELs from the permit or designate that an approved WMP will become the final TMDL WQBEL once approved.* The inclusion of numeric WQBELs and the associated timelines for TMDLs is one of the most significant challenges with the Tentative Order identified by the Program. The numeric WQBELs are the primary driver for costs of compliance, raise the most questions regarding implementation and compliance, and drives the watershed planning efforts to the potential detriment of identifying multi-benefit watershed solutions. As noted in our comments on the Working Proposal, while the Program recognizes that including numeric WQBELs provides the appearance of clear and measurable milestones for compliance, the interpretation of numeric WQBELs in the context of stormwater discharges has raised a number of questions and challenges. In reviewing monitoring data for Ventura County and trying to assess the ability to comply with WQBELs, a number of questions have arisen:	**No change.** See response to C.1.1. The Regional MS4 Permit uses a hybrid approach, in which permittees may comply with interim narrative WQBELs and must comply with final numeric WQBELs at the end of the TMDL implementation schedules, or alternatively, capture the 85th percentile, 24-hour stormwater volume for the drainage area. The numeric WQBELs are a backstop if BMPs are not implemented and ensure that final water quality outcomes will be achieved. Further the conclusion that numeric WQBELs will drive costs of compliance more than WQBELs that are expressed as BMPs is unsupported. Regardless of how WQBELs are expressed, numerically or narratively, they must be adequate to achieve the TMDL WLAs by the applicable deadlines. As such, the cost of compliance is expected to be the same. (See also discussion on the expression of WQBELs in Part V.B.2 the Fact Sheet and response to comment #H.5.1.)

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		• If the monitoring data are in compliance for a significant period of time and then a single exceedance occurs, are the Permittees in violation and subject to mandatory minimum penalties? • If an exceedance occurs only during large storm events (e.g. greater than the 85th percentile storm event), are the Permittees in violation and subject to mandatory minimum penalties? • If an exceedance occurs due to a one-time event that is addressed (e.g. dumping) are there any provisions to prevent mandatory minimum penalties? • How are the averaging periods for the WQBELs considered when they are longer than a storm event? • How do multi-benefit regional projects provide compliance for upstream Permittees? For other types of permits in which numeric WQBELs are included, these types of questions can be easily answered. But for stormwater runoff, the variability, variety of sources, and limitations on controls make it challenging for Ventura County Permittees to implement controls that can meet the WQBELs with "no exceedances", as is currently written in the permit.	U.S. EPA agrees with the Board that numeric effluent limitations are not inherently more stringent for stormwater, stating in their comments on the draft permit that "Neither the Clean Water Act nor the 2014 TMDL Memorandum suggest that expressing WLAs as NELs is any more or less stringent than BMPs."[4] The Board has concluded that hybrid approach to relies on both BMP-based and numeric WQBELs provides the greatest flexibility to permittees to comply with the TMDL provisions of the permit, while being consistent with federal law, regulation, and guidance, and considering the specific facts in the Los Angeles Region. This approach was also supported by the State Board in its 2015 Order on the 2012 LA County permit. In the 2015 Order, the State Board specifically declined to amend the 2012 LA County MS4 permit to allow extensions of final WQBEL and TMDL-based deadlines (i.e. allow permittees to remain in deemed compliance status) because achievement of the deadline was technically or economically infeasible, explaining, "Although we recognize that it may not always be feasible for municipal

[4] *Ibid.*

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		Additionally, as noted above, significant water quality improvements have been made without including numeric WQBELs in the MS4 permit. While the Regional Water Board staff repeatedly state that the current Ventura County MS4 permit contains numeric WQBELs, the Program respectively disagrees with this assessment. This was a very significant topic of negotiation during the adoption of the 2010 permit and while the permit does discuss water quality based effluent limitations, it does not specifically state that numeric limitations are included. The TMDL provisions include wasteload allocations and implementation of BMPs to meet the allocations. Regardless of the reinterpretation of the permit language now, the Program has been implementing the permit based on the assumption that the TMDLs were incorporated as BMP-based effluent limitations. As a result, the progress and successes outlined above, occurred through implementation of a BMP-based effluent limitation approach to incorporating TMDLs in the Ventura permit. This demonstrates that numeric WQBELs are not necessary in Ventura County to meet the TMDL requirements. In contrast, the inclusion of numeric effluent limitations has the potential to have the	storm water dischargers to meet final TMDL deadlines, **short of amending the Basin Plan to modify the deadlines**, we find it appropriate for the dischargers to request time schedule orders rather than be granted an extension within the provisions of the Los Angeles MS4 Order." (WQ Order 2015-0075, p. 37 FN 110. Emphasis added; citations omitted) In response to the specific questions raised in the comment about compliance assessment: • The averaging periods for the TMDL waste load allocations have been incorporated into the permit in Attachments K through S. Thus, for most numeric WQBELs based on a waste load allocation, a single exceedance after a long period of compliance would not constitute a violation. If a violation were to occur, the application of MMPs depends on the magnitude and frequency of the exceedance and the classification of the pollutant. Based on these two considerations, it is very unlikely that a single exceedance after a long period of compliance would trigger an MMP. See also response to comment #G.10.

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		opposite effect. One of the key aspects of obtaining funding for projects is the ability of Permittees to say to decision-makers that if projects are funded, they will be in compliance with their permit requirements. Because of all the questions highlighted above, Permittees can no longer make the statement that the project will provide compliance. The success of the installation of full capture trash devices in the Los Angeles Region demonstrates this phenomenon. When Permittees can provide a clear explanation of the requirements, what needs to be done to implement those requirements, and that implementing those projects will be compliance, it is much easier to obtain funding. The Program recognizes that adaptive management will be needed and it is possible that additional strategies and projects may be required after implementing the proposed plan. However, the key difference is that the Permittees would continue to be in compliance with the permit requirements as they figure out what to do next and implement the next round of projects, rather than being out of compliance and potentially subject to mandatory minimum penalties due to the fact that stormwater planning, control measure effectiveness, and monitoring are much more variable and uncertain that other types of	• The permit includes an illicit discharge detection and elimination program to prevent dumping. If an exceedance occurs due to an event outside of the permittees control, permittees may not be subject to mandatory minimum penalties per Water Code section 13385(j)(1). See also response to comment #G.10. • All attempts have been made to provide comprehensive direction in Attachments K through S, Attachment E, and Part X of the Revised Tentative Order on the application of averaging periods to WQBELs. A consideration of the length of averaging periods as compared to the length of a storm can further be determined on a case-by case basis through the permittees' IMP or CIMP. • As stated in response to comment number C.1.7, the permit allows for compliance with numeric WQBELs to be demonstrated in receiving waters, so that upstream permittees can work with downstream permittees to demonstrate compliance using regional projects. Regarding the comment that permittees have made progress attaining TMDLs based on their assumption that the

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		discharges. Right now, the permit structure makes MS4 Permittees subject to the same requirements with the expectations that they can achieve the same results as dischargers with a single point of discharge and complete control over their treatment processes. As noted in our comment letter requesting a workshop on this issue, significantly more information and options for how to potentially incorporate the TMDLs into the permit are now available, but none of these options were evaluated. In 2012, the Regional Water Board was faced with incorporating a large number of TMDLs into the permit for the first time and had very little data and information on MS4 discharges in Los Angeles County. This is not the case now. Ventura County has had the TMDLs in the permit, has made progress in implementing them, has improved water quality and removed multiple impairments ahead of schedule. This information was not evaluated or considered in determining the approach to incorporating TMDLs for Ventura County. Nor were any of the other approaches taken throughout California or the rest of the Country considered. In addition to all of the information above, in the legal attachment (Attachment 2), we have included a more detailed discussion of the numerous reasons why we disagree with the	TMDLs were incorporated as BMP-based effluent limitations, the Board disagrees. While some progress has been made, as shown by the data analysis in Part II.E, pages F-30 to F-47 of the Fact Sheet, there are still many instances where TMDLs are not yet attained, where MS4s have been determined to be a source, and where a waste load allocation has been calculated. On September 13, 2018, the Board held a public workshop on the status of implementation of the 2010 Ventura County MS4 Permit. Staff provided an overview of monitoring trends in Ventura County. Staff noted that concentrations of metals in dry weather were usually below objectives and that concentrations of some metals during wet weather have shown improvement, while exceedances of bacteria objectives in wet and dry weather continue to be a concern. Based on the monitoring data as presented in the Fact Sheet and the workshop, numeric WQBELs continue to be necessary in Ventura County. As noted above, the questions posed by the comment regarding compliance assurance with numeric WQBELs can, in fact, be answered. Thus, permittees can design and implement projects that will achieve numeric WQBELs in order to

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		conclusion of Regional Board staff that inclusion of numeric WQBELs are necessary and feasible to calculate. We request consideration of all those factors when evaluating the proposed alternative provided in this cover letter and Attachment 1. The Ventura County Permittees would prefer that the numeric WQBELs be removed from the permit for all Ventura County TMDLs. However, if this step is not taken, the Ventura County Permittees would like a compliance option for the approved WMP to become the WQBEL for final TMDL compliance. This approach is already justified in the fact sheet on page F-123: "While the Los Angeles Water Board finds that inclusion of numeric WQBELs in the Order is appropriate and necessary to achieve compliance with the TMDLs WLAs as required by federal law, at the same time, the Los Angeles Water Board also finds it appropriate to allow permittees to, alternatively and voluntarily, comply with the numeric WQBELs by implementing approved Watershed Management Programs comprised of a suite of BMP-based control measures. Watershed Management Programs must be accompanied by demonstrations, via computer modeling, that the BMPs will meet the numeric WQBELs.	provide decision makers with the certainty they require to make funding decisions. It wouldn't be consistent with federal guidance that BMPs be clear, specific, and measurable, to allow permittees who have exceeded WQBELs to "continue to be in compliance with the permit requirements as they figure out what to do next and implement the next round of projects," as suggested by this comment. The Board has considered the progress in implementing TMDLs and the status of water quality when determining the hybrid approach in the Regional MS4 Permit. See for example, Part II.E pages F-30 through F-47 of the Fact Sheet, as well as sections V.B and VI of the Fact Sheet. The Board has also considered approaches taken by other permitting agencies in California and throughout the country and held workshops on October 15, 2020 and December 10, 2020 to specifically discuss these approaches with Permittees and staff. MS4 staff participate in a roundtable with U.S. EPA Region IX representatives and MS4 permit staff from around the state. They share ideas and discuss the legal and policy aspects of various permitting approaches. MS4 staff throughout the

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		This alternative BMP-based option satisfies U.S. EPA's guidance that MS4 permits include "effective, measurable WQBELS...that is projected to achieve the WLA." Based on this finding in the Fact Sheet, the Los Angeles Water Board finds it appropriate for the Permittees to comply using a WMP. Additionally, on page F-217, the Los Angeles Water Board finds that the WMP requirements and specifically the Reasonable Assurance Analysis (RAA) demonstrates the ability of the control measures in the WMP to meet the WQBELs and RWLs. "For WQBELs and receiving water limitations associated with a TMDL, the objective of the RAA is to demonstrate that the selected water quality control measures will achieve the applicable TMDL provisions. In the case of WQBELs and receiving water limitations not addressed by a TMDL implementation plan (either because there is no TMDL or because its U.S. EPA TMDL without a state adopted program of implementation), the objective of the RAA is to demonstrate the ability of the selected water quality control measures in the Watershed Management Program to ensure that Permittees' MS4 discharges do not cause or contribute to exceedances of applicable WQBELs and receiving water limitations."	state coordinate with State Board and U.S. EPA Region IX, and the permitting decisions for each region are based on the same laws, regulations, and guidance. The differences in the permitting approaches between the regions are based on the unique conditions of each region and the TMDLs that apply. The San Bernardino MS4 permit, which is mentioned in the comment, incorporates *two* TMDLs. In comparison, the Regional MS4 Permit includes 45 TMDLs. The relative contribution of MS4s and the magnitude of the impairments being addressed differs from the San Bernardino permit. A different approach to the incorporation of waste load allocations is thus supported. A BMP-only approach, which was largely employed in the region's early generation MS4 permits, has not been effective in addressing water quality impairments due to MS4 discharges. The failure of BMPs in these early generation permits was discussed in the 2006 blue ribbon panel report, which acknowledged that there was a lack of incentives and accountability regarding the need to implement BMPs that would achieve specific water quality results. The inclusion of numeric WQBELs is also

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		Given these two findings, once a WMP is approved in accordance with the permit requirements, the Permittees will have demonstrated that the control measures are sufficient to serve as a BMP-based WQBEL, without the need to incorporate the WMP into the permit. This approach was utilized in the San Bernardino and Riverside County MS4 permits. By allowing WMPs to become the WQBELs after approval, the permit would provide Permittees with certainty that if they implement their plan, they will be in compliance with the permit and not subject to violations and fines due to sporadic water quality exceedances. This option would also provide incentives to fund the plans so that compliance can be maintained. It may also be possible for this option to be used to address concerns with timing and scheduling. Other MS4 permits, such as Caltrans, have included extended compliance schedules or options for incorporating extended compliance schedules through the adoption of a WMP. While we understand this may be challenging to do legally, the Ventura County Permittees request consideration of the language proposed in Attachment 1 to see if a viable pathway could be identified. Without modifying the permit language to	consistent with the evolution of the permitting approach for MS4 discharges described by U.S. EPA in its 1996 policy and subsequent memos in 2002, 2010, and 2014. The requested change to remove numeric WQBELs from the permit is not made. The requested change to have the WMP become the WQBEL after approved is not made either. WMPs can predict the ability of BMPs to attain WLAs through the RAAs. However, there is still some uncertainty about the ability of RAAs to ensure that BMPs will attain WQBELs. This inherent uncertainty is the primary reason that Tentative Order includes adaptive management provisions requiring Permittee(s) to periodically update their WMPs in response to new data and information. Therefore, reliance on BMP based WQBELs alone is not sufficient to fulfill some of the key criteria for incorporating WLAs in the permit. (See also responses to comments #F.11, #G.35, and # H.1.2.a.)

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		allow more time, unrealistic past due and upcoming TMDL deadlines would force development of WMPs that do not reflect the actual time for implementation of control measures that the Ventura County Permittees have experienced during the past 10 years of TMDL implementation. As noted on page F-205 of the Fact Sheet: "The Watershed Management Program is a voluntary alternative compliance pathway that allows Permittees to implement permit requirements in an integrated manner on a watershed basis, including demonstrating compliance with numeric WQBELs by implementing BMPs." As none of the findings above distinguish between interim and final numeric WQBEL compliance, the Ventura County Permittees request that the Tentative Order be modified to explicitly allow the WMPs to become WQBELs for final TMDL compliance as well as interim. The Ventura County Permittees would be interested in working with the Regional Water Board and other interested parties to identify the structure and reporting requirements that would be needed to support adding this compliance option. We have provided one suggested approach in Attachment 1.	

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		Recommendation The Ventura County Permittees request that either the WQBELs be removed from the permit or the suggested permit modifications in Attachment 1 be incorporated into the final order. [Attachment 1]: Modifications to Section IV. Effluent Limitations and Discharge Specifications **A. Effluent Limitations…** **2. Water Quality-Based Effluent Limitations.** Each Permittee shall comply with applicable water quality-based effluent limitations (WQBELs) as set forth in Attachments K through S of this Order, pursuant to applicable compliance schedules. The WQBELs in this Order are consistent with the assumptions and requirements of the TMDL waste load allocations (WLAs) assigned to discharges from the MS4.[1] Once approved by the Regional Board, the WMP, including the adaptive management process, shall be incorporated into this Order as the final WQBELs for the TMDLs included in Attachments K through S of this Order. Based on the adaptive management process, the WMP shall be updated, if	

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		necessary. The updated WMP shall be implemented upon approval by the Regional Board. **B. Total Maximum Daily Load Provisions** **1. General** **a.** The provisions of this Part IV.B implement and are consistent with the assumptions and requirements of available WLAs established in TMDLs applicable to the Permittees, including programs of implementation and schedules, where provided for in the State adoption of the TMDL (40 CFR §122.44(d)(1)(vii)(B); Cal. Wat. Code §13263(a))… **d.** ~~Permittees shall comply with the applicable WQBELs and/or receiving water limitations contained in Attachments K through S of this Order, consistent with the assumptions and requirements of the WLAs established in the TMDLs, including programs of implementation and schedules, where provided for in the State adoption of the TMDL (40 CFR §122.44(d)(1)(vii)(B); Cal. Wat. Code §13263(a))~~. Permittees that elect to prepare WMPs as set forth in Part IX shall implement approved WMPs to be found in compliance with	

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		WLAs and other requirements of TMDLs.	
C.1.9	VCSQMP	*Approved Watershed Management Plans Should Become Final BMP-based WQBELs* Under the current Draft Regional Permit structure, incorporation of final BMP-based WQBELs can be achieved most readily by revising WQBEL language in Section IV of the Draft Regional Permit to incorporate approved Watershed Management Plans (WMPs) as the final WQBEL. (See Attachment #1 to Ventura Submittal.) Under this approach, the approved WMP would be the WQBEL rather than a numeric WQBEL based on the WLA. WMPs include suites of BMPs that are measurable and objective, and thus consistent with U.S. EPA's 2014 Guidance. Further, recognizing the WMP (or WMPs) as the final WQBEL is consistent, at least in part, with the Los Angeles Water Board's purposes for including WMPs as an alternative compliance approach. At F-123 of the Draft Fact Sheet, there is an expressed intent of the Los Angeles Water Board to allow for permittees to, "alternatively and voluntarily, comply with the numeric WQBELs by implementing approved Watershed Management Programs comprised of a suite of BMP-based control measures." (Draft Fact Sheet, p. F-123.) The subtle difference between what is stated in the Draft Fact Sheet and the approach proposed by the	**Change made.** Regarding the use of Watershed Management Plans as final BMP-based WQBELs, the Los Angeles Water Board disagrees that the Regional Permit should allow WMPs to serve as final BMP-based WQBELs for compliance with TMDLs, as discussed in response to comment #C.1.8, #F.11, #G.35, and #H.1.2.a. Nevertheless, Part IX.B.9 of the Revised Tentative Order clarifies that TSOs, which have been approved, can be considered in the schedule for a WMP. See response to comment #F.8 for additional discussion on this change. Regarding the use of Basin Plan Amendments to extend final TMDL deadlines, see response to comments #C.1.6, #G.1, and #G.32.

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		Program is that whereby the Los Angeles Water Board looks to WMPs as alternative compliance for meeting numeric WQBELs, we recommend that the approved WMPs become the final WQBELs rather than numeric WQBELs. The use of approved WMPs as WQBELs would be effective, measurable WQBELs that are projected to achieve WLAs. (See, e.g., U.S. EPA 2014 Guidance, p. 6.) Key advantages to this approach include, but are not limited to the following: 1) Consistent with section 402(p)(3)(B) of the CWA and 40 CFR § 122.44(k)(2); 2) Consistent with Order WQ 2015-0075; 3) Expands on existing Ventura County watershed programs; 4) Provides MS4 dischargers with a practical path towards compliance for difficult and complex pollutant issues associated with stormwater; 5) Recognizes the inherent difficulties of meeting “numeric” effluent limits at the end of an outfall; and, 6) as discussed above, provides the Los Angeles Water Board with more discretion with respect to the use of TSOs where TMDL compliance schedules have already expired. Opponents of this approach may argue that for WMPs to be considered final BMP-based WQBELs that the Los Angeles Water Board would need to re-open the permit. We	

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		disagree. The Draft Regional Permit sets forth specific requirements and expectations for WMPs, which enables the Los Angeles Water Board to declare that approved WMPs are in fact final BMP-based WQBELs. Direct Los Angeles Water Board action is not necessary, and has already been shown, the public can challenge Executive Officer approved WMPs to the Los Angeles Water Board and the State Water Board. Thus, the process remains transparent and open to the public. Moreover, a WMP that addresses TMDL WLAs where the Basin Plan schedule for compliance has already expired can be coupled with a TSO for those specific constituents. By approving a TSO along with, or as part of, a WMP, the Los Angeles Water Board provides MS4 dischargers with a pathway for compliance. While allowing for more time to comply with TMDLs within the permit, as was done in the 2012 Caltrans permit is preferred by the Program, we recognize that the Los Angeles Water Board staff does not view this as viable. However, rather than arbitrarily discounting this option, we request further evaluation of available alternatives to addressing TMDL compliance where deadlines have already passed. In fact, we believe that the Los Angeles Water Board has the legal authority to recognize that implementation of an WMP (as the BMP-	

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		based WQBEL) as approved is the equivalent of meeting the TMDL WLA and thus provides for TMDL compliance. In other words, the WMP is the WQBEL and compliance with the WMP-based WQBEL constitutes TMDL WLA compliance. Another option would be for the Los Angeles Water Board to amend the Basin Plan to address these situations. This option is preferred by the Program as compared to adopting a TSO, but we recognize that Basin Plan amendments can be time consuming and resource intensive. The approach of combining a WMP with a TSO can be accomplished through the Draft Regional Permit and WMP process contained therein. Importantly, like with the WMP, a TSO can be approved by the Executive Officer and does not require Los Angeles Water Board action. (See Wat. Code, §13223.) Prior to approving a TSO, it must be noticed for public comment for a period of at least 30-days. (Wat. Code, §13167.5 (a)(4).) This process is consistent with that used by the Los Angeles Water Board for WMP public review and comment, and thus the two can be combined. In summary, the Program recommends that the Draft Regional Permit be revised to reflect that approved WMPs are final BMP-based WQBELs and that implementation of the	

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		WMP constitutes compliance with TMDLs. In the event that the Los Angeles Water Board finds that this option is not legally feasible, after careful evaluation, then the Draft Regional Permit should clearly note that TSOs can be used as part of a WMP for meeting TMDL WLAs (through the implementation of BMPs) where a Basin Plan schedule for compliance has already expired.	
C.1.10	VCSQMP	**Total Maximum Daily Load Provisions** Many statements contained in the Draft Fact Sheet improperly suggest that numeric WQBELs are necessary to be consistent with WLAs in TMDLs. Putting aside the issue of whether WQBELs are required at all, the Los Angeles Water Board has significant discretion in how it incorporates TMDLs into MS4 permits. As noted by the United States District Court for the District of Columbia, "…, EPA regulations require NPDES permits merely to be 'consistent with the assumptions and requirements of any available wasteload allocation,' in a TMDL." [footnote] 3 The court further noted that "EPA has taken position that *Friends of the Earth* does not require changes to permitting, precisely because its regulations do not necessitate permits and TMDLs to be mirror images of one another." [footnote] 4 [footnote 3]: *Anacostia Riverkeeper, Inc. v. Wheeler* (USDC, D.C. 2019) 404 F.Supp.3d 160, 180.	**Change made.** See response to comment #C.1.1, #C.1.3, #C.1.5 and #C.1.6 (regarding wet weather bacteria). With respect to whether it is necessary to incorporate TMDL WLAs herein as numeric effluent limitations, the Los Angeles Water Board has found that, under the facts and circumstances here, numeric effluent limitations are necessary to achieve water quality standards, and that it is feasible to calculate them. Because a BMP only approach has not yet been effective in achieving water quality standards, translation of TMDL WLAs into numeric water quality based limitations and/or receiving water limitations are necessary. (See also discussion in response to comments #F.11, #G.35, #H.1.2.a; Fact Sheet at Parts II.E; V.B; and VI D, E, and F).

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		[footnote 4]: *Anacostia*, 404 F. Supp.3d, 181. Moreover, TMDLs should be treated as informational tools. (See Anacostia, p. 181, ["Recall, however, that the Act treats TMDLs as information tools. They allow stakeholders – whether regulated sewer authorities, federal or local regulators, environmental groups, or recreational users – to plan and monitor anti-pollution efforts."].) In cases such as here where WQBELs are being included in an NPDES permit, such WQBELs need to be consistent with the assumptions and requirements of available WLAs. Being consistent with does not mean that WQBELs need to be numeric or match the WLAs. Thus, just because a WLA may be expressed numerically does not mean that a WQBEL must also be expressed numerically. Further, the guidance relied on by the Los Angeles Water Board is just that – *guidance*. It is not legally binding on the Los Angeles Water Board. The U.S. EPA 2014 Guidance presents recommendations – not findings of law. Even so, the U.S. EPA 2014 Guidance recognizes that for municipal stormwater agencies have significant discretion even if it is arguably feasible to include numeric WQBELs. "NPDES authorities have significant flexibility in how they express WQBELs in MS4 permits (see examples in	TMDL WLAs have been translated into WQBELs and/or receiving water limitations that are consistent with the assumptions and requirements of the TMDL WLAs. The assumptions and requirements include, but are not limited to, numeric values and averaging periods. For those TMDLs that do not specify averaging periods for the WLAs, the averaging period for the WQBELs and/or receiving water limitations in the Order is based on the averaging period for the TMDL numeric targets. For each TMDL pollutant category, to the extent possible, the WLAs have been incorporated into the Order in a consistent manner. Some TMDLs specify alternative means of demonstrating compliance with WLAs; these alternative means of demonstrating compliance are included in the TMDL provisions in Part IV.B and Attachments K through S of the Revised Tentative Order. Regarding the comment about what must be in a Fact Sheet and Administrative Record for the permit, 40 CFR § 123.25 sets forth requirements for state NPDES permitting programs. State programs must be administered in conformance with 40 CFR § 124.8, which sets forth requirements for fact sheets. Principally, the fact sheet must include the "principal

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		Box 1 of the attachment).” [footnote] 5 In the aforementioned “Box 1,” examples include numeric expressions as well as non-numeric expressions. Box 1 defines non-numeric expressions as: “The MS4 Permit establishes individualized, watershed-based requirements that require each affected MS4 to implement specific BMPs within the permit term, which will ensure reasonable further progress towards meeting applicable water quality standards.” [footnote] 6 Examples of such BMP based, non-numeric expressions are then provided. [footnote 5]: U.S. EPA 2014 Guidance, p. 4. [footnote 6]: U.S. EPA 2014 Guidance, Attachment, p. 10 Notably, explanation of numeric expressions is also fairly-broad in the guidance and reflects that such expressions are not limited pollutant concentration-based limits. Rather, numeric expressions are defined as: “The MS4 Permit includes a specific, quantifiable performance requirement that must be achieved within a set timeframe.” [footnote] 7 The examples provided include load reductions on percentage basis, restoration of impervious areas, and a planting rate for trees as well as a pollutant concentration-based limit. In other words, the use of numeric WQBELs is also flexible and can be expressed in many different manners.	facts” and the “significant factual, legal, methodological and policy questions” considered in preparing the permit. A key factual and methodological issue is whether WQBELs expressed as BMPs would be sufficient to achieve applicable TMDL WLAs. If the Board proposed expressing WQBELs as BMPs only rather than as numeric WQBELs, the Board would need to include the facts to support this in the fact sheet and in the permit’s administrative record. This interpretation of 40 CFR 123.25 is affirmed by and consistent with U.S. EPA’s 2014 Memorandum, which states with regard to all permitted stormwater discharges, including MS4 discharges, “As discussed in the 2002 memorandum, the permit’s administrative record *needs to provide an adequate demonstration* that, where a BMP-based approach to permit limitations is selected, the BMPs required by the permit will be sufficient to implement applicable WLAs” (U.S. EPA 2014 Memorandum, p. 6. emphasis added). The Fact Sheet has been revised to remove references to 40 CFR §§ 124.9 and 124.18. To the extent the commenter is suggesting that the Permit must contain certain minimum findings under state law,

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		[footnote 7]: Id. Unfortunately, rather than using the discretion provided to the Los Angeles Water Board to consider incorporating TMDLs with non-numeric expressions (i.e., BMP-based WQBELs) or quantifiable performance requirements, the Draft Regional Permit relies almost exclusively on pollutant concentration-based limits. (See, Draft Fact Sheet, p. F-137, ["The assumptions and requirements include, but are not limited to, numeric values and averaging periods."].) Incorporation of TMDLs in this manner will make it nearly impossible for the Program to comply with many of the newly created numeric WQBELs, especially those associated with wet weather bacteria. Instead of creating immediate or nearly immediate non-compliance with numeric WQBELs, the Program encourages the Los Angeles Water Board to reconsider its position with respect to using numeric WQBELs. On a related issue, the Draft Fact Sheet alleges that sections 124.8, 124.9 and 124.18 of Title 40 of the Code of Federal Regulations required the permit's administrative record to support "the expectation that BMPs are sufficient to achieve the WLAs." (Draft Fact Sheet, p. F-125.) Reliance and reference to these federal regulatory provisions is	the findings supporting the Order, and the associated evidence in the administrative record, are consistent with state law as discussed in response to comment #H.1.2.f.

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		improper. First, 40 CFR § 124.8 contains the requirement that there be a fact sheet for NPDES permit. Nothing within the fact sheet provision supports the statement that the administrative record needs to show how BMPs are sufficient to achieve the WLAs. Next, with respect to 40 CFR §§ 124.9 and 124.18, these administrative record provisions apply ONLY to permits issued by U.S. EPA. Since the Draft Regional Permit is being issued by the Los Angeles Water Board and not U.S. EPA directly, these two sections are not applicable here. Since these federal regulatory provisions are not applicable, the Los Angeles Water Board must look to apply state legal standards for supporting permit provisions. Under state law, a state agency must ensure that there is sufficient evidence to support permit provisions, and that the evidence is summarized in findings. (*Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255, 1281; See Environmental Protection Information Center v. California Department of Forestry and Fire Protection (2008) 44 Cal.4th 459, 516.) This requirement applies regardless if WQBELs are BMP-based or numeric. Either way, the Los Angeles Water Board needs to evaluate "sufficient" evidence. However, the Los Angeles Water Board does need to affirmatively prove within the administrative	

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		record that BMPs will absolutely achieve WLAs.	
C.1.11	RWG Law on behalf of the Cities of Agoura Hills, Beverly Hills, Covina, Culver City, Hidden Hills, La Mirada, Manhattan Beach, Maywood, Monrovia, San Marino, and Westlake Village	**The Regional Board Need Not Require Strict Compliance with Water Quality Standards.** Before explaining the Cities' approach in detail, it is important to address the Regional Board's obligations when permitting MS4s. NPDES permits issued for MS4s need only "require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." [footnote] 1 The so-called "maximum extent practicable" or "MEP" standard "is a highly flexible concept that depends on balancing numerous factors, including the particular control's technical feasibility, cost, public acceptance, regulatory compliance, and effectiveness." [footnote] 2 Indeed, the Tentative Permit's Fact Sheet states that "the MEP standard is an ever evolving, flexible and advancing concept, which considers technical and economic feasibility." [footnote] 3 Congress adopted the MEP standard to address the practical and administrative difficulties in regulating MS4 discharges. [footnote] 4 Regulating Los Angeles and Ventura counties' complex,	**No change.** See response to comment number C.1.1, C.1.3; F.22; G.25; and H.1.2.a.

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		interconnected MS4s requires such flexibility given the permittees' different economic means. [footnote 1]: 33 USC § 1342(p)(3)(B)(iii) (emphasis added). [footnote 2]: *Bldg. Indus. Ass'n of San Diego Cty. v. State Water Res. Control Bd.*, 124 Cal.App.4th 866, 889 (2004) (emphasis added). [footnote 3]: Tentative Permit, Fact Sheet Part V.A., pg. F-115 (emphasis added). [footnote 4]: *Bldg. Indus. Ass'n*, 124 Cal.App.4th at 884. The Tentative Permit's Fact Sheet states that the federal Clean Water Act requires the Regional Board to include TMDL-based water quality based effluent limits ("WQBELs") in the Tentative Permit. [footnote] 5 But the notion that the Regional Board is bound to include such water quality standards in the Tentative Permit is incorrect. A long of line of binding cases and precedential orders confirm that the Regional Board has discretion to require, or not require, strict compliance with water quality standards in an MS4 permit. In other words, under the MEP standard, the Regional Board has discretion when evaluating water quality standards as part of an MS4 permit. [footnote 5]: Tentative Permit, Fact Sheet Part V.B.2., pg. F-119.	

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		In *Building Industry Association of San Diego County v. State Water Resources Control Board*, the California Court of Appeal found that "Congress intended to provide . . . the regulatory agency of an approved state . . . the discretion to require compliance with water quality standards in a municipal storm sewer NPDES permit, particularly where . . . compliance will be achieved primarily through an iterative process." [footnote] 6 And, in *Defenders of Wildlife v. Browner*, the Ninth Circuit Court of Appeals stated: "we conclude that Congress' choice to require industrial storm-water discharges to comply with 33 U.S.C. § 1311, but not to include the same requirement for municipal discharges, must be given effect. When we read the two related sections together, we conclude that 33 U.S.C. § 1342(p)(3)(B)(iii) [the MEP standard] does not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C) [controls that meet water quality standards]." [footnote] 7 [footnote 6]: *Bldg. Indus. Ass'n*, 124 Cal.App.4th at 883. [footnote 7]: *Defs. of Wildlife v. Browner*, 191 F.3d 1159, 1165 (9th Cir. 1999). The State Water Resources Control Board ("State Board") has reached the same conclusion. In reviewing the 2012 Los	

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		Angeles County MS4 Permit ("2012 Permit"), the State Board reiterated the holding of these cases, stating: "MS4 discharges must meet a technology-based standard of prohibiting non-storm water discharges and reducing pollutants in the discharge to the Maximum Extent Practicable (MEP) in all cases, but requiring strict compliance with water quality standards (e.g., by imposing numeric effluent limitations) is at the discretion of the permitting agency." [footnote] 8 [footnote 8]: Order WQ 2015-0075, Part II.A, pg. 10 (emphasis added). For similar reasons the incorporation of numeric WQBELs and receiving water limits as a means of achieving water quality standards is not required by the Clean Water Act. In its 2014 memorandum on TMDL incorporation in stormwater permits, EPA stated, "NPDES authorities have significant flexibility in how they express WQBELs in MS4 Permits." [footnote] 9 To the extent that an MS4 permit incorporates TMDL-based water quality standards, they can be expressed either numerically or narratively. [footnote 9]: November 26, 2014 Revisions to the November 22, 2022 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for	

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		Storm Water Sources and NPDES Permit Requirements Based on Those WLAs," pg. 4. In sum, the Regional Board need not require strict compliance with water quality standards in an MS4 permit. The Regional Board has significant flexibility to adopt a workable Permit that recognizes the permittees' financial capabilities. Yet, in contrast to the requirements of the MEP standard, the Tentative Permit's findings in support of that exercise of discretion do not address whether compliance with such limits are financially feasible. [footnote] 10 [footnote 10]: See Tentative Permit, Fact Sheet Part V.B.2, pg. 122.	
C.1.12	City of Port Hueneme, City of Simi Valley, City of Santa Paula, City of Ventura, City of Thousand Oaks, County of Ventura, and VCSQMP	Include specific language designating Watershed Management Programs (WMPs) as the Water-Quality Based Effluent Limitations (WQBELs) for TMDLs once approved. As discussed at the October 2020 workshop on the incorporation of TMDLs into the permit, a number of alternative approaches to incorporating TMDLs into the permit have emerged since the 2012 Los Angeles MS4 Permit (2012 Permit) was adopted. We agree with the alternative approach to incorporating TMDLs proposed by the Program that will be more cost effective, incentivize collaboration and regional projects, and provide more	**No change.** See response to comments #C.1.8, #C.1.9, #F.11, #G.29, #G.34, #G.35, and #H.1.2.a.

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		clarity on assessing compliance for both permittees and the public, while still achieving the ultimate goal of beneficial use protection in the region's waterbodies.	
C.1.13	City of Los Angeles	Attachment F, Part V.B, Pages F-117 through F-123 and Attachment F Part VI.G, Pages F-157 through F-159. Attachment F, Part V.B outlines the rationale for the incorporation of the WQBELs and acknowledges the discretion the Regional Board has in specifying how those WQBELs are expressed in MS4 permits. However, the Fact Sheet does not provide a strong rationale for the policy decision to retain the numeric WQBELs expressed in the 2012 and previous MS4 Permits. In 2012, the Regional Board found that there was insufficient data and information available at that time on the prospective implementation of BMPs to provide the Regional Board reasonable assurance that the BMPs would be sufficient to achieve the numeric WQBELs (see page F-8 of Attachment F of the Regional Board's response to comments on the 2012 MS4 Permit Tentative Order dated October 24, 2012). Since the adoption of the previous MS4 Permits, significant new and relevant information not previously known has been developed, including, but not limited to, the WMPs developed after the 2012 MS4 Permit that outline the level of BMP implementation necessary to achieve the numeric WQBELs,	**No change.** New information obtained since adoption of the 2012 permit has been considered in the Regional MS4 Permit. Regarding information gained from the WMPs, while the WMPs can predict the ability of BMPs to attain WLAs through the RAAs, there is still some uncertainty about the ability of RAAs to ensure that BMPs will attain WQBELs. This inherent uncertainty is the primary reason that Tentative Order includes adaptive management provisions requiring Permittee(s) to periodically update their WMPs in response to new data and information. Therefore, reliance on BMP based WQBELs alone is not sufficient to ensure that WLAs will be attained. The numeric WQBELs also serve as a backstop if BMPs are not implemented to ensure that final water quality outcomes will be achieved. Additionally, while most Permittees in Los Angeles County are implementing approved WMPs and EWMPs, not all Permittees are. Permittees have a choice in the Regional MS4 Permit regarding whether to develop

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		a dedicated funding source has been created in Measure W, and the State Water Board's adoption of the California Department of Transportation (Caltrans) MS4 Permit (Order 2012-0011-DWQ) and subsequent amendments to incorporate TMDLs. Given the new information, the Regional Board has the opportunity to consider a different approach that would 1) result in an implementable MS4 Permit with which Permittees can comply, 2) will result in improved water quality, and 3) will ultimately lead to the attainment of water quality standards. LASAN encourages the Regional Board to review the Caltrans Permit Fact Sheet for information that would support a BMP-based approach to incorporating WQBELs. There are meaningful similarities between the challenges faced by Caltrans and the City. Both entities are addressing numerous TMDLs with Caltrans addressing 84 TMDLs (approximately 500,000 California residents to fund each TMDL) and the City addressing 24 (approximately 164,000 City residents to fund each TMDL). Additionally, the fact sheets in both the Caltrans Permit and the Tentative Order cite similar 40 CFR sections and USEPA guidance documents. As stated in the Caltrans Permit and found within the Tentative Order Fact Sheet, effluent limitations for NPDES-regulated	and implement a WMP as an alternative compliance pathway. For those Permittees that do not use this alternative compliance pathway, interim and final numeric WQBELs are necessary to ensure that the TMDL WLAs are achieved. Regarding the adoption of the Caltrans MS4 permit in 2012, the State Board included BMP-based TMDL requirements rather than numeric WQBELs based on a number of factors, including the fact that Caltrans, a single discharger, was named in over 80 TMDLs state-wide, the fact that Caltrans had relatively little contribution to the exceedances in each of those TMDLs, and the consideration that there was significant efficiency to be gained by streamlining and standardizing control measure implementation throughout Caltrans' state-wide storm water program. Furthermore, while the current Caltrans permit includes a deadline (2034) that exceeds TMDL deadlines in TMDL implementation schedules, it is the Los Angeles Water Board's understanding that the next Caltrans permit will only allow for the 2034 deadline to continue through the use of TSOs.

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		storm water discharges that implement WLAs in TMDLs may be expressed in the form of BMPs (See 33 U.S.C. §1342(p)(3)(B)(iii); 40 CFR §122.44(k)(2)&(3)), and where effluent limitations are expressed as BMPs, there should be adequate demonstration in the administrative record of the permit, including in the Fact Sheet, that the BMPs will be sufficient to comply with the WLAs. Where the two permits differ significantly is the manner in which the TMDLs are incorporated as effluent limitations. The State Water Board found the BMPs outlined in the Caltrans Permit are consistent with the requirements of the WLAs. While the State Water Board and Caltrans conducted an analysis to identify the level of BMPs necessary to attain TMDLs, the analysis was not as robust as the analysis conducted under the WMPs in which the City participated. If the Caltrans analysis is sufficient to support a finding that a BMP-based approach to incorporating WQBELs, then the WMPs should also be sufficient. The Tentative Order should incorporate the findings of the WMPs to support the incorporation of WQBELs as BMPs. Several other components are also worth considering, including the TMDL schedules and the feasibility of the effluent limitations. Regarding the TMDL schedules, the Fact Sheet (pages 157 through 159) suggests that	Regarding technical feasibility of numeric effluent limitations, the 2006 Blue Ribbon Panel report is now 15 years old. In the years since the release of the report, more information about setting waste load allocations and effluent limitations has been gained, as noted in U.S. EPA's 2014 Memorandum. The Project List approach proposed by LASAN, which would allow a BMP-based approach to achieve WQBELs within timeframes that exceed TMDL deadlines, would not be consistent with federal regulations and guidance, or the specific circumstances in the Los Angeles Region. See also response to comment C.1.1, C.1.3, C.1.5, C.1.6, C.1.8, F.11, F.47, G.35, H.1.2.a.

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		permit compliance schedules for attaining WQBELs and receiving water limitations derived from WLAs must be based on a state-adopted TMDL program of implementation and cannot exceed the maximum time that the implementation schedule allows. While the Caltrans Permit incorporates all of the TMDLs adopted in the LA Region that identify Caltrans as a responsible party (all of which are also included in the Tentative Order), the Caltrans Permit does not include the final TMDL dates. Rather, the Caltrans Permit is set up to provide a focused and streamlined process for TMDL compliance and recognizes that, because Caltrans must comply with numerous TMDLs, Caltrans must phase in implementation requirements and that, to achieve the highest water quality benefit as quickly as feasible, this phase-in must be accomplished in a manner that addresses discharges with the highest impact on water quality first. In this manner, the Caltrans Permit provides flexibility in the way the TMDLs are prioritized and does not require Caltrans to meet the final deadlines identified in the TMDLs. The Tentative Order should provide the same flexibility and the Regional Board should use its discretion within the MS4 Permit to provide implementation schedules that are attainable.	

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		Regarding the feasibility of effluent limitations, the Caltrans Permit Fact Sheet relies on the findings of California's Stormwater Blue Ribbon Panel (which was convened specifically to examine the feasibility of incorporating numeric effluent limits in stormwater permits) which concluded that numeric limits were generally infeasible across all three stormwater activities (municipal, industrial, and construction), with a few exceptions (The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater Associated with Municipal, Industrial and Construction Activities, June 2006). On page 9 of the Caltrans Permit Fact Sheet, the findings of the Blue Ribbon Panel are cited in support of a BMP-based implementation approach: "In 2005, the State Water Board assembled a blue ribbon panel to address the feasibility of including numeric effluent limits as part of NPDES municipal, industrial, and construction storm water permits. The panel issued a report dated June 19, 2006, which included recommendations as to the feasibility of including numeric limitations in storm water permits, how such limitations should be established, and what data should be required (SWRCB, 2006). The report concluded that 'It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban	

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		discharges. However, it is possible to select and design them much more rigorously with respect to the physical, chemical and/or biological processes that take place within them, providing more confidence that the estimated mean concentrations of constituents in the effluents will be close to the design target.' Consistent with the findings of the Blue Ribbon Panel and precedential State Water Board orders (State Water Board Orders Numbers WQ 91-03 and WQ 91-04), this Order allows the Department to implement BMPs to comply with the requirements of the Order." Given the significant new information developed since the adoption of the 2012 MS4 Permit, LASAN requests the Regional Board incorporate a BMP-based approach to express WQBELs and provide flexibility with regard to the manner in which TMDLs are implemented that would support alternative schedules to attain final TMDL deadlines. LASAN has outlined such an approach in the form a Project List with specific strikeout edit language in the Tentative Order provided as a separate attachment to the LASAN comment letter.	
C.1.14	Los Angeles Area Chamber of Commerce 2nd Letter	It is apparent in the tentative MS4 Permit the method of incorporating the various Total Maximum Daily Loads (TMDLs) and expression of water quality-based effluent	**No change.** Regarding the preparation of updated watershed management plans, Los Angeles County Permittees, including

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		limitations (WQBELs) in the permit are of paramount significance. Although these methodologies are arguably complex from both a technical and legal perspective, we understand that your Board has discretion on the matter, which has been exercised by other regional boards throughout the state to support successful alternative compliance approaches by their permittees. The Chamber supports comments submitted by the City of Los Angeles (Board of Public Works and LA Sanitation), and others, urging your Board to utilize its discretion and direct staff to incorporate permit terms that support an alternative compliance approach. Ultimately, the flexibility afforded to permittees will ensure that limited funding is directed to achieving water quality improvements rather than litigation, enforcement and/or fines. As emphasized in our first letter, it is paramount that the Regional Board seek ways to achieve its water quality goals within the means of existing revenue sources, and to the full extent possible, avoid imposing additional new tax and other financial burdens on municipalities, residents, and businesses.	the City Long Beach[5], were required to update their WMPs and EWMPs by June 30, 2021 per the requirements of the current 2012 Los Angeles County MS4 Permit. The City of Long Beach and Ventura County Permittees that develop a WMP may modify any WMPs that were not subject to the June 30, 2021 deadline through the adaptive management process in Part IX.E of the Order or on an as needed basis per Part IX.C.2 of the Order. Regarding BMP-based (or narrative) WQBELs in lieu of numeric effluent limitations, see response to comment numbers C.1.1, C.1.3, C.1.6, C.1.8, C.1.13, F.11, G.35, and H.1.2.a. Regarding the use of Measure W funds to achieve MS4 compliance, see response to comment #G.25. Regarding the incorporation of a credit trading program, see response to comment #G.30 regarding shifting resources between Permittees implementing a WMP. Regarding a BMP credit trading program to allow for

[5] The City of Long Beach is subject to the 2014 Long Beach MS4 Permit (R4-2014-0024) but participated in three watershed management programs approved under the 2012 Los Angeles MS4 Permit.

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		Following are the key elements of the recommended alternative compliance approach proposed by the City of Los Angeles and other key stakeholders and permittees in the Region: 1. Preparation of updated Watershed Management Plans (WMPs), including interim milestones, that outline best management practices (BMPs) needed to attain effluent and receiving water limitations; 2. Approval and adoption of WMPs and the associated BMP-based WQBELs in lieu of numeric effluent limitations; 3. Inclusion of a BMP credit trading program to allow for participation in regional or sub-regional stormwater control projects when on-site measures are infeasible or impractical; and 4. Prioritization of the most cost-effective solutions and use of available funding, including revenues from Measure W, to achieve MS4 compliance.	participation in regional or sub-regional stormwater control projects when on-site measures are infeasible, the Tentative Order already accommodates this opportunity in Part VIII.F.5.c (Part VIII.F.4.c in the revised Tentative Order), "Alternative Compliance Measures," under the Planning and Land Development Program.
C.1.15	Santa Ana Region MS4 Permittees	**Final allocations for Total Maximum Daily Loads (TMDLs) should be incorporated into the Tentative Order utilizing a BMP approach, rather than numeric water quality based effluent limitations (WQBELs)** The Santa Ana Region MS4 Permittees are concerned about the incorporation of TMDL wasteload allocations (WLAs) into the	**No change.** Regarding incorporation of BMP-based WQBELs rather than numeric WQBELs, see response to comment numbers C.1.1, C.1.3, C.1.6, C.1.8, F.11; and G.35, and H.1.2.a. Regarding the permitting examples included in the EPA compendium, EPA notes that their inclusion should not be

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		Tentative Order as numeric WQBELs. The Santa Ana Region MS4 Permittees recommend that the Regional Board explore alternatives to numeric WQBELs, including using a BMP-based approach using clear, measurable metrics rather than numeric WQBELs. This recommendation is based on the following rationale: <u>Other approaches, such as BMP-based WQBELs are Consistent with Available Guidance</u> Including BMP-based WQBELs or other approaches to incorporating TMDLs is consistent with available guidance from the United States Environmental Protection Agency (USEPA), the State Water Board Order 2015-0075 (Order 2015-0075) on the 2012 Los Angeles County MS4 Permit (2012 Permit), and approaches used in other MS4 permits in California and throughout the United States. As stated in the Tentative Order's Fact Sheet, a 2014 Memorandum from USEPA on incorporating TMDL WLAs into MS4 Permits constitutes the primary guidance relied upon for including numeric WQBELs. The 2014 Memorandum provides the following guidance for incorporating the TMDLs into the Tentative Order:	read as an endorsement of the entire permit approach, nor as EPA's independent determination that the permit terms meet regulatory requirements (EPA-830-S-16-002, p. 4). With that in mind, Los Angeles Water Board staff selected some permits from the compendium at random to compare those with numeric effluent limitations and those with narrative limitations. For each permit, staff evaluated the unique facts and circumstances as determined by the permitting authority that would demonstrate if numeric WQBELs were feasible or if BMPs were adequate to achieve WLAs. Of the permits evaluated, staff found that the Salinas, Frederick County, and District of Columbia MS4 permits include numeric effluent limitations. The Caltrans, San Francisco Region, San Bernardino, Boise, and Middle Rio Grande MS4 permits include narrative WQBELs because the circumstances determining the requirements of those permits were different than the circumstances in the Los Angeles region. Staff presented their evaluation at the December 2020 Board meeting. Regarding the feasibility of calculating numeric WQBELs for MS4 discharges,

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		"Where the TMDL includes WLAs for stormwater sources that provide numeric pollutant loads, the WLA should, where feasible, be translated into effective, measurable WQBELs that will achieve this objective. This could take the form ***of a numeric limit, or of a measurable, objective BMP-based limit*** that is projected to achieve the WLA." (Emphasis added; P. 6) The guidance set forth in the 2014 Memorandum clearly allows for the use of a BMP-based limit and states that "NPDES authorities have significant flexibility in how they express WQBELs in MS4 permits." (P. 4) Additionally, per Order 2015-0075, numeric WQBELs are not required to be incorporated into MS4 permits. "We emphasize, however, that we are not taking the position that numeric WQBELs are appropriate in all MS4 permits or even with respect to certain TMDLs within an MS4 permit." (P. 58) Finally, in 2017, the USEPA compiled examples of options for MS4 permit language in *Compendium of MS4 Permitting Approaches* [footnote] 1. In Part 3 of this document, USEPA identified four different	see response to comment #C.1.5, #F.11, #G.34 #H.1.2.a, #I.1.38. Regarding consideration or allowance for large storm events, see response to comments #C.1.5 and #G.10. Regarding using BMP-based WQBELs specifically for bacteria TMDLs to reflect the new Statewide Bacteria Provisions, see response to comment # G.16.

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		approaches that had been utilized in MS4 permits to incorporate TMDL requirements: [footnote 1]: USEPA, 2017. Compendium of MS4 Permitting Approaches. EPA-830-S-17-001. Office of Wastewater Management Water Permit Division. April 2017. 1. Listing of applicable TMDLs, Wasteload Allocations (WLAs), and/or the affected MS4s 2. Numeric limits and other quantifiable approaches for the specific pollutants of concern 3. Required implementation of specific stormwater controls or management measures 4. Other types of water quality-based requirements a. Permitting Authority Review and Approval of TMDL Plans b. Monitoring & Modeling Requirements c. TMDL-Related Annual Reporting Requirements This document provides numerous examples of permit language from around the country, including several from California, that have been included in MS4 permits for each of these different approaches. The document demonstrates that a wide variety of options are available to permit writers and that many permits utilize non-numeric WQBEL approaches to incorporating TMDLs into	

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		permits. All of these documents became available after the adoption of the 2012 Los Angeles MS4 permit and should be carefully considered to determine the most effective method for incorporating TMDLs into the Tentative Order. <u>Inclusion of Numeric WQBELs is not Feasible</u> In order to incorporate numeric WQBELs, the 2014 EPA memo clearly states that numeric effluent limitations should only be included "where feasible." "Where the NPDES authority determines that MS4 discharges have the reasonable potential to cause or contribute to a water quality standard excursion, EPA recommends that the NPDES permitting authority exercise its discretion to include clear, specific, and measurable permit requirements and, ***where feasible***, numeric effluent limitations as necessary to meet water quality standards." (Emphasis added; P.4) The Santa Ana Region MS4 Permittees are concerned with the interpretation in the Fact Sheet that numeric WQBELs are "feasible" if they are "feasible to calculate" based on EPA staff testimony during the 2012 adoption hearing regarding the interpretation of a previous (2010) EPA guidance memorandum. Additionally, "feasible to calculate" is	

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		determined to be possible because WLAs were calculated during the development of the TMDLs. This interpretation of feasible is problematic because it does not consider the feasibility of steps necessary to go from a TMDL allocation to an enforceable permit limitation or the ability of available stormwater BMPs to attain the WQBELs. Additionally, the testimony used to interpret the term “feasible” in the previous USEPA memorandum was not provided during development of the current EPA guidance memorandum. In 2006, a Blue Ribbon Panel was directed by the State Water Board to evaluate whether numeric WQBELs for stormwater were feasible. [footnote] 2 While this Panel was convened prior to when the 2014 USEPA guidance was developed, and recognizing additional information is now available that might inform the conclusions of the Panel, the Panel was directed to specifically answer the question of feasibility. Therefore, the direction to the Panel from the State Water Board on how to assess feasibility is important to consider. In particular, the panel of experts was asked to assess several other factors beyond just “feasible to calculate”. Specifically, this panel of experts was asked to consider the following: [footnote 2]: Storm Water Panel Recommendations to the California State	

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		Water Resources Control Board: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006 "Is it technically feasible to establish numeric effluent limitations, or some other quantifiable limit, for inclusion in storm water permits? How would such limitations or criteria be established, and what information and data would be required?" "The answers should address industrial general permits, construction general permits, and area-wide municipal permits. The answers should also address both technology-based limitations or criteria and water quality-based limitations or criteria. In evaluating establishment of any objective criteria, the panel should address all of the following: 1. The ability of the State Water Board to establish appropriate objective limitations or criteria; 2. how compliance determinations would be made; 3. the ability of dischargers and inspectors to monitor for compliance; and 4. the technical and financial ability of dischargers to comply with the limitations or criteria." (P. 3)	

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		The Panel was directed to assess “technical feasibility”, not “feasibility to calculate”, and assess a number of questions, such as how compliance determinations would be made, the ability to monitor for compliance, and the technical and financial ability of dischargers to comply. Based on an assessment of all of these factors related to feasibility, the Blue Ribbon Panel found that it is not feasible to calculate numeric effluent limitations for municipal stormwater. Notably, they did find it was feasible to calculate numeric effluent limitations for some other types of stormwater dischargers based on the assessment of all the factors listed above. The Fact Sheet does not include any assessment of these other factors that are critical to determining feasibility prior to including numeric WQBELs. One of the primary challenges identified by the Blue Ribbon Panel was the variability of storm events and the fact that there will always be some storms that exceed the design capacity of BMPs. The Fact Sheet does not address this concern or provide any discussion of how these issues will be addressed in assessing compliance with the numeric WQBELs. “Since the storm-to-storm variation at any outfall can be high, it may be unreasonable to	

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		expect all events to be below a numeric value. In a similar circumstance, there are a number of storms each year that are sufficiently large in volume and/or intensity, to exceed the design capacity volume or flow rates of most BMPs. Assessing compliance during these larger events represents yet another challenge to regulators and the regulated community." (P.6) The Panel acknowledged that several times each year, the runoff volume or flow rate from a storm will exceed the design volume or rate capacity of the BMP and that stormwater agencies should not be held accountable for pollutant removal from storms beyond the size for which a BMP is designed (P.8). Counter to this guidance, the Tentative Order requires compliance with numeric WQBELs with zero allowable exceedances and no consideration or allowance for large storm events. <u>Alternatives to Numeric WQBELs Better Support Effective Watershed Planning</u> As noted by the Blue Ribbon Panel, stormwater BMP design requires selection of a storm size to be captured or treated. The selection of the design parameters has significant impacts for the costs of the project. As MS4 permittees work to identify multi-	

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		benefit projects to support obtaining supplemental funding, optimization of design parameters will be needed to meet multiple purposes. In some instances, building additional BMP-capacity could significantly increase the cost of the project for an only incremental increase in pollutant removal. Using BMP-based limitations provides more opportunities for optimizing BMP planning, resulting in more cost-effective TMDL implementation planning. The Santa Ana Region MS4 Permittees have effectively utilized implementation of TMDL implementation plans as the method of demonstrating compliance with TMDL requirements in two of the current MS4 permits. Both the Riverside County and San Bernardino County MS4 permits include language that establishes adopted implementation plans as the WQBELs or compliance pathways for the TMDLs (see Order Number R8-2010-0036: San Bernardino County MS4 Permit; P.50-58 and Order Number R8-2010-0033: Riverside County MS4 Permit; P.61-69). This approach has supported collaborative problem solving and implementation approaches that have improved water quality throughout the region. A similar approach could be utilized in the Los Angeles Region	

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		by establishing the WMPs as the WQBELs once approved. Finally, alternative approaches to incorporating TMDLs could support addressing challenges associated with outdated TMDLs, particularly those that are currently based on outdated water quality objectives. For example, TMDLs that include fecal coliform objectives that have been superseded by the Statewide Bacteria Provisions drive planning and monitoring to address an indicator that is no longer an objective for many waterbodies. Using BMP-based approaches for compliance allow permittees to implement control measures that reflect the latest science to protect beneficial uses rather than planning to meet outdated objectives. For all of the reasons outlined above, incorporating numeric WQBELs into a municipal stormwater permit is not yet feasible and alternatives, such as BMP-based approaches, which are allowed by existing guidance, will better support effective multi-benefit planning efforts. *Considerations for revising the Tentative Order:* The Santa Ana Region MS4 Permittees recommend that alternatives to the numeric	

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		WQBELs be considered prior to adopting the Tentative Order. In particular, consideration should be given to incorporating language similar to the existing Riverside and San Bernardino MS4 permits that allows for the WMPs to become the WQBELs once approved.	
C.1.16	Heal the Bay, the Natural Resources Defense Council, and Los Angeles Waterkeeper	The goal of the CWA is to protect public and environmental health. We must maintain the integrity of this federal law by holding dischargers accountable for violations of water quality standards and numeric effluent limits. The process to develop existing TMDLs was a public process with good faith negotiations. We must do that process justice now via full incorporation of TMDLs in the Regional MS4 Permit. **The Tentative Permit must incorporate all applicable TMDLs and associated water quality standards as well as numeric effluent limits.**	**No change.** The Revised Tentative Regional MS4 Permit includes receiving water limitations, which are defined in Attachment A as any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, and provisions to implement all applicable TMDL WLAs, including numeric effluent limits.
C.1.17	TECS Environmental	First, EO Purdy argues that compliance schedules apply to MS4 Permits, despite the fact that former EO Unger told USEPA in a 2016 letter that they are not. Still, she ignored this and pointed to 40 CFR 122.47 (Compliance Schedules) for support. But according to USEPA in an earlier letter (2008) to the State Board, this regulation does not apply to MS4s, only to general permits under Clean Water Act Section 301(b)(1)(C). General permits also include, but are not limited to industrial and construction	**No change.** The commenter confuses the intent of Mr. Unger's 2016 letter and the applicability of the Compliance Schedule Policy. The Order includes compliance schedules because the Order requires Permittee's to comply with applicable WQBELs. Compliance schedules are authorized in NPDES Permits "when appropriate" to achieve "compliance with CWA and

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		stormwater permits and are authorized under 402(p)(3)(B)(ii) -- not to be confused with 402(p)(3)(B)(iii), which is mentioned below. **Compliance Schedules**. I was astounded by Ms. Purdy's claim that compliance schedules are not required in MS4 Permits. This is just the opposite from what former EO San Unger said in a letter to USEPA Region IX in 2016, which I referenced in my presentation to the September 10, 2020 board meeting. Mr. Unger's letter said, flat-out: *… the Compliance Schedule Policy does not apply to MS4 permits, as the Policy expressly only applies to NPDES permits with effluent limitations established under CWA section 301(b)(1)(C). MS4 permits are not subject to CWA section 301(b)(1)(C). Rather, effluent limitations in MS4 permits are established pursuant to CWA section 402(p)(3)(B) and, if applicable, section 303(d). The Water Boards' conclusions about TMDL programs of implementation and associated schedules and MS4 permits extend to all water quality standards, whether promulgated by USEPA or the State.*[1] [footnote 1: Letter from Sam Unger, EO, LARQCB to Tomas Torres, Water Director, USEPA Region IX, June 23, 2016, pages 2-3.]	regulations" [40 CFR 122.47(a)]. 40 CFR § 122.47 does not distinguish between stormwater permits and non-stormwater permits. 40 CFR § 122.47(a)(1) requires compliance as soon as possible, but not later than the applicable statutory deadline…" Statutory deadlines for compliance with WQS for MS4s are not specified in the Clean Water Act; however, Water Code § 13377 requires all NPDES permits to implement the applicable Basin Plan, including applicable TMDLs and their schedules of implementation. Additionally, 40 CFR 122.44(d)(1)(vii)(B) requires WQBELs to be consistent with the assumptions and requirements of the WLAs, including the TMDL implementation schedules that are an integral component of TMDL WLAs. Because TMDL implementation schedules allow Permittee(s) additional time to come into compliance with an applicable water quality standard, these schedules are incorporated into NPDES permits as compliance schedules. 40 CFR § 122.47 has been interpreted by U.S. EPA as allowing an NPDES permitting authority to include a compliance schedule in an NPDES permit only when the state's water quality standards or regulations include a

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		This is straight from the horse's mouth. Nevertheless, Ms. Purdy still clings to the notion that compliance schedules are required under federal law. She does so by referring to 40 Code of Federal Regulations (CFR) §122.47. I do not understand how she can cite this regulation to negate what Mr. Unger asserted (again, on behalf of the water boards), to which USEPA apparently agreed. It is clear that §122.47 does not authorize compliance schedules in MS4 Permits. According to a 2007 memo from USEPA headquarters in Washington D.C., to USEPA Region IX, compliance schedules are only required for CWA 301 NPDES permits.[2] This memo may be one reason why EO Unger believed that compliance schedules in MS4 Permits were not applicable to MS4 Permits. [footnote 2: Memorandum, from James A. Hanlon, USEPA Director of Wastewater Management to Alexis Strauss, Director, USEPA Region IX, dated June 10, 2007.] Beyond this, the State's compliance schedule policy that was first adopted in 2003, and then amended in 2008, incorporated into the basin plan, and then codified, makes no mention of CWA 402(p)(3)(B)(iii), which addresses MS4 Permits. Instead, it only references CWA 301, which addresses general NPDES permits -- including general industrial and construction	provision that authorizes such schedules. (See In re Star-Kist Caribe, Inc., (Apr. 16, 1990) 3 E.A.D. 172, 175, modification denied, 4 E.A.D. 33, 34 (EAB 1992.).) For MS4 permits, the TMDL and/or implementation plan is the applicable regulation authorizing the compliance schedule. For NPDES permits that include effluent limitations pursuant to CWA section 301(b)(1)(C), the Compliance Schedule Policy is the state regulation authorizing the Regional Water Board to include the compliance schedule. The Los Angeles Water Board does not dispute the accuracy of Mr. Unger's 2016 Letter. However, the commenter is confused about the purpose of the letter. As explained above, the Los Angeles Water Board may include compliance schedules in NPDES permits implementing effluent limitations pursuant section 301 of the Clean Water Act if doing so is consistent with the Compliance Schedule Policy. The Compliance Schedule Policy expressly bars the use of compliance schedules for priority pollutants subject to the California Toxic Rule in 40 CFR 131.38 in most instances. As such, even where there is TMDL for one of these pollutants, the

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		stormwater permits authorized under 402(p)(3)(B)(ii). It should be emphasized to the board that federal regulations only require MS4 Permits to contain schedules for the "timely implementation" of control measures contained in SWMPs over the 5-year term of the permit, which serve to reduce pollutants to achieve water quality standards and TMDLs.[3] [footnote 3: See 2012 MS4 Permit, Part V.A.3.] Action Sought: Ms. Purdy must eliminate the compliance schedule requirement from the tentative MS4 permit. So doing would significantly reduce compliance costs for permittees and would obviate the need for extensions and time schedule orders. She should also re-open the current permit to remove compliance schedules to spare permittees from having to needlessly continue to pay for an invalid requirement.	Board may only include a compliance schedule for that pollutant if it gets additional approvals from U.S. EPA under section 303(c) of the Clean Water Act. The purpose of Mr. Unger's letter was to seek this authorization so that TMDL-based compliance schedules could be included in NPDES permits issued to power plants, general industrial and construction permits, and other non-MS4 permits. However, as stated by Mr. Unger, and quoted by you, no such authorization was needed to include the compliance schedules in MS4 permits because "the Compliance Schedule Policy does not apply to MS4 permits, as the Policy expressly only applies to NPDES permits with effluent limitations established under CWA section 301(b)(1)(C)." Here, the Board is not relying on Section 301 of the Clean Water Act to require compliance with WQBELs, rather it is relying on section 402(p)(3)(B)(iii) (authorizing the permitting authority to include "such other provisions as the Administrator or the State determines appropriate for the control of such pollutants"). (For additional discussion on the Board's authority under 402(p)(3)(B)(iii) see response to comment #F.22)

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			Therefore, any compliance schedules in the Order are solely based on the associated TMDL implementation plan and cannot exceed the maximum time that the implementation plan allows. (40 CFR §122.47, See also Wat. Code §§ 13263, 13337). To the extent the commenter is suggesting that compliance schedules are unnecessary because the Permittees should only be subject to receiving water limitations in Part V.A.3 of the 2012 Permit (which is carried over as Part V.C in the Tentative Order), this issue has been addressed in litigation. Compliance with receiving limitations may require Permittee(s) to implement BMPs that exceed the maximum extent practicable or "MEP" standard. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 884-886. Because timely implementation of a Permittee's stormwater management program may require compliance actions beyond the 5-year term of the permit, compliance schedules are necessary and appropriate components of the Order.
C.1.18	TECS Environmental 2nd Letter	Compliance Schedules Are Not Required for MS4 Permits. As mentioned previously, compliance schedules are not required in	**No change.** See response to comment number C.1.17.

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		MS4 Permits. According to a June 23, 2016 letter from former EO San Unger to USEPA Region 9 regarding the State's Compliance Schedule Policy. He wrote: *… the Compliance Schedule Policy does not apply to MS4 permits, as the Policy expressly only applies to NPDES permits with effluent limitations established under CWA section 301(b)(1)(C). MS4 permits are not subject to CWA section 301(b)(1)(C). Rather, effluent limitations in MS4 permits are established pursuant to CWA section 402(p)(3)(B) and, if applicable, section 303(d). The Water Boards' conclusions about TMDL programs of implementation and associated schedules and MS4 permits extend to all water quality standards, whether promulgated by USEPA or the State.*[2] [footnote 2: Letter from Sam Unger, EO, LARQCB to Tomas Torres, Water Director, USEPA Region IX, June 23, 2016, pages 2-3.] Yet, despite this, regional board staff still clings to the notion that compliance schedules are required under federal law. Staff does so by referring to 40 Code of Federal Regulations (CFR) §122.47. What she misses here is that Mr. Unger's reference to compliance schedule policy refers to §122.47. It is unclear how staff can cite this regulation to negate what Mr. Unger asserted	

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		(again, on behalf of the water boards), to which USEPA apparently agreed. It is clear that §122.47 does not authorize compliance schedules in MS4 Permits. According to a 2007 memo from USEPA headquarters in Washington D.C., to USEPA Region 9, compliance schedules are only required for CWA 301 NPDES permits.[3] This memo may be one reason why EO Unger believed that compliance schedules in MS4 Permits were not applicable to MS4 Permits. [footnote 3: Memorandum, from James A. Hanlon, USEPA Director of Wastewater Management to Alexis Strauss, Director, USEPA Region 9, dated June 10, 2007.] Beyond this, the State's compliance schedule policy that was first adopted in 2003 and then amended in 2008 and incorporated into the basin plan makes no mentioned of CWA 402(p)(3)(B)(iii), which addresses municipal stormwater permits. Instead, it is limited only to CWA 301, which addresses general NPDES permits, including general industrial activity and construction stormwater permits. The board should be made aware that federal regulations only require MS4 Permits to contain schedules for the "timely implementation" of control measures contained in SWMPs over the 5-year term of the permit, which serve to reduce pollutants	

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		to achieve water quality standards and TMDLs.[4] [footnote 4: See 2012 MS4 Permit, Part V.A.3.] Eliminating compliance schedules in MS4 Permits makes it unnecessary to require time schedule orders to extend compliance deadline dates for TMDLs, which should be necessary in any case because strict compliance with them is not required, as mentioned above. **Recommendation**: Eliminate compliance schedules in the tentative MS4 Permit.	
C.1.19	City of Calabasas Mayor	Provide the maximum degree of flexibility in terms of timing for permittees to comply.	**Change made.** On March 11, 2021, the Board adopted a Basin Plan amendment to extend the deadlines for the Malibu Creek Bacteria and Nutrient TMDLs, which allowed an additional five years for the City of Calabasas to comply with the TMDLs. In addition, permittees have the option of applying for Time Schedule Orders pursuant to Part X.E of the Order. This flexibility allows permittees up to 15 additional years to comply with the TMDLs. Part IX.B.9 of the Revised Tentative Order clarifies that TSOs, which have been approved, can be considered in the schedule for a WMP.
C.1.20	SGVCOG 2nd Letter and ULAR Group	***Compliance Schedules:*** The Tentative Permit specifies that Permittees must comply with water-quality	**Change made.** See response to comment number G.1.

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		based effluent limitations immediately. Previously in the 2012 MS4 Permit, Permittees had 90 days to meet compliance deadlines. The SGVCOG has concerns that the requirement for immediate compliance ignores the Court's findings with regards to the Cities of Duarte's and Gardena's lawsuits. Regardless, as the LARWQCB develops the Permit, **a WMP being developed and implemented in good faith by the Permittees that is determined to be "inadequate" by the LARWQCB should be allowed a grace period to correct inadequacies.** This would still allow for the LARWQCB to address gross non-compliance while providing a path for WMPs with very minor and easily correctable flaws to continue addressing water quality goals.	
C.1.21	SGVCOG 2nd Letter and ULAR Group	Many of the original TMDLs have optimistic compliance schedules, which have previously been recognized as such by Board staff. There is flexibility in the Tentative Permit for Permittees to request extensions, in addition to the knowledge that the Board staff are currently working on a TMDL extension Basin Plan Amendment. **As an initial alternative, we recommend that the Board withhold adopting the new Permit until after the TMDL extension Basin Plan Amendment(s) have been approved and can be incorporated into the Permit. Alternatively, we recommend that the**	**Change made.** See response to comment number G.1.

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		current schedules, at a minimum, recognize the anticipated TMDL deadline extensions from the Basin Plan Amendment(s) and ultimately the revised schedules will automatically be incorporated in the Final Permit.	
C.1.22	SGVCOG 2nd Letter and ULAR Group	The TMDL amendment is currently focused on specific TMDLs identified with near term deadlines. **We recommend the TMDL extension Basin Plan Amendment effort be extended to include other TMDLs where appropriate, particularly those with final deadlines prior to 2030**. Even with these extensions, there are remaining recommendations for better integration of the SCW Program regarding alignment of compliance schedules, which is further detailed in the comments above.	**No change.** Basin Plan amendments to extend TMDL implementation schedules are beyond the scope of the Regional MS4 Permit. However, the Los Angeles Water Board will work with any Permittees who request an extension for TMDLs other than those addressed in Resolution number R21-001 adopted on March 11, 2021.
C.1.23	City of Malibu	At this time, the City requests that the Regional MS4 Permit be revised to incorporate the extensions in the Basin Plan Amendments for the near-term TMDLs.	**Change made.** See response to comment number G.1.
C.1.24	Los Angeles County and LACFCD 2nd Letter	**Incorporation of Final Total Maximum Daily Load Extensions** Additional time is also required for the type of multi-benefit projects that have been identified in the EWPs/WMPs, as it takes approximately 5 to 7 years to analyze, design, fund, and construct such projects. It is also possible that in the design or construction process, it will be determined that a project cannot feasibly be built. In that case, a new	**Change made.** See response to comment number G.1.

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		project must be identified, and the process begins anew. Therefore, the County and the District request that the Regional MS4 Permit be revised to incorporate the extensions in Basin Plan Amendments for the near-term Total Maximum Daily Loads (TMDLs). The County has been making this request at Regional Board public hearings since November 2019 and to Regional Board staff for the past 2 years. The 2012 MS4 Permit covers 84 cities plus the County and the District. It covers miles of MS4, regulating discharges into nine separate watersheds, receiving waters, different lakes, and the Pacific Ocean. Most significantly, solutions to the many water quality issues that are available by this large urban environment are, to a large extent, still unknown. While many water quality standards in many receiving waters are being met, there are others for which no practical answer currently exists. Despite millions of dollars and best efforts, the County, the District, and other Permittees may not be able to achieve certain current, final TMDL deadlines if these deadlines are not addressed. At the time these deadlines were adopted, the Regional Board, the	

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		Permittees, and the public had no identifiable means to achieve them. Now, we have more information and dedicated funding. It is time to address final TMDL deadlines considering the knowledge that we have obtained and the new EWPs/WMPs that have been developed. If the Regional Board, the Permittees, and the public fail to do so, regional water quality efforts will become financially and technologically challenging and unrealistic, and the risk of litigation will be extremely high. The 2012 MS4 Permit and WMP plans helped support the passage of Measure W. If Los Angeles County Permittees are deemed out of compliance with the same permit and plans that catapulted the taxpayers into a position of overwhelming support for clean water, it jeopardizes not only public trust, but the only program of its kind in the nation. Without these provisions, the County and several cities will be deemed out of compliance with upcoming TMDLs starting in January 2021.	
C.1.25	SGVCOG 2nd Letter and ULAR Group	In addition, regarding the Bacteria TMDLs, the current timeframe for compliance is particularly unreasonable given recent scientific studies that indicate the need to reduce sources of human waste in order to meet recreational beneficial uses. Implementation is shifting to provide greater focus on source control efforts rather than structural project implementation and volume control which can be ineffective in reducing	**Change made.** On March 11, 2021, the Los Angeles Water Board approved Basin Plan amendments for four Bacteria TMDLs, which extended the wet-weather programs of implementation and associated schedules for Santa Monica Bay Beaches, Malibu Creek, Ballona Creek and Marina del Rey Harbor. The additional time will allow permittees to tailor control measures to meet the

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		pathogens and recreational health risks. A longer schedule is needed to adapt current implementation programs, as is currently underway in the Upper Los Angeles River watershed with the Load Reduction Strategy Adaptation Plan.	TMDLs. Basin Plan amendments for other bacteria TMDLs are beyond the scope of the Regional MS4 Permit as discussed in response to comment number C.1.22. For additional discussion on human sources of bacteria see response to comment #G.16.
C.1.26	County of Ventura	Extend Channel Island Harbor (Kiddie/Hobie) Beaches and Malibu Creek Watershed Bacteria TMDLs wet weather compliance deadlines for additional 10 years to allow sufficient time to complete pending assessments, secure funding, develop project concepts, complete planning, construction, and implementation. As discussed previously, it is our understanding that State Water Resources Control Board was able to grant TMDL deadline extension through California Department of Transportation NPDES Permit; and also some TMDL deadline extensions were granted in the Agricultural Discharge Waiver.	**Change made.** On March 11, 2021, the Los Angeles Water Board approved a Basin Plan amendment to the Malibu Creek and Lagoon Bacteria TMDL, which extended the program of implementation and associated schedule for five years to July 15, 2026. If additional time is needed, then Permittees may request a Time Schedule Order pursuant to Part X.E of the Order. The Los Angeles Water Board did not amend the program of implementation and associated schedule for the Harbor Beaches of Ventura County Bacteria TMDL. This is because the scope of the proposed Basin Plan amendments included those TMDLs with approaching final deadlines in the next one to three years. The final deadline for this TMDL had already passed prior to initiating the TMDL extension project in the summer of 2020 (final wet-weather compliance was required by December 18, 2018). Basin

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			Plan amendments to extend TMDL implementation schedules are beyond the scope of the Regional MS4 Permit as discussed in response to comment number C.1.22. The Caltrans MS4 Permit predates the State Board's Order WQ 2015-0075, which further elucidates requirements in the 2012 Los Angeles County MS4 Permit. State Board Order WQ 2015-0075 affirmed that TMDL compliance schedules need to be complied with and that the only permitting option appropriately available to a Permittee unable to meet final TMDL deadlines is to request a time schedule order (page 36 of State Board Order WQ 2015-0075.) The comparison to the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Agricultural Lands (Conditional Waiver) is misplaced because the federal Clean Water Act excludes return flows, including stormwater runoff, from irrigated agriculture from the NPDES permitting program. (See definition of point source at 40 CFR section 122.2, and list of exclusions at 40 CFR section 122.3.) Nonetheless, to the extent the commenter is referring to the Board's recent action to

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			renew the Conditional Waiver during which it revised the TMDL deadline for the Malibu Creek Watershed Nutrient TMDLs, it did so to align the deadline with the implementation plan that the Board incorporated into the Basin Plan in 2016. The Basin Plan amendment was adopted in December 2016 after the Board's action to renew the Conditional Waiver earlier in 2016. This Basin Plan amendment established a TMDL deadline of October 14, 2022. Thus, the Board revised the July 2, 2021 TMDL deadline that was contained in the 2016 Conditional Waiver to the new deadline of October 14, 2022.
C.1.27	LCC Group	**Request to Consider Extension of Final TMDL Implementation Deadlines for Additional TMDLs in the Los Angeles Region** On November 20, 2020, the Regional Water Board published a Notice of Public Hearing for Proposed Resolution for Consideration of Extension of Final TMDL Deadlines for Certain TMDLs in the Los Angeles Region. The deadline extensions being considered are for nine TMDLs with final deadlines in 2021, 2022, and 2023. They had effective dates between March 21, 2003 and July 2, 2013 with implementation periods between 10 years, 6 months and 19 years. We believe this consideration of TMDL final deadlines is	**No change.** See response to comment number C.1.22.

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		important because as has been mentioned in recent Water Board meetings, several, if not many, TMDL Implementation Schedules were quite optimistic when adopted. Implementation has been more challenging than envisioned. We also believe that the 87-page staff report includes criteria and other factors that would accelerate further consideration of optimistic TMDL implementation schedules. Therefore, we recommend that the Regional Water Board initiate a consideration of extension of final deadlines for TMDLs in the Los Angeles Region with final deadlines in 2024, 2025, and 2026. It would be better to initiate this process now rather than wait until some Permittees are facing immediate final deadlines that they cannot meet. Later, consideration of TMDL final deadlines may also be necessary for TMDLs with deadlines in 2027, 2028, and 2029. The Safe, Clean Water Program funding is a blessing that will help Permittees meet TMDL deadlines, but there is not enough money in the near future to design and build projects fast enough to meet final deadlines between now and 2030. Plans to reconsider TMDL final deadlines should be noted in the new Regional MS4 Permit and the TMDL attachments.	
C.1.28	Los Angeles County and	Attachment F/ Part VI.H/ Pg. F-168. As of August 2020, the current projected revenue for the SCWP Regional Program is $140.6	**Change made.** The monetary projections were updated accordingly.

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	LACFCD 2nd letter	million per year and the Municipal Program is $112.6 million per year. The County and LACFCD request that the Regional Board update the projections accordingly.	
C.1.29	Los Angeles County and LACFCD 2nd letter	Attachment F/ Part VI.H/ Pg. F-168. On F-168, the last sentence of the first SCWP paragraph should more accurately/clearly read: "…for general administration of the program including, but not limited to, technical assistance teams, watershed coordinators funded through the Regional Technical Resources Program (TRP), stormwater education programs, and District Projects."	**Change made.** Additional language was added to the Fact Sheet to clearly identify where the "District Program" funds will be allocated.
C.1.30	SGVCOG 2nd Letter and ULAR Group	Overall, this area of concern emphasizes that it is more important to implement the right programs and strategies to achieve the environmental and water quality goals driving the Permit than meeting a set milestone to complete a specified action. We do not want to rush forward in order to meet a set deadline that is unreasonable and potentially sacrifice a more thoughtful and effective approach. Some of the critical water quality objectives in older TMDLs are no longer aligned with the best available science. Examples of this include the Bacteria objectives that should be adjusted to focus more directly on allowable risk and move away from the use of Fecal Indicator Bacteria, as well as shifting towards the use of site-specific methods for metals (e.g., Biotic Ligand Model, Water Effect Ratio studies) to	**No change.** The TMDLs that are incorporated in the Order are aligned with the applicable water quality objectives. For additional discussion on human sources of bacteria and the biotic ligand model see response to comment numbers G.16 and G.22, respectively. Permittees may participate in a Watershed Management Program, which is an alternative compliance pathway that allows Permittees to implement permit requirements in an integrated manner on a watershed basis. The watershed management program provisions serve as the mechanism for this program integration. Since jurisdictional activities also serve watershed purposes, such activities can be integrated into the Permittees' Watershed Management

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		identify potential impacts to aquatic life. Necessary updates to water quality objectives can be used to clearly identify where beneficial uses (e.g. recreational use in relation to bacteria and aquatic life in relation to metals) are impaired and require action. **The main recommendation is for flexibility in the Permit to incorporate new information and advancements and, when necessary, provide the appropriate additional time to successfully do so.**	Programs. Such opportunities for program integration inherently provide flexibility to the Permittees in implementing their programs. Program integration can be expanded or minimized as the Permittees see fit. Additionally, Watershed Management Programs can incorporate additional time where necessary and appropriate through the adoption of an approved Time Schedule Order or TSO.
C.1.31	TECS Environmental	Second, she seems to suggest that the high flow suspension (HFS) regulation, which suspends recreational uses during storm events in engineered channels and, therewith, also suspends the bacteria TMDL, is disallowed on exceedance days. Exceedance days are not defined anywhere in the permit. Nothing in the HFS regulation and basin plan amendments mention exceedance days as exceptions to this rule. The suspension of the bacteria TMDL during high flows is unequivocally unconditional. **Hi Flow Suspension of the Bacteria TMDL**. Ms. Purdy's comments regarding hi-flow suspension (HFS) were a little fuzzy. She admitted that HFS exists and is in the tentative permit (as it is in the current one). She also referenced Chapter 2 of the Los Angeles County Basin Plan that was amended to include HFS. The amendment	**Change made.** A provision was added to Part X.A of the Revised Tentative Order to clarify compliance with bacteriological limitations during a high flow suspension (HFS). Regardless of whether there is a bacteria TMDL or not, WQBELs and receiving water limitations do not apply during a high flow suspension as defined in Attachment A of the Revised Tentative Order. Waterbodies subject to high flow suspension are listed in the Basin Plan, Chapter 2, Table 2-1a. However, a high flow suspension does not suspend the applicability of Bacteria TMDLs to waterbodies subject to a HFS. The HFS temporarily suspends REC-1 and REC-2 beneficial uses of the waterbody and the associated bacteriological water quality objectives set to protect water contact recreational

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		cites California Code of Regulations (23 CCR § 3939.5), which authorizes HFS. But neither mentions that HFS is conditioned on exceedance-days. Neither does attachment "A, Definition" of the tentative permit. Although it references HFS, the definition does not mention the exceedance-days condition. In any case, Ms. Purdy should know that compliance with the exceedance-days condition cannot be required because it is not included in the HFS basin plan amendment. In other words, it has no legal basis. What Ms. Purdy is also not mindful of is the essential purpose of HFS. While she admits that HFS suspends recreation beneficial uses because water contact is prohibited in engineered channels, she does not realize that the exceedance-day condition undermines that purpose. What she is suggesting is that the bacteria TMDL is still in effect despite the fact that water contact is not allowed during qualifying storm events. If water contact is prohibited during high flow events, why is there a need for an exceedance-day condition? If no one is allowed in the channels during high flow, how can anyone be at risk for an illness caused by bacteria? To continue to condition HFS on exceedance-days continues to violate 23 CCR § 3939.5. Further, federal regulations	activities associated with the swimmable goal as expressed in the federal Clean Water Act section 101(a)(2) during specific conditions, namely days with rainfall greater than or equal to ½ inch and the 24 hours following the end of the ½-inch or greater rain event. This HFS condition does not encompass all wet-weather days as defined in Bacteria TMDLs. In the Bacteria TMDLs wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event as compared to the HFS condition, which as noted earlier is a day with rainfall greater than or equal to ½ inch and the 24 hours following the end of the ½-inch or greater rain event. Both the Los Angeles River Bacteria TMDL and the San Gabriel River Bacteria TMDL acknowledge that the HFS applies to some but not all the waterbodies addressed by these Bacteria TMDLs and both TMDLs account for the high flow suspension in the waterbodies where it applies by adjusting the number of allowable wet-weather exceedance days. For example, in the Los Angeles River Bacteria TMDL, the number of wet-weather annual allowable exceedance days for non-HFS waterbodies is 15 days based on daily sampling. In contrast, the

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		cannot be used to justify the condition because USEPA approved the HFS basin plan amendment, without any reference to exceedance-days. Beyond this, Region 8 (Santa Ana Board) also provides for HFS, absent the exceedance-days condition. Action Sought: Ms. Purdy must: (1) eliminate the exceedance-days condition for all engineered channels within the board's jurisdiction, which would spare permittees from unnecessary and costly compliance; (2) add a list of engineered channels that are subject to HFS (as does the Santa Ana Regional Board); and (3) send-out a Lyris notice informing permittees that they are not subject to the HFS exceedance-days condition under the current permit.	number of wet-weather annual allowable exceedance days for HFS waterbodies is 10 days. The difference is because HFS days are subtracted from the total number of wet-weather days in the year for purposes of calculating allowable exceedance days. (See Los Angeles River Watershed Bacteria Total Maximum Daily Load Staff Report, dated July 15, 2010, pp. 43-44.) The San Gabriel River Bacteria TMDL takes the same approach and assigns wet-weather annual allowable exceedance days for non-HFS waterbodies and for HFS waterbodies. (See Total Maximum Daily Loads for Indicator Bacteria in San Gabriel River, Estuary and Tributaries Staff Report, dated June 10, 2015, p. 55.) In the Ballona Creek Bacteria TMDL the high flow suspension is applied differently in Reaches 1 and 2 because the reference system approach does not apply in Reach 1, since Reach 1 is not designated with the REC-1 beneficial use. The reference system approach is only applicable to waters designated as REC-1, which includes LREC-1. In Ballona Creek Reach 2, the greater of the allowable exceedance days under the reference system approach or high flow suspension applies. (See Total Maximum

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			Daily Loads for Bacterial Indicator Densities in Ballona Creek, Ballona Estuary, & Sepulveda Channel Staff Report, dated July 21, 2006, pp. 28-29.)
C.1.32	TECS Environmental 2nd Letter	High-Flow Suspension Regulation Eliminates Compliance with the Bacteria TMDL The 2012 and the proposed new Permit DO NOT provide an exemption to the bacteria TMDL for MS4 and other Permittees that discharge to engineered (concrete) channels during significant storm events. This is contrary to California regulation ***§3939.5. Suspension of Recreational Beneficial Uses in Engineered Channels During Unsafe Wet Weather Conditions***. The purpose of this regulation is to spare dischargers from having to comply with the bacteria TMDL, which limits exceedances of its waste load allocation to 10 days. Nevertheless the regulation is clear: the bacteria TMDL is totally suspended during storm events in concrete flood control channels. It is not at all conditioned on the bacteria TMDL. The rationale is that swimmers cannot risk illness exposed to high bacteria counts in concrete channels if they are not supposed be there by law in the first place. **Recommendation**: Eliminate the bacteria TMDL for all engineered channels in the Los Angeles Basin.	**Change made.** See response to comment number C.1.31.

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C.1.33	VCSQMP	Attachments L, M, O. All Bacteria TMDLs. Subsequent to the adoption of the bacteria TMDLs, the applicable water quality objectives were modified by the Statewide Bacteria Provisions. For all inland waters and bays and estuaries, total and fecal coliform are no longer applicable objectives. While we recognize that TMDL modifications are needed to remove the WLAs for these constituents, all of the bacteria TMDLs in Ventura County contain allocations for E.coli and/or enterococcus, which are the applicable bacteria indicators under the Statewide Bacteria Provisions. Because the three indicators are designed to protect recreational beneficial uses to the same level of human health protection, (as described on pages, 7-107, 7-336, and 7-432) of the Basin Plan, the additional indicators do not provide any additional benefit for beneficial use protection. The inclusion of total and fecal coliform as WQBELs and RWLs for the bacteria TMDLs in Ventura County is redundant and adds costs to the TMDL monitoring and reporting programs. It also creates confusion for compliance if E. coli and enterococcus WQBELs and RWLs are attained, but the total coliform and fecal coliform WQBELs and RWLs are not, but the water quality objectives for those indicators are no longer applicable.	**No change.** The State Water Board Staff Report for the Statewide Bacteria Provisions states, “TMDLs established before the effective date of the Bacteria Provisions will remain in effect where a bacteria water quality objective supersedes a water quality objective for bacteria for which the TMDL was established.” (page 142) In other words, the Statewide Bacteria Provisions did not change bacteria TMDLs established before the effective date of the Bacteria Provisions (February 4, 2019) and the Bacteria TMDLs remain in effect. Therefore, the Regional MS4 Permit incorporates water quality based effluent limitations and receiving water limitations consistent with the Bacteria TMDLs as required. Basin Plan amendments to revise TMDLs are beyond the scope of the Regional MS4 Permit. However, the Los Angeles Water Board may convene a public meeting to evaluate the effectiveness of these TMDLs in attaining the Bacteria Provisions, at a later date. If changes are made to the TMDL, the Order would be reopened to incorporate these changes.

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		Please remove the total and fecal coliform WQBELs and RWLs from the Channel Islands Harbor Beaches (Kiddie Beach and Hobie Beach), Santa Clara River Estuary and Reaches 3, 5, 6, 7 Indicator Bacteria TMDL, and Malibu Creek and Lagoon Bacteria TMDL and make any corresponding changes to the Fact Sheet.	
C.1.34	Los Angeles County and LACFCD 2nd letter	Attachment F/ Part VI.D.1/ Pg. F-137. As noted on Page F-137, the State Water Resources Control Board (State Water Board or SWRCB) adopted new statewide bacteria water quality objectives in 2019 based on the United States Environmental Protection Agency's (USEPA) 2012 recreational criteria and the Regional Board incorporated those objectives into the Basin Plan in February 2020. As stated by Regional Board staff (Dr. Ginachi Amah) at the February 2020 adoption hearing (see February 13, 2020 video starting at 5:35:30), if the Board did not adopt the new objectives into the Basin Plan as proposed, the Basin Plan would retain obsolete objectives. The new water quality objectives represent a step forward in the understanding of the risks faced by recreators in the region's waterbodies that should be acknowledged in the new Order. The County and LACFCD request the addition of the underlined language below (or comparable language) into Part VI.D.1 of Attachment F. Incorporation of the proposed language does	**No change.** The requested additional language assumes facts that are not validated by specific references. See response to comment numbers # C.1.33 and G.16.

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		not result in a revision to the TMDL WLAs, rather it acknowledges the changes to the objectives in the Basin Plan and aligns attainment of those objectives in a manner that remains consistent with the assumptions of the TMDL Waste Load Allocations (WLAs), which are intended to result in the protection of public health: In 2018, the State Water Board adopted statewide bacteria water quality objectives and implementation provisions to protect recreational users from the effects of pathogens in California water bodies (Bacteria Provisions). The Bacteria Provisions supersede numeric REC-1 water quality objectives for bacteria contained in a basin plan prior to the effective date of the Bacteria Provisions (February 4, 2019). The Los Angeles Water Board incorporated these Bacteria Provisions into the Basin Plan. The Bacteria Provisions did not change bacteria TMDLs established before February 4, 2019 and these TMDLs remain in effect. The Los Angeles Water Board may convene a public meeting to evaluate the effectiveness of these TMDLs in attaining the Bacteria Provisions at a later date. <u>However, the revised criteria and recent scientific research indicate that the potential human health risks from human versus nonhuman fecal sources can vary and that a human contamination source has the</u>	

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		highest likelihood of causing illness in water contact recreators. The Los Angeles Water Board finds that implementing strategies that focus on human sources of bacteria are effective at protecting the water contact recreation beneficial use. Assessing protection of human health and determining compliance with bacteria TMDLs using indicators of human waste sources and associated risk to contact recreators rather than indicator bacteria is consistent with the assumptions and requirements of the TMDL wasteload allocations as required by 40 C.F.R. § 122.44(d)(1)(vii)(B)).	
C.1.35	City of Los Angeles	Attachment F, Part VI.D.1, Page F-137 and F-138. Within the discussion of the incorporation of bacteria TMDLs into the Tentative Order, the Regional Board acknowledges the adoption of the USEPA's 2012 recreational criteria by the State Water Board and the Regional Board. A key component of USEPA's 2012 criteria was the identification of the level of risk to be attained to meet the contact recreation (REC-1) beneficial use. The level of risk was consistent with the USEPA criteria that formed the basis of the bacteria TMDLs in the Los Angeles Region which were developed primarily to attain the REC-1 beneficial use. LASAN requests that the Fact Sheet be revised to acknowledge 1) that the primary goal of the bacteria TMDLs was to attain the	**No change.** A methodology has not been developed to demonstrate compliance with bacteria TMDLs and water quality objectives based on a site-specific assessment of risk as discussed in response to comment number G.16.

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		REC-1 beneficial use, 2) that demonstrating that water quality does not pose a risk level higher than identified in USEPA's criteria provides a demonstration that the TMDLs have been attained, and 3) that water quality which does not pose a risk to contact recreation is consistent with the assumptions of the TMDL WLAs.	
C.1.36	TECS Environmental 2nd Letter	The Tentative MS4 Permit Includes TMDLs Not on the State's 303(d) list. As mentioned previously on several previous occasions, the existing and proposed tentative MS4 permits require compliance with TMDLs that are not on the State's 2016 303(d) list. This is especially true for the metals TMDLs for all reaches of the San Gabriel River and Reach 2 of the Rio Hondo (tributary to the Los Angeles River). The decision to not place or remove these TMDLs from the 303(d) list was determined by State Water Resources Control Board based on the *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List*. If a TMDL is not on this list, it cannot be a TMDL. Moreover, if it is not on the 303(d) list it means that a water quality standard required to protect a particular benefit use has been met.	**No change.** Section 303(d)(1)(A) of the Clean Water Act requires states to prepare a list of waterbodies where water quality is impaired due to pollution and to submit the list to the U.S. EPA for approval. Section 303(d)(1)(c) of the Clean Water Act separately requires the development of TMDLs to address the water quality impairments identified on the 303(d) list. A TMDL is a pollutant control plan that is developed and implemented to restore the waterbody. A TMDL must address all sources of pollution, including discharges of pollution upstream of the impaired portion of the waterbody, since these upstream sources contribute to the impairment downstream. Once a TMDL has been established, the Regional Water Boards implement the TMDLs primarily through requirements in discharge permits, including MS4 permits, that discharge either directly or indirectly to the impaired waterbody.

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			While the 303(d) list and TMDLs are related, the commenter misunderstands the relationship between the 303(d) delisting process and its impact on an existing TMDL. The 303(d) list contains a priority ranking of impaired waterbodies that require TMDLs. The 303(d) list is not regulatory. TMDLs are not placed on or removed from the 303(d) list, and changes to the 303(d) list do not affect established TMDLs. Further, waterbodies that are removed from 303(d) list may still be included in TMDLs if discharges to these waterbodies reach an impaired water. Even if all reaches to a waterbody are no longer listed as impaired, in most cases, the TMDL may only be revised or removed through a separate Basin Plan Amendment that is wholly unrelated to the 303(d) listing process. However, it is often appropriate to continue to implement the TMDL to ensure that the waterbody stays in attainment.
C.1.37	TECS Environmental 2nd Letter	Compliance with TMDLs in Non-stormwater Discharges is Not a Requirement. Clean Water Act section 402(p)(3)(B)(ii), says that permits for discharges from MS4s "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." That being the case there is no need to require compliance with TMDLs or water	**No change.** The Board agrees that the Clean Water Act requires MS4 permits to effectively prohibit non-stormwater discharges. However, notwithstanding this prohibition, some non-stormwater discharges may be discharged into the MS4 as discussed in response to comment number C.1.2. Furthermore,

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		quality standards in non-stormwater discharges. Federal regulations require MS4 Permittees to adopt ordinances to prohibit non-stormwater discharges to a component of an MS4 and if the discharger cannot comply it must obtain a stormwater discharge permit from a permitting agency. **Recommendation**: Eliminate non-stormwater compliance with TMDLs and water quality standards in MS4 Permits.	MS4 permits implement the non-stormwater prohibition not only through the discharge prohibition in Part III.A of the Revised Tentative Order, but also through an illicit discharge detection and elimination program (IDDE Program). Where these controls are insufficient to achieve water quality additional controls may be required. As explained in Part IV.A.3 of the Fact Sheet, the IDDE Program "[does] not constitute the full manifestation of [the effective non-stormwater] provision (55 Fed. Reg. 47990, 47995; see also 40 CFR § 122.26(d)(2)(i).) This is particularly true in the case of waterbodies impaired by non-stormwater flows discharged into and through the MS4 during dry weather. (See Part IV.A.4 of the Fact Sheet for additional discussion the appropriateness of regulating non-stormwater flows that discharge from an MS4.) As such, it is appropriate for the Los Angeles Water Board to require MS4 permittees to comply not only with the non-stormwater discharge prohibition, but also applicable receiving water limitations and WQBELs. The Board has the necessary legal authority to require compliance with applicable receiving water limitations and WQBELs pursuant to Section

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			402(p)(3)(B)(iii) of the Clean Water Act, which requires the Los Angeles Water Board as the permitting authority to impose permit conditions, including: "management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator of the State determines appropriate for the control of such pollutants." Section 402(a)(1) of the Clean Water Act also requires states to issue permits with conditions necessary to carry out the provisions of the Clean Water Act. Federal regulations also require that NPDES permits include water quality-based effluent limitations consistent with the assumptions and requirements of any available waste load allocation for the discharge. (40 CFR section 122.44(d)(1)(vii)(B).)
C.1.38	Los Angeles County and LACFCD 2nd letter	Attachment F/ Part VI.B. During the last two decades, the County and LACFCD have led or participated in a number of efforts across the region to improve our technical and scientific understanding of stormwater quality and our watersheds. These efforts include, among others, participation in various regional studies by the southern California Stormwater Monitoring Coalition (SMC) and the Southern California Coastal Water Research Project (SCCWRP), the	**No change.** See response to comments #G.16 and #G.22. The Los Angeles Water Board has a long history of working with permittees and stakeholders, and partnering with SCCWRP, on scientific studies that have been used to revise regulations and permit requirements and will continue to do so.

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		development and continued upgrade of Watershed Management Modeling System (WMMS), Los Angeles Basin Stormwater Conservation Study, various river ecosystem restoration studies, and Los Angeles River Copper Water-Effect Ratio and Lead Recalculation studies. The County and LACFCD, in collaboration with other agencies and organizations, will continue to fund similar and other scientific studies. Additionally, the SCWP provides additional funding through the Scientific Studies Program. Under the Scientific Studies Program, interested parties may apply for Regional Program funds for scientific and technical activities, including but not limited to scientific studies, technical studies, monitoring, and modeling, related to Stormwater and Urban Runoff capture and pollution reduction. Efforts are currently under consideration to conduct studies to support gathering information on pollutants that are impacting waterbodies across multiple watersheds. Two of these pollutants (bacteria and zinc) are primary drivers for identifying the types, location, and numbers of best management practices (BMPs) in Enhanced Watershed Management Programs/Watershed Management Programs (E/WMPs) developed	

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		for watersheds throughout Los Angeles County. The County and LACFCD request the commitment of the Regional Board to consider new language developed and submitted by the Permittees to further enhance TMDLs and their implementation.	
C.1.39	City of Los Angeles	Main Body, Part IV.B.2(d), Page 27 and Part X.E.5.e, Page 98. There are multiple statements within these provisions related to time schedules considering economic factors. LASAN requests that economic factors include consideration of Safe Clean Water Program (SCWP) funding.	**No change.** The reference to time schedules in Part IV.B.2.c.ii(d) of the Order relates to schedules for certain TMDLs that were developed by U.S. EPA. Some U.S. EPA TMDLs do not have separate programs of implementation in the Basin Plan (i.e. a regulatory implementation schedule). As such, these TMDLs generally require immediate compliance with applicable WQBELs and receiving water limitations. Nevertheless, the Los Angeles Water Board recognizes that in some cases additional time is needed to comply and allows Permittees to demonstrate compliance with these TMDLs in an approved Watershed Management Program provided there is adequate justification for the proposed schedule and any interim milestones are met. One factor that may be considered in proposing a time schedule is “economic factors.” No change is needed to specifically reference this program in the Regional Permit, the existing reference to

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			economic factors is broad enough to include Safe Clean Water Program funding and not all Permittees can avail themselves of this funding source. The reference to time schedules in Part X.E.5.e of the Order relates to requirements that apply to a Permittee when requesting a Time Schedule Order from the Los Angeles Water Board. The Los Angeles Water Board will consider all information provided by Permittees, including information regarding availability of funding from the Safe Clean Water Program.
C.2.1	VCSQMP	**Provision IV.A.1 – Technology-Based Effluent Limitations** The provision in the Draft Regional Permit is appropriate. However, the rationale and justification in the Draft Fact Sheet for Technology-Based Effluent Limitations needs to be revised for clarity with respect to application of such limits as they pertain and apply to municipal stormwater. Specifically, we recommend the following be revised: • Draft Fact Sheet, p. F-114-115, Footnote 102 – This footnote should be removed from the Draft Fact Sheet as it does not apply to municipal stormwater. Inclusion of this footnote is confusing in that it implies that Technology-Based Effluent	**Change made.** The Fact Sheet was updated to include a description of the successive permits for Ventura County. Revisions were also made to footnotes 102 and 107, now footnotes 156 and 161 in the Revised Tentative Fact Sheet, respectively. Regarding the comment on the U.S. EPA letter from Alexis Strauss, the Los Angeles Water Board disagrees that it was “improper” to cite this letter as the letter was from the agency’s representative, Ms. Strauss, and she accurately states U.S. EPA’s position. However, the Board has revised the footnote to simply cite the primary

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		Limitations for stormwater are also to be expressed numerically, which is not true. • Draft Fact Sheet, p. F-116 – The first full paragraph on page F-116 describes in detail successive permits for Los Angeles County, and uses this chronology as justification for provisions in the Draft Regional Permit. However, these details relate only to previous Los Angeles County MS4 permits and not previous Ventura County MS4 permits. Thus, the justification provided is not applicable to Ventura County permittees and cannot be used to support Draft Regional Permit provisions on Ventura County. This difference between the programs continues to support the need for a separate Ventura County MS4 permit rather than trying to force Ventura County into the Los Angeles County model. • Draft Fact Sheet, page F-116, Footnote 107 – The Draft Fact Sheet improperly cites to a letter from Alexis Strauss that was submitted to the State Water Board in regarding to pending Test Claims before the Commission in State Mandates. The letter in question was written and submitted in April 2008. Reference to this letter and its content in the Fact Sheet is improper for numerous reasons. First and foremost, the test claims in question have been heavily litigated for a number of	sources as well as more up-to-date U.S. EPA guidance on incorporating TMDLs into stormwater permits, "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on LAs'" (Nov. 26, 2014).

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		years and have been subject to several appellate court decisions and a California Supreme Court decision. The Court decisions on these matters are controlling – not a letter from Alexis Strauss in 2008. Second, the Draft Fact Sheet cites to this letter as evidence of "U.S. EPA's intent that storm water management programs evolve based on changing conditions …." Such a letter does not convey U.S. EPA's intent as it is not a formal regulation, memo or guidance, but rather one U.S. EPA employee's opinion. Reference to this letter should be deleted. Moreover, reference to U.S. EPA's intent should also be stricken unless the Draft Fact Sheet can be revised to include appropriate references or evidence for this statement other than the Strauss 2008 letter.	
C.2.2	TECS Environmental 2nd Letter	Technology-Based Effluent Limitations (TBELs) Are Not Required. The permits, under Part IV.A EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS, **Technology Based Effluent Limitations**, specify that *Each Permittee shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP)*. The regional board's permit writers should know that TBELs are not a requirement for MS4 Permits, which is affirmed under 40 CFR §122.4(a)(1): ***Technology-based effluent limitations*** *and*	**No change.** The Los Angeles Water does not dispute that section 301 of the Clean Water Act does not apply to MS4 permits. This issue was settled in *Defenders of Wildlife v. Browner*. There, the court concluded "that 33 U.S.C. § 1342(p)(3)(B)(iii) does not require municipal storm-sewer discharges to comply strictly with [section 301(b)(1)(C)].) (191 F.3d (9th Cir.) 1159, 1165.)

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		standards are based on effluent limitations and standards promulgated ***under section 301 of the CWA***. Once again, CWA 301 does not apply to MS4 Permittees. Beyond this, it is not clear what purpose this requirement serves. Moreover, there is no connection between TBELs and MEP. The latter is only and inexorably associated with CWA 402(p)(3)(B)(ii). **Recommendation**: Delete Part IV.A and make clear that TBELs implemented to the MEP are not a permit requirement.	However, that same court also concluded that permitting agencies have the authority to include more stringent controls in MS4 permits as necessary to meet water quality standards, holding that "[a]lthough Congress did not require municipal storm-sewer discharges to comply strictly with § [301](b)(1)(C), § [402]p)(3)(B)(iii) states that "[p]ermits for discharges from municipal storm sewers ... shall require ... *such other provisions as the Administrator ... determines appropriate for the control of such pollutants*." (Emphasis added.) That provision gives the [permitting authority] discretion to determine what pollution controls are appropriate." (*Id*. at 1167.) The MEP standard, while not derived from section 301 of the Clean Water Act, is therefore analogous to a technology based effluent limitation (TBEL) in that its reference point is the MS4 discharge rather than the waterbody. (*Maryland Dep't of the Env't v. Cty. Commissioners of Carroll Cty.* (2019) 465 Md. 169, 212; Jones Creek Invs., LLC v. Columbia Cty. (S.D. GA 2014) 98 F. Supp. 3d 1279, 1300, fn. 4.) And, like a TBEL, MEP functions as the regulatory floor, meaning that it is only the first step in establishing effluent limitations in the MS4 permit.

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			The Los Angeles Water Board has determined that compliance with MEP is insufficient to attain water quality standards, and has therefore exercised its discretion to include WQBELs as discussed in response to comments # F.22, G.25, and H.1.2.a.
C.2.3	City of Los Angeles	[Part IV.B.1.e becomes new f. Add new e as follows]: "Permittees shall demonstrate compliance with WQBELs, receiving water limitations, and WLAs in Attachments K through S of this Order as outlined in Part X of this Order."	**No change.** The proposed change introduces unnecessary redundancy. Compliance determination for WQBELs and Receiving Water Limitations is set forth in Part X of the Order and a cross-reference is unnecessary.
C.2.4	VCSQMP	Part IV.B.2. Page 26-27. This Part states that the permittees have demonstrated they are meeting the WLAs for the Santa Clara River Reach 3 Chloride TMDL. Per the Fact Sheet, while no exceedances have occurred in the past two years, three values were measured above the WLAs in the outfall in previous years. Per the permit, no exceedances are allowed, resulting in some uncertainty for the Permittees as to whether compliance can be demonstrated per the permit requirements upon the Effective Date of the Tentative Order. Additionally, the WQBEL as proposed in the Tentative Order is lower than the current water quality objective for chloride in Reach 3 and lower than the water quality objective of 100 mg/L that applied upstream of Reach 3. As this is an EPA TMDL, the	**No change.** The Santa Clara River Reach 3 Chloride TMDL was established by U.S. EPA in 2003 and the TMDL was included in the 2010 Ventura County MS4 Permit. U.S. EPA TMDLs do not include a time schedule for implementation and therefore are effective immediately. The Los Angeles Water Board may choose to provide additional time for implementation through the WMPs. In this case, the Los Angeles Water Board has not chosen to do so based on recent monitoring data as discussed in the Fact Sheet. The Board expects Permittees to maintain the current conditions where there were no exceedances in the past two years.

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		permittees should be able to propose a time schedule in a WMP to be able to consistently demonstrate zero exceedances, as required by the permit, to avoid mandatory minimum penalties. Time should also be provided to allow the TMDL to be updated to match the new water quality objective for Reach 3, if the WQBELs are not modified to 100 mg/L, as requested in comment number C.7.6 below. Remove the TMDL for Chloride in the Santa Clara River Reach 3 from Part IV.B.2 to Part IV.B.3 and make corresponding changes to the Fact Sheet.	With regards to the WQBEL of 80 mg/L, see response to comment number C.7.6.
C.2.5	Los Angeles County and LACFCD 2nd Letter	Order/ Part IV.B.2.b/ Pg. 26. The Tentative Order states that Permittees shall comply with the EPA TMDL WLAs that are set equivalent to existing loads on the effective date of the Order. In the case of the Santa Monica Bay TMDLs for DDTs and PCBs, the calculation of existing loads was based on three data points collected in the Ballona Creek watershed during one year and extrapolated to the rest of the Santa Monica Bay watershed. At the same time, the maximum allowable stormwater loads estimated based on the sediment targets and the average annual total suspended sediment loadings resulted in much higher loads than the calculated existing loads. The lower values of existing loads were selected as the WLAs for MS4. Over the past five years, significantly more	**No change.** For TMDLs where waste load allocations are set equal to existing pollutant loads at the time of TMDL adoption, Permittees may not increase pollutant loads in MS4 discharges more than the WLAs. Therefore, in the Regional MS4 Permit these WLAs are incorporated as numeric WQBELs and/or receiving water limitations that must be complied with as of the effective date of the Order. For the SMB DDTs and PCBs TMDL, compliance with the WQBELs will be determined based on a three-year averaging period as stated in Attachment O, Part III.C of the Revised Tentative Order.

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		data have been collected through the CIMPs that conduct monitoring in the subwatersheds that discharge to Santa Monica Bay. Those data may indicate some discrepancies with the calculated existing loads and may necessitate adjustments to EWMPs to address these pollutants. EWMPs are scheduled to be updated no later than June 2021 to assess whether BMPs and corresponding schedules should be identified. For this reason, the County and LACFCD request that the Santa Monica Bay TMDLs for DDTs and PCBs be included in the next subsection (Part IV.B.2.c) which would allow Permittees the opportunity to propose and implement BMPs and a schedule if the newer data suggest a load reduction is needed.	It should be noted that none of the watershed management programs for Permittees discharging to Santa Monica Bay submitted and approved under the 2012 Los Angeles County MS4 Permit proposed a schedule of implementation to comply with the SMB DDTs and PCBs TMDL, including: • North Santa Monica Bay Coastal Watershed EWMP; • Santa Monica Bay J2/J3 EWMP; • Beach Cities EWMP; • Palos Verdes Peninsula EWMP; • Malibu Creek Watershed EWMP; • Ballona Creek Watershed EWMP; and • Santa Monica Bay J7 WMP. However, if new information indicates that widespread pollutant reductions are necessary, the Board may consider a basin plan amendment to adopt a program of implementation for this TMDL. Permittees may also request a TSO at any time.
C.2.6	City of Los Angeles	Main Body, Part IV.B.2.b, Page 27. In the 2012 MS4 Permit (Attachment M), Permittees were allowed to establish deadlines for attaining the Santa Monica Bay TMDLs for DDTs and PCBs. The determination made in the TMDL that no load reductions were	**No change.** See response to comment number C.2.5.

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		necessary was based on limited data (only three samples each for DDTs and PCBs were used as the basis for evaluating current conditions). Based on the limited data collected during three events in wet season (2/27/06, 3/28/06, and 4/4/06) it appeared that no additional reductions were necessary to attain the TMDL. However, data collected since the 2012 Permit have indicated that there is a potential that reductions may be needed. Significantly more data have been collected since adoption of the 2012 Permit. As such, some Permittees may need to re-evaluate their approach to attaining this TMDL, including the schedule, as part of the June 2021 WMP/RAA updated. Further, no information is presented in the Fact Sheet demonstrating that the Regional Board evaluating the more robust dataset collected since 2012 to make a finding that the TMDL was being attained as asserted in the Tentative Order. As such, LASAN requests that the Santa Monica Bay TMDLs for DDTs and PCBs be moved to the list contained within IV.B.2.c and provided the opportunity to propose and implement BMPs and a schedule. Additionally, LASAN requests that the Fact Sheet be updated accordingly.	
C.2.7	City of Los Angeles	Main Body, Part IV.B.2.c.i and ii(d), Page 27. There are two references stating that Permittees shall propose a “schedule for implementing the BMPs that is short as	**No change.** The proposed additional language is redundant with Part IV.B.2.c.ii(d).

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		possible". While the intent of this language is understood, there may be alternative approaches (e.g., multi-benefit regional projects) with realistic goals that should be pursued with the funding that is available. LASAN requests that the following text be added for clarity: "…taking into consideration technical, environmental review and permitting, and economic feasibility."	
C.2.8	City of Los Angeles	[add underlined to Part IV.B.2.c.ii.(d)]: "A demonstration that the time schedule requested is as short as possible. The time schedule requested should take into account the time since U.S. EPA establishment of the TMDL, and technological, environmental review and permitting, operation, and economic factors (including consideration of Benefit Assessment Program or SCWP funding capabilities) that affect the design, development, and implementation of the control measures that are necessary to comply with the applicable numeric WQBELs contained in Attachments K through S of this Order."	**No change.** The proposed additional language is redundant. The existing language mirrors the language in California Water Code section 13385(j)(3)(C)(i) (relating to Time Schedule Orders.) This language is general enough to include environmental review and permitting and economic factors. Note that the Safe Clean Water Program is just one source of funding that Permittees in LA County can pursue to implement watershed management programs. Since the Regional Permit applies to Permittees in Ventura and Los Angeles Counties a specific reference has not been added.
C.2.9	Los Angeles County and LACFCD 2nd Letter	Attachment F/ Part VI.F.c / Pgs. F-154 through 155; Attachment Q/ Part V/ Pgs. Q-11 through Q-14; Attachment Q/ Part VII.A/ Pg. Q-15; Attachment Q/Part VII.B/ Pg. Q-16; Attachment Q/ Parts VII.D, E. and F/ Pgs. Q-16 through Q-20; Attachment Q/ Parts VII.I, J, K, and L/ Pgs. Q-21 through Q-26;	**No change.** The Order already includes statements explaining when Permittees may use Watershed Management Programs to comply with certain U.S. EPA adopted TMDLs. Part IV.B.2.c of the Order allows Permittees to implement specific U.S. EPA TMDLs through their

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		Attachment R/ Part III/ Pgs. R-4 through R-9. The Fact Sheet (starting on Pg. 154) states USEPA established TMDLs are included in the Order as narrative WQBELs whereby Permittees have the option of proposing BMPs that have a reasonable assurance of achieving the TMDL WLAs along with a schedule to implement the BMPs that is as short as possible in a Watershed Management Program. However, the TMDL Attachments contain numeric effluent limitations without clearly stating that compliance may be demonstrated through BMP implementation. As currently written, the requirements are to both implement the BMPs and attain the limitations. The compliance requirements in the TMDL Attachments should include an OR statement so that Permittees may comply either through implementation of WMP or meeting the effluent limitations for the following TMDLs: • Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL • Legg Lake System Nutrient TMDL • Lake Calabasas Nutrient TMDL • Echo Park Lake Chlordane, Dieldrin and PCBs TMDL • Peck Road Park Lake Chlordane, Dieldrin, DDTs and PCBs TMDL	Watershed Management Programs. Part X.B.2.b.ii of the Order (Compliance Determination) specifies that Permittees may use Watershed Management Programs as an alternative compliance pathway for the U.S. EPA TMDLs listed in Part IV.B.2.c.

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		• Puddingstone Reservoir Nutrient, Mercury, Chlordane, Dieldrin, DDTs and PCBs TMDLs	
C.2.10	Los Angeles County and LACFCD 2nd Letter	Order/ Part IV.B.2.c.ii.(d)/ Pg. 27. An opportunity must be afforded to MS4 Permittees to identify appropriate and attainable implementation schedules. Setting the maximum allowable time as 5 years, or the effective date of the new Permit in the case of the Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL developed by USEPA, is unreasonable. No analysis or information has been provided by the Regional Board to indicate these deadlines are feasible when considering technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the applicable WLA(s). The County and LACFCD request the deletion of language associated with the requirement for schedules to not exceed five years and the requirement for the dry weather WLAs for the Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL to be met on the effective date of the new Permit.	**No change.** There is no language in Part IV.B.2.c of the Order which sets a maximum allowable time of five years. Part IV.B.2.c.ii(d) merely states that time schedules must be "as short as possible." Part IV.B.2.c.ii(e) further requires interim requirements and dates for their achievement where schedules are longer than one year. To the extent the Fact Sheet discusses a 5-year limitation on the time schedule for the City of Long Beach to comply with the WQBELs and receiving water limitations during dry weather at Long Beach City Beaches, this language was merely describing requirements established in the TMDL itself. This five-year implementation schedule was not carried over into this Order, because the deadline has passed, as discussed in more detail below. Regarding the provisions relating to the time schedule for the Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL, the deadline was carried over from the 2014 Long Beach Permit. As noted in footnote 34 of the Revised Tentative Order, the Long Beach City Beaches dry weather bacteria

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			deadline of “no later than the effective date of this Order” was established consistent with the deadline in the 2014 Long Beach MS4 Permit, Part VIII.G.1.c.iv.(1). Per the 2014 City of Long Beach MS4 Permit, the final compliance deadline for Long Beach City Beaches during dry weather was March 28, 2019. This is a past final compliance deadline that has already been in effect for more than 2 years. Consistent with the assumptions and requirements of the TMDL, the Los Angeles Water Board determined that additional time to comply with the dry weather bacteria WLAs was not warranted. Therefore, the dry weather bacteria deadline for Long Beach City Beaches is carried over, by tying it to the effective date of the Regional MS4 Permit. If Permittees need additional time to comply with a final deadline, they can request a Time Schedule Order. See Part VI.F.2.c of the Revised Tentative Attachment F for further discussion about the compliance schedules for this TMDL.
C.2.11	SGVCOG 2nd Letter and ULAR Group	Part IV.B.2.c.iv; Page 28. Recommend adding language that Permittees will have the opportunity to revise a Watershed Management Program if it is initially found to	**No change.** See response to comment number G.1.

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		be inadequate. A grace period should be provided to correct any inadequacies.	
C.3.1	VCSQMP	Modifications to Section X. Compliance Determination **E. Time Schedule Orders** **4.** Permittees may either individually request a TSO or may jointly request a TSO with Permittees subject to the WQBELs and/or receiving water limits. Permittees may request a TSO concurrently when submitting a Watershed Management Plan under Part IV.	**No change.** A TSO may be requested at any time. A TSO request must include, at a minimum, the information listed in Part X.E.5.a through f of the Order and nothing in these provisions bar a Permittee from requesting a TSO concurrently with submission of a Watershed Management Program. Note, also that Permittees may request a TSO prior to submittal of a Watershed Management Program. Part IX.B.9 of the Revised Tentative Order has been updated to clarify that TSOs, which have been approved, can be considered in the schedule for a Watershed Management Program.
C.3.2	The Nature Conservancy	[Add the underlined language to Part X.E.5.c.] "Justification of the need for additional time to achieve the WQBELs and/or receiving water limitations, which may include but is not limited to additional time to plan and execute projects that incorporate multiple environmental and community benefits that present greater complexity than projects solely aimed at water quality improvement;"	**No change.** It is not necessary to add additional language to this requirement. The additional language is redundant as these provisions already require Permittees to describe what they have done to comply with the permit limitation(s), why they need more time, and what specific actions they need to take to achieve compliance. If Permittee(s) need more time to complete multi-benefit projects their TSO application should include this information.
C.3.3	City of Los Angeles	[add underlined to Part X.E.5.e]: "A demonstration that the time schedule	**No change.** The language as written is from California Water Code section

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		requested is as short as possible, considering the technological, environmental review and permitting, operation, and economic factors (including consideration of Benefit Assessment Program or SCWP funding capabilities) that affect the design, development, and implementation of the control measures that are necessary to comply with the WQBELs and/or receiving water limitation(s); and"	13385(j)(3)(C)(i), which authorizes the Board to issue Time Schedule Orders. This language is general enough to capture environmental review and permitting. See also response to comment C.2.8 for a discussion of Safe Clean Water Program funding.
C.4.1	VCSQMP	Attachment J. Table J-3, Santa Clara River Bacteria. Page J-2. Table J-3 inadvertently lists the Ventura County Watershed Protection District as a Responsible Party under the Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL. The Ventura County Watershed Protection District is not named in the Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL as an MS4 Permittee. On page 7-435 of Chapter 7 of the Basin Plan, the TMDL states "The cities of Santa Clarita, Fillmore, Santa Paula, and Ventura, and the Counties of Los Angeles and Ventura are responsible for the MS4 WLAs." The Ventura County Watershed Protection District is not named in this section or any other section of the TMDL and should therefore not be included as a responsible party to this TMDL.	**No change.** The TMDL generally identifies the MS4 Permittees as responsible parties and assigns WLAs to MS4 Permittees discharging to the Estuary and Reaches 1, 2, 3 and above. A Geographic Information System (GIS) desktop analysis using available data confirms that VCWPD has MS4 discharges to Santa Clara River Reach 3. Excluding the Ventura County Watershed Protection District would be inconsistent with the assumptions and requirements of the WLAs. The references to the County of Ventura and Los Angeles are broad enough to include the flood control districts therein. Further, the Santa Clara River Bacteria TMDL Staff Report Pages 53-54 Section 6.3 WLA, and Page 55 Section 7.1 Responsible Jurisdictions, Agencies and Entities, provides additional support as it

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		Remove the "X" from Table J-3 in the Ventura County Watershed Protection District row under the Santa Clara River Estuary and Reaches 3, 5, 6, 7, Indicator Bacteria TMDL.	names Ventura County Watershed Protection District (VCWPD) as a responsible MS4 Permittee for meeting the WLAs.
C.4.2	County of Ventura, VCWPD, and the City of Thousand Oaks	As members of the Ventura Countywide Stormwater Quality Management Program (Program), the County, VCWPD, and the City support the comments in the Program's December 7, 2020 letter and would like to provide additional comments and support for removing County, VCWPD, and the City as responsible parties for the Santa Monica Bay Beach (SMBB) Bacteria TMDL (Wet and Dry Weather) in Table J-6 of the Tentative Order's Attachment J. The key reasons for this request are as follows: 1. The Ventura County Malibu TMDL Responsible Agencies were not included in the original SMBB Bacteria TMDL. 2. The Ventura County Malibu TMDL Responsible Agencies are subject to the Malibu Creek Bacteria TMDL which includes the same requirements as the SMBB Bacteria TMDL including the same July 15, 2021 implementation deadline. 3. The Ventura County Malibu TMDL Responsible Agencies were added into the SMBB Bacteria TMDL during the reconsideration process in 2012. However, the staff report does not provide any discussion of the addition or demonstration that the MS4 discharges	**Change made.** As stated, the revised Santa Monica Bay Beaches Bacteria TMDL (SMB Bacteria TMDL) in Table 7-4.2b of the Basin Plan (p. 7-54) names Ventura County and Thousand Oaks as responsible jurisdictions for Jurisdictional Group 9, the Malibu Creek Watershed. Tables J-6 and J-7 in the Revised Tentative Attachment J are consistent with the TMDL. Footnote 5 was added to Table J-7, clarifying that the SMB Bacteria TMDL does not differentiate between the County of Ventura and the VCWPD. The SMB Bacteria TMDL does not include compliance with the SMB Bacteria TMDL through compliance with the Malibu Creek Bacteria TMDL and this compliance approach would not be appropriate because the Malibu Creek Bacteria TMDL does not distinguish between summer and winter dry weather and allows exceedances during this time period whereas the SMB Bacteria TMDL does not allow any summer dry weather exceedance days.

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		from Ventura County reach Santa Monica Bay. 4. No County MS4, VCWPD MS4, or City of Thousand Oaks MS4 infrastructure is located in the Santa Monica Bay Beaches (SMBB) watershed other than that located in the Malibu Creek Watershed (MCW). Moreover, there is no City's jurisdictional area and County's area is an open space with several private properties and no public infrastructure, in the area outside MCW but within SMBB as well. The Santa Monica Bay Beaches (SMBB) Bacteria TMDL initially became effective in June 2003 (2003 SMBB Bacteria TMDL). In the 2003 SMBB Bacteria TMDL, allocations for MS4 permittees were not assigned to Ventura County MS4 Permittees. The 2003 SMBB Wet Weather Bacteria TMDL Basin Plan Amendment (BPA) states that the wasteload allocations (WLAs) will primarily be implemented through the Los Angeles County MS4 permit and the staff report for the 2003 SMBB Dry Weather Bacteria TMDL only identifies the wasteload allocations as applying to Los Angeles County MS4 Permittees and Caltrans: "A joint WLA is given to LA County MS4 permittees and Caltrans for each shoreline monitoring location and for each of the two	Regarding the comment that "the Ventura County area outside of the Malibu Creek subwatershed that drains to Santa Monica Bay does not contain any MS4 infrastructure," the Regional Board agrees, which is why the County of Ventura and the VCWPD are not included in Jurisdictional Group 1 in Table J-7 of the Revised Tentative Attachment J.

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		compliance periods (summer dry weather and winter dry weather).” (SMBB Dry Weather Bacteria TMDL Staff Report page 21) Additionally, the Malibu Creek Watershed was not included in the TMDL and no Ventura County MS4 Permittees were listed as responsible parties for the monitoring. The Malibu Creek Watershed Bacteria TMDL was adopted in 2004, became effective in January 2006, and used the same targets and allocations as the SMBB Bacteria TMDL to ensure that discharges to Malibu Creek would not cause exceedances of the SMBB Bacteria TMDL. As a result, compliance with the Malibu Creek Bacteria TMDL by Ventura County MS4 Permittees will result in compliance with the SMBB Bacteria TMDL. "The Waste Load Allocations and Load Allocations for this TMDL are the same as for the Santa Monica Bay Beaches Bacteria TMDL (See Table 22)." (Malibu Creek Bacteria TMDL Staff Report page 30) In 2012, the SMBB Bacteria TMDL was reconsidered. As noted in the staff report, the reconsideration was a limited modification to address specific technical elements:	

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		"This reconsideration is not a general reconsideration of all the elements of the TMDLs but a re-examination of certain technical issues which, as recognized at the time of TMDL adoption, might need revision upon further data collection and analysis, study or experience." (SMBB Bacteria TMDL Reconsideration Staff Report page 6). Even though it was not part of the reconsideration, during the reconsideration in 2012, the Malibu Creek Watershed, Jurisdictional Group 9 including County of Ventura and City of Thousand Oaks, was added to the Basin Plan Amendment. However, there is no accompanying discussion or justification in the staff report for adding this jurisdictional group to the TMDL. It is unclear why Jurisdictional Group 9 was added to the SMBB Bacteria TMDL when a TMDL in Malibu Creek that is consistent with the SMBB Bacteria TMDL already existed. Additionally, VCWPD was not listed in the reconsidered SMBB Bacteria TMDL. Because no discussion exists in the 2012 SMBB Bacteria TMDL Staff Report regarding why Jurisdictional Group 9 was added, the Staff Report also does not include any discussion regarding the likelihood of MS4 discharges from Ventura County reaching Santa Monica Bay. Ventura County	

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		Permittees are located at the top of the watershed and in many cases their discharges do not reach the lagoon due to capture in the lakes in the upper part of the watershed. As noted in the Malibu Creek Bacteria TMDL Staff Report, “The lakes were not included in Table 20, because the lakes were not identified as a fecal coliform source during the source assessment (Section 4).” [footnote] 1 (Malibu Creek Bacteria TMDL Staff Report page 29). This finding indicates that the Ventura County MS4 Permittees were included in the Malibu Creek TMDL to address impairments in the Malibu Creek Watershed, but does not support the inclusion of the Ventura County Malibu TMDL Responsible Agencies in the SMBB Bacteria TMDL. Footnote 1: Table 20 in the staff report is the summary of the load reductions needed in the watershed. Finally, the Ventura County area outside of the Malibu Creek watershed that drains to Santa Monica Bay, does not contain any MS4 infrastructure and there is no City of Thousand Oaks’ jurisdictional area. As shown in the attached watershed maps, a small portion of the County unincorporated area, 2,860 acres of open space, is in the SMBB watershed just to the west of the Malibu	

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		Creek Watershed. Attached map number 3 shows that majority of the area belongs to National Park Service. Remaining areas are privately owned without any municipal/County's infrastructure, except for 2.5 miles of rural/scenic Yerba Buena Rd under County's jurisdiction. As discussed previously with Los Angeles Regional Water Board staff and as shown in attached photos, this scenic road does not have a curb and gutter, no ditches and no shoulder and does not meet MS4 definition per the Tentative Order's Attachment A "Definitions": **Municipal Separate Storm Sewer System (MS4)** A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) (40 CFR § 122.26(b)(8)): 1. Owned or operated by a State, city, town, borough, county, parish, VCWPD, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special VCWPDs under State law such as a sewer VCWPD, flood control VCWPD or drainage VCWPD, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a	

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		designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; 2. Designed or used for collecting or conveying storm water; 3. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR § 122.2 Concluding, Yerba Buena Rd does not meet above definition of the MS4 and therefore County of Ventura should not be listed under this TMDL in the new Regional MS4 Permit. Moreover, VCWPD has no flood control or storm drain infrastructure within that area and the City has no jurisdictional area at all. This area that has been discussed and accepted by the RWQCB staff as related to Santa Monica Bay Marine Debris TMDL. Ventura MS4 Permittees compliance with bacteria TMDL requirements is met through Malibu Creek Bacteria TMDL. While we recognize that the TMDL cannot be modified through a permit action, incorporating the TMDL into the permit only requires that the permit conditions be consistent with the assumptions used to develop the TMDL allocations, not that they be exactly equal (see Attachment 5 to the Program's comment letter). As a result, given the information above from the TMDLs, it is	

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		consistent with the SMBB Bacteria TMDL assumptions that contributions from Ventura County will be addressed by the Malibu Creek Bacteria TMDL and separate SMBB Bacteria TMDL requirements are not needed. As a result, it is requested that County of Ventura, VCWPD, and City of Thousand Oaks be removed as responsible parties for the Santa Monica Bay Beach Bacteria TMDL (Wet and Dry Weather) in Table J-6 of the Tentative Order's Attachment J. **Requested Action:** Remove the "X" from Table J-6 in the Ventura (County of), Ventura County Watershed Protection VCWPD, and Thousand Oaks rows under the Santa Monica Bay Beaches Bacteria TMDL. Or, if this change is not made, please add a footnote to Table J-6, that states: "The County of Ventura, the Ventura County Watershed Protection VCWPD, and the City of Thousand Oaks shall comply with the effluent limitations assigned to the Malibu Creek and Lagoon Bacteria TMDL in lieu of complying with the Santa Monica Bay Beaches Bacteria TMDL."	
C.4.3	VCSQMP	Attachment J. Table J-6 Santa Monica Bay Beaches Bacteria TMDL. Page J-4. In the original Santa Monica Bay Beaches (SMBB)	**No change.** The Malibu Creek Watershed was included in the original TMDL; however, no interim waste load

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		Bacteria TMDL, the Ventura County MS4 permit was not cited in the Basin Plan Amendment as a MS4 permit subject to the TMDL. Additionally, the Malibu Creek Watershed was not included in the TMDL and no Ventura County MS4 Permittees were listed as responsible parties for the monitoring. The Malibu Creek Watershed Bacteria TMDL was adopted after the original SMBB Bacteria TMDL and used the same targets and allocations as the SMBB Bacteria TMDL to ensure that discharges to Malibu Creek would not cause exceedances of the SMBB Bacteria TMDL. As a result, compliance with the Malibu Creek Bacteria TMDL by Ventura County Permittees will result in compliance with the SMBB Bacteria TMDL. "The Waste Load Allocations and Load Allocations for this TMDL are the same as for the Santa Monica Bay Beaches Bacteria TMDL (See Table 22)", page 30. During the reconsideration in 2012, the Malibu Creek Watershed, Jurisdictional Group 9, that includes the Ventura County stormwater permittees was added to the Basin Plan Amendment, but there is no accompanying justification in the staff report making it unclear why they were added when a TMDL in Malibu Creek that is consistent with the SMBB Bacteria TMDL already existed. Additionally, Ventura County Permittees are located at the top of the	allocations were assigned in anticipation of the development of the Malibu Creek Bacteria TMDL. See response to comment number C.4.2.

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		watershed and in many cases their discharges do not reach the lagoon due to capture in the lakes in the upper part of the watershed. Finally, the Ventura County area outside of the Malibu Creek subwatershed that drains to Santa Monica Bay, does not contain any MS4 infrastructure. As a result, it is requested that Thousand Oaks, Ventura County, and Ventura County Watershed Protection District be removed as responsible parties for the Santa Monica Bay Beach Bacteria TMDL (Wet and Dry Weather) in Table J-6. Remove the "X" from Table J-6 in the Ventura (County of), Ventura County Watershed Protection District, and Thousand Oaks rows under the Santa Monica Bay Beaches Bacteria TMDL. If this change is not made, please add a footnote to Table J-6, that states "The County of Ventura, the Ventura County Watershed Protection District, and the City of Thousand Oaks shall comply with the effluent limitations assigned to the Malibu Creek and Lagoon Bacteria TMDL in lieu of complying with the Santa Monica Bay Beaches Bacteria TMDL."	
C.4.4	Los Angeles County and LACFCD 2nd letter	Attachment J/ Table J-7/ Pg. J-5. Table J-7. The unincorporated County has no jurisdiction in Santa Monica Bay J5, J6, and J7. The County of Los Angeles owns beaches along these coasts, but they are considered	**No change.** The SMB Bacteria TMDL in Table 7-4.2b of the Basin Plan names the County of Los Angeles as a responsible jurisdiction for J1 through J7 and J9. As stated in footnote 3 of Revised Tentative

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		non-point sources and are outside of this MS4 Permit. We recommend revisions to Table J-7.	Attachment J, the SMB Bacteria TMDL does not differentiate between the County of Los Angeles and the Los Angeles County Flood Control District. The County of Los Angeles is required to comply with the SMB Bacteria TMDL for areas in which it has the jurisdiction and legal authority to implement the requirements of the SMB Bacteria TMDL. In other words, if there is no unincorporated County area in a jurisdictional group, then the County of Los Angeles has no jurisdiction or legal authority to comply with the SMB Bacteria TMDL. Note, the Los Angeles County Flood Control District does own and maintain MS4s in J5, J6 and J7.
C.4.5	VCSQMP	Attachment J. Table J-11 Los Angeles River Watershed Management Area TMDLs. Page J-11. The Ventura County Permittees appreciate the inclusion of footnote 7 to Table J-11 noting that the City of Simi Valley does not have any MS4 discharges to the Los Angeles River Watershed. However, given that the City does not have any MS4 infrastructure in the watershed, it is inappropriate to include the City as a responsible party to a TMDL in the MS4 permit. The permit should only include TMDLs that are applicable to the coverage area of the permit. Per the first page of the Order ". . . 10 incorporated cities within	**No change.** As stated in the June 25, 2018 letter to the City of Simi Valley, the Los Angeles Water Board agrees that there is currently no portion of the municipal separate storm sewer system (MS4) in the areas of Simi Valley draining to the Los Angeles River Watershed. The letter goes on to state that because the final compliance deadline for the trash waste load allocations had already elapsed, the Los Angeles Water Board does not plan on reconsidering the Los Angeles River Trash TMDL. However, because the TMDL assigns a waste load allocation to the City of Simi Valley, and

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		Ventura County (hereinafter referred to separately as Permittees and jointly as Dischargers) are subject to waste discharge requirements (WDRs) for their municipal separate storm sewer system (MS4) discharges originating from within their jurisdictional boundaries . . ." Given that the permit only covers the MS4 system, requirements for portions of a jurisdiction that do not have an MS4 should not be included in the permit. This issue was also previously addressed in a July 5, 2016 field trip and subsequent September 12, 2017 letter from the City of Simi Valley to the LA RWQCB Executive Officer. Per this letter "The TMDL in the Los Angeles River Watershed cites three small parcels of land totaling 1.2 acres, within the City extending into the area mapped as the Watershed. On July 5, 2016, City staff met with your agency's staff to tour these parcels and discuss the City's role in the TMDL. During that meeting, your agency's staff concluded that the small parcels within the City do not have the potential to cause or contribute to water quality impairments in the Watershed." In a June 25, 2018 response letter from the LA RWQCB Executive Officer to the City of Simi Valley, it states "Los Angeles Water	the permit must be consistent with the assumptions and requirements of the TMDL waste load allocations, the City of Simi Valley cannot be removed from Attachment J. Footnote 8 of the Revised Tentative Attachment J is included to explain the unique situation for Simi Valley.

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		Board staff concluded that no portion of the municipal separate storm sewer system (MS4) is in the areas of Simi Valley draining to the Los Angeles River Watershed. Staff recognizes that the current conditions of these areas would not result in point source discharges of trash in the Los Angeles River watershed. However, given that the final compliance deadline for the trash waste load allocations has already elapsed, the Los Angeles Water Board does not plan on reconsidering the TMDL. Under the current Ventura County and Los Angeles County MS4 permits, the city of Simi Valley has no requirements to meet the Los Angeles River Trash TMDL. **The City's exemption from the Los Angeles River Trash TMDL may be further clarified in future MS4 permits."** Remove the "X" from Table J-11 for the City of Simi Valley.	
C.4.6	City of Simi Valley	The City of Simi Valley would also request its removal as a responsible jurisdiction from the Malibu Creek Sedimentation and Nutrients TMDL and the Los Angeles River Trash TMDL.	**No change.** Regarding the Los Angeles River Trash TMDL, see response to comment number C.4.5. The Regional MS4 Permit does not name the City of Simi Valley as a responsible Permittee for the Malibu Creek Sedimentation and Nutrients TMDL.
C.5.1	---	No comments received.	---
C.6.1	VCSQMP	Attachment L. Part I. B Harbor Beaches of Ventura County (Kiddie Beach and Hobie	**No change.** Consistent with the Kiddie Beach and Hobie Beach Bacteria TMDL,

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		Beach) Bacteria. Page L-1. The Tentative Order includes WQBELs that are equal to the daily maximum and geometric mean TMDL targets. However, as stated on page 7-337 of the Basin Plan, the WLAs for the Harbor Beaches of Ventura County (Kiddie Beach and Hobie Beach) Bacteria TMDL are expressed as allowable exceedance days. The TMDL clearly states that the WLAs are equal to allowable exceedance days and not the TMDL targets without any exceedance days. While we recognize that with limited monitoring, the equivalent exceedance days may be zero, it is not appropriate for the WQBELs to not allow for the exceedance days to be applied if sufficient monitoring is conducted. Remove the water quality-based effluent limitations table in I.B and replace it with the final allowable exceedance days table from I.C.2 and make any corresponding changes to the Fact Sheet.	WLAs are expressed as receiving water limitations (applied in-stream) with allowable exceedance days and are included in Attachment L Part I.C. Consistent with most other Bacteria TMDLs in the permit, WQBELs applied at the outfall in Attachment L Part I.B, are set equal to the TMDL targets. The TMDL does not assign allowable exceedance days to the outfalls. As such, exceedance days are not assigned to the outfalls to determine compliance with WQBELs unless the TMDL expressly assigns exceedance days to outfalls. (See e.g., response to comment # C.7.7)
C.7.1	City of Santa Paula	The Santa Clara River Nitrogen TMDL. Effluent limitations for this TMDL have been included in the Tentative Order ignoring the fact that the waterbody has been delisted and the impairments removed for this constituent, through costly investments in wastewater infrastructure (including the City's Water Reclamation facility). In addition, the application of a centralized wastewater	**No change.** The WQBELs included in the permit are consistent with the TMDL WLAs. A change of WQBELs requires a separate action through a Basin Plan amendment. This is outside the scope of this permit. Once a TMDL has been established, the Regional Water Boards implement the

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		permitting model to a decentralized stormwater infrastructure through the inclusion of stringent numeric effluent limitations could place the City in an untenable position if technical or economic factors leave it unable to comply. Furthermore, the cities and county in the lower Santa Clara River watershed could be exposed to significant financial jeopardy from future Mandatory Minimum Penalties, and continued and unnecessary costs for monitoring and reporting. It should be noted that the stormwater numeric effluent limitation for Total Ammonia as Nitrogen (30-day average effluent limitation = 2.0 mg/L) contained in the Tentative Order is more stringent than numeric effluent limitations recently adopted for several wastewater treatment plants in Ventura County (*Examples: Simi Valley is 2.4 mg/L, Camrosa is 3.0 mg/l*).	TMDLs through changes in discharge permits, including MS4 permits, to reduce the levels of pollution causing the water quality impairment. While the 303(d) list and TMDLs are related, changes to the 303(d) list do not affect established TMDLs as discussed in response to comment # C.1.36.
C.7.2	County of Ventura	Remove the water quality-based effluent limitations for Santa Clara River (SCR) Reach 3 per SCR Nitrogen Compounds TMDL, because SCR Reach 3 was delisted from the Clean Water Act 303(d) list documenting that the impairment associated with this TMDL has been removed. Additionally, the Ventura County MS4 monitoring program has demonstrated that receiving water exceedances are no longer being observed.	**No change.** See response to comments C.7.1 and C.1.36

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C.7.3	VCSQMP	*For waterbodies that have been delisted, remove the TMDLs from the permit* The Tentative Order contains numeric WQBELs for waterbodies that have been delisted and for which there is no longer any evidence of MS4s causing or contributing to receiving water exceedances. For waterbodies that are now meeting objectives, there is no need to maintain WQBELs in the permit. While the Ventura County Permittees recognize that the existence of a TMDL has been utilized as a rationale for including numeric WQBELs in other permits, there is no requirement to do so. Rather, the Regional Water Board should conduct an evaluation of the data to determine if there continues to be reasonable potential for the MS4s to cause or contribute to a receiving water objective exceedance. If there is no longer reasonable potential, the TMDLs should be removed from the permit, or at a minimum the WQBELs should be removed. Successful implementation of actions that result in achieving water quality objectives and removing impairments should be rewarded. Rather than rewarding the success, the Tentative Order instead imposes immediate compliance requirements for these TMDLs. Due to the concerns outlined in comment #1, the Permittees have concerns that even though the impairments no longer	**No change.** See response to comments C.7.1 and C.1.36

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		exist, questions about assessing compliance with permit conditions could cause a compliance risk for the Permittees when there is very little potential impact in the receiving waters. The Tentative Order should acknowledge these successes and remove the numeric WQBELs from the permit. <u>Recommendation</u> The Ventura County Permittees request that the numeric WQBELs for the Santa Clara River Nitrogen TMDL be removed.	
C.7.4	VCSQMP	Attachment M Part I.B Santa Clara River Nitrogen Compounds. Page M-1. The Santa Clara River, reach 3, was delisted by the Los Angeles Water Board, demonstrating that the impairment associated with this TMDL has been removed. Additionally, the Ventura County MS4 monitoring program has demonstrated that receiving water exceedances are no longer being observed. However, the Tentative Order includes WQBELs associated with the Santa Clara River Nitrogen Compounds TMDL. In order to demonstrate compliance with the WQBELs, the Ventura County Permittees must demonstrate "no exceedances of the WQBELs" per Part X of the Tentative Order. The requirement to demonstrate no exceedances under any conditions is inconsistent with the delisting and the finding that the waterbody is no longer impaired. By	**No change.** See response to comments C.7.1 and C.1.36.

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		including the WQBELs, the responsible Ventura County Permittees are potentially subject to mandatory minimum penalties for exceedances of the WQBELs that are not causing an impairment of the waterbody. TMDLs that have resulted in delistings should be rewarded and WQBELs for those TMDLs should not be included in the Tentative Order. If needed, other mechanisms for incorporating the WLAs, such as minimum BMP requirements or monitoring triggers could be incorporated to reflect the different status of TMDL implementation for delisted waterbodies. Remove the water quality-based effluent limitations for Reach 3 in the Attachment M 1.B table, and make any corresponding changes to the Fact Sheet.	
C.7.5	VCSQMP	Attachment M Part I.B Santa Clara River Nitrogen Compounds. Page M-1. Provision I.B states, "…to Santa Clara River Reach 5 and Reach 3 and their tributaries…". It is requested that the reference to tributaries be removed due to the fact that allocations for MS4s only assigned to Reach 7 and Reach 3 discharges in the Santa Clara River Nitrogen Compounds TMDL (Basin Plan Chapter 7, page 7-99). Only non-point sources were assigned allocations to the tributaries.	**Change made.** The WLA to reach 5 is appropriate. The Basin Plan Chapter 7-9 Santa Clara River Nitrogen Compounds TMDL uses the U.S. EPA Santa Clara River reach designations. The U.S. EPA's Santa Clara River Reach 7 corresponds to Santa Clara River Reach 5 in the Los Angeles Region's Basin Plan Chapter 2 (see Revised Tentative Attachment M, footnote 1). The reference to tributaries has been removed. The TMDL staff report explains

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		Please modify Attachment M, I.B as follows "…to Santa Clara River Reach 5 and Reach 3 ~~and their tributaries~~…."	that MS4 discharges are assigned WLAs due to potential localized effects on water quality (pg. 61.) This is consistent with the previous 2012 Los Angeles County and 2010 Ventura County MS4 permit language for this TMDL.
C.7.6	VCSQMP	Attachment M Part II.B Santa Clara River Chloride TMDL. Page M-1. The Ventura County Permittees recognize that the Santa Clara River Chloride TMDL includes a WLA of 80 mg/L. However, subsequent to the TMDL development, the objective for Reach 3 was changed to 100 mg/L. As the WLA in the TMDL was set equal to the water quality objective, it would be consistent with the assumptions of the WLA to include an effluent limitation of 100 mg/L to achieve the water quality objective for chloride in this reach. As noted on page 19 of the TMDL, "The approach of setting the TMDL and associated allocations on a concentration basis equal, in most cases, to the applicable standard, greatly reduces the uncertainty concerning the relationship between discharge limitations and the applicable water quality standards." Therefore, adjusting the effluent limitations to match the current standards would not add any additional uncertainty or cause for concern that the applicable water quality objectives were not met. Additionally, the implementation plan for the TMDL acknowledged that the Regional Water Board	**Change made.** The U.S. EPA established Santa Clara River Reach 3 Chloride TMDL is clear that WLAs were intended to be set equal to the applicable water quality objective in the Basin Plan. At the time this TMDL was established (June 18, 2003), the Basin Plan Objective for Santa Clara River Reach 3 was 80 mg/L for chloride. The Los Angeles Water Board changed the water quality objective for Santa Clara River Reach 3 from 80 mg/L to 100 mg/L in 2004 (Resolution R03-015, effective on 08/04/04). Additionally, the EPA TMDL on page 20, Section 10: Implementation Recommendations, states the following: "EPA understands that the State is in the process of reviewing and revising upward the numeric water quality objective for chloride in Santa Clara River Reach 3. Based on our review of the data used to support the State's listing of Reach 3 for chlorides on the 2002 California Section 303(d) list, it appears possible that this

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		was in the process of modifying the water quality objective for Reach 3 to 100 mg/L and allow for full implementation of the TMDL to be deferred until after the objective change, thereby allowing for the new objective to be considered when developing permit limitations. Finally, Reach 4, upstream of Reach 3, has an objective of 100 mg/L and upstream discharges can discharge at 100 mg/L or higher. Setting allocations for Reach 3 that are less than the upstream reach prevents the Permittees from showing compliance if the receiving water exceeds 80 mg/L due to upstream discharges even though no impairment exists in the receiving waters. It is requested that the water quality based effluent limitation in II.B. be modified to 100 mg/L, as was identified in the working proposal, and make any corresponding changes to the Fact Sheet.	Reach would not exceed water quality standards if the objective is raised to 100 mg/L as proposed by the State. EPA believes it would be reasonable for the State to defer full implementation of the TMDL for Reach 3 until this objective change is completed. If the State does not complete its proposed action to raise the chloride objective for Reach 3, the State should determine the appropriate means of implementing the TMDL through its NPDES permitting decisions and other programs to address nonpoint sources for which allocations are included in this TMDL." Therefore, the Santa Clara River Reach 3 WQBEL of 80 mg/L is revised to 100 mg/L in Revised Tentative Attachment M Part II.B. Furthermore, justification is added to the Revised Tentative Attachment F Table F-21 and Part III.I.3.g.
C.7.7	VCSQMP	Attachment M Part IV.B Santa Clara River Estuary and Reaches 3, 5, 6, 7, Indicator Bacteria. Page M-2. Provision IV.B includes WQBELs that are equal to the daily maximum and geometric mean TMDL targets. However, both the targets and the WLAs located in the TMDL for Santa Clara River Estuary and Reaches 3, 5, 6, 7, Indicator Bacteria are expressed as allowable exceedance days.	**Change made.** The Board agrees that is appropriate to apply exceedance days at outfalls to determine with compliance with WQBELs based on the Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL. Table 7-36.2 and Table 7-36.3 of the Basin Plan assign in-stream allowable exceedance days to Santa Clara River Estuary, and Santa

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		The allowable exceedance days should be included for the WQBELs as well as the RWLs. In Chapter 7 of the Basin Plan, on page 7-432, the TMDL states "To implement the single sample bacteria objectives for waters designated REC-2, and to set allocations based on the single sample targets, an allowable number of exceedance days is set for marine and fresh waters. The numeric targets in the TMDL are expressed as 'allowable exceedance days' since bacterial density and the frequency of exceedances is more relevant to public health." On page 7-433, the TMDL states "MS4 permittees are assigned wasteload allocations (WLAs) equal to allowable exceedance days listed in Table 7-36.2 and interim WLAs equal to allowable exceedance days listed in Table 7-36.3. Compliance with interim WLAs will be assessed using in-stream monitoring. Compliance with final WLAs will be assessed using both in-stream monitoring and outfall monitoring as described in the monitoring section." The TMDL clearly states that the WLAs are equal to allowable exceedance days and not the TMDL targets without any exceedance days. While we recognize that with limited monitoring, the equivalent exceedance days may be zero, it is not appropriate for the WQBELs to not allow for the exceedance	Clara River Reaches 3, 5, 6, and 7. However, in contrast to other Bacteria TMDLs in the region, the compliance determination language in the monitoring section of the Santa Clara River Bacteria TMDL expressly contemplates applying these exceedance days at the outfalls, stating, “Responsible jurisdictions and agencies shall assess compliance *at the outfall monitoring sites* identified in the implementation plan. Compliance shall be based on the allowable number of *exceedance days*…” (Basin Plan, p. 7-436.) Therefore, applying the exceedance days to both WQBELs and receiving water limitations is consistent with the assumptions and requirements of these TMDL WLAs. The following changes were made to the Revised Tentative: added Part III.I.h to the Fact Sheet; revised Table F-21 of the Fact Sheet; revised Part VI.D.1 of Fact Sheet, and revised Attachment M, Part IV.

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		days to be applied if sufficient monitoring is conducted. Remove the water quality-based effluent limitations table in IV.B and replace it with the final allowable exceedance days table from IV.C.2, and make any corresponding changes to the Fact Sheet.	
C.7.8	VCSQMP	Attachment M Part IV.B Santa Clara River Estuary and Reaches 3, 5, 6, 7, Indicator Bacteria. Page M-2. Provision IV.B assigns effluent limitations and receiving water limitations to Reaches 1 and 2 that are based on the targets for the Estuary. However, the TMDL only includes allocations for permittees that discharge to Reaches 1 and 2 that are equal to the number of exceedance days in the Estuary. However, the targets that apply to the Estuary are specific to marine waters, not the freshwaters that are present in Reaches 1 and 2. Therefore, the WQBELs for Reaches 1 and 2 should not include the WQBELs and RWLs indicator bacteria concentrations from the Estuary. If indicator bacteria WQBELs and RWLs are included for Reaches 1 and 2 they should be the same as Reach 3. Delete Santa Clara River Reaches 1 and 2 from the effluent limitations table in Attachment N, IV.B and the receiving water limitations table in Attachment N, IV.C.3. If	**No change.** The Santa Clara River Bacteria TMDL clearly states that "Permittees that discharge to Reaches 1 and 2 have WLAs based on allowable exceedance days for the Estuary. Permittees that discharge to Reach 3 or above have WLAs based on allowable exceedance days for Reaches 3, 5, 6, and 7". (Basin Plan, p. 7-433) Therefore, Attachment M Part IV includes receiving water limitations consistent with the WLAs. Furthermore, Total Dissolved Solids (TDS) monitoring data from mass emissions station ME-SCR, located upstream of Reaches 1 and 2, indicates that Reaches 1 and 2 may have brackish water 95% of the time. To be protective of the Estuary, marine objectives were applied to the upstream Reaches 1 and 2.

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		this modification is not made, delete Santa Clara River Reaches 1 and 2 from the Santa Clara Estuary column in the tables and add them to the Santa Clara River Reaches 3 and above column.	
C.7.9	VCSQMP	Attachment M Parts IV.B, IV.C Santa Clara River Estuary and Reaches 3, 5, 6, 7, Indicator Bacteria. Pages M-2, M-3. The Santa Clara River Estuary and Reaches 3,5,6,and 7 Indicator Bacteria TMDL does not include Reach 4, but throughout Sections IV.B and IV.C of Attachment M to the Tentative Order, the WQBELs, RWLs and other requirements are described as being applicable to Reach 3 and above. This creates confusion about the applicability of the requirements and incorrectly implies that the requirements are applicable to MS4 discharges into Reach 4. Please either modify all instances of Reach 3 and above to state Reaches 3, 5, 6 and 7 or include a footnote for every instance where Reaches 3 and above or Reaches 1, 2, 3 and above is utilized to clarify that "and above" refers to Reaches 5, 6 and 7 of the Santa Clara River only.	**No change.** The Santa Clara River Bacteria TMDL clearly states that "Permittees that discharge to Reaches 1 and 2 have WLAs based on allowable exceedance days for the Estuary. Permittees that discharge to Reach 3 or above have WLAs based on allowable exceedance days for Reaches 3, 5, 6, and 7". This means that WLAs also apply to Reach 4.
C.7.10	VCSQMP	Attachment M Part IV.C. 4 Santa Clara River Estuary and Reaches 3, 5, 6, 7, Indicator Bacteria. Page M-3. As part of the implementation plan, Ventura County Permittees subject to the Santa Clara River	**No change.** The Board's December 26, 2017 acceptance letter of the Santa Clara River Bacteria TMDL Implementation Plan states the following: "Los Angeles Water Board staff supports in conceptual

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		Bacteria TMDL submitted a proposed load-based compliance plan to the Los Angeles Regional Water Quality Control Board. The submitted plan included the required elements outlined in the permit. In a letter dated December 26, 2017, the Regional Water Board stated, "Los Angeles Water Board staff supports in conceptual terms the proposed wet-weather load-based compliance approach and associated permit language." As a result, the Ventura County Permittees request that the permit note that a load-based compliance plan has been submitted and approved for use for the applicable responsible parties to the TMDL. Additionally, the language in IV.C.4 should be modified to clarify that attaining the loads in an approved load-based plan equals compliance with the WQBELs in IV.B. Include a footnote to Attachment M, IV.C.4 stating that the Ventura County Permittees have an approved load-based compliance plan. Modify IV.C.4 as follows: "Permittees may comply with the WQBELs in IV.B.2 by attaining the allowable loads in an approved load-based compliance plan."	terms the proposed wet-weather load-based compliance approach and associated permit language. If the Responsible Agencies would like to pursue this wet-weather load-based compliance option at MS4 outfalls in the next iteration of their MS4 permit, additional information will be required. In order to demonstrate a technically defensible linkage to the allowable number of exceedance days in-stream, the Responsible Agencies must provide more detailed Reasonable Assurance Analysis (RAA) information and the respective modeling files, including model input and output data, model calibration, BMP effectiveness, and runoff volume as outlined in the Los Angeles Water Board's RAA Guidelines." To date, the Board has not received the additional information required to add the appropriate permit language. Upon receiving the additional information, the Board will include permit language for Ventura County Permittee's wet weather load-based compliance approach at the outfall in a future iteration of the permit. In the case that Ventura County MS4 Permittees submit the additional information to the Board during the permit

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			term, Ventura County Permittees can implement the wet weather load-based compliance approach in an approved Watershed Management Program or upon Executive Officer approval of a plan submitted in accordance with Part IV.F of Revised Tentative Attachment M.
C.7.11	Los Angeles County and LACFCD 2nd letter	Attachment M/ Part VI.C/ Pg. M-4. The Santa Clara EWMP group conducts CIMP monitoring for Lake Elizabeth 3 times during the wet season and 2 times during the dry season. Quarterly monitoring of all outfalls in addition to the CIMP monitoring is excessive and unnecessary. We recommend deleting this requirement.	**No change.** Attachment M Part VI.C does not require additional monitoring. The CIMP monitoring of a minimum of 3 wet and 2 dry weather events satisfies the TMDL requirement of at least quarterly monitoring. The monitoring frequency is specified in Attachment M Part VI.C for the purposes of defining how compliance will be measured for the mass-based effluent limitations.
C.8.1	VCSQMP	Attachment N Parts I.B.1 and I.B.2 Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs) and Siltation in Calleguas Creek, its Tributaries, and Mugu Lagoon TMDL. Page N-1. The Calleguas Creek OC Pesticides and PCBs TMDL sets allocations based on percent reductions in bed sediment samples (see discussion in Section 7.2 of the TMDL Technical Report). As a result, the allocations are for bed sediment, not bed sediment and suspended sediment. Therefore, the interim and final RWLs should only apply in bed sediment.	**Change made.** The Board agrees this change is appropriate and consistent with the TMDL.

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		Modify Attachment N, I.B.1 and I.B.2 to remove the references to suspended sediment: ". . .receiving water limitations for pollutant concentrations in ~~suspended sediment and~~ bed sediment . . "	
C.8.2	VCSQMP	Attachment N Parts I.B.1 and I.B.2 Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs) and Siltation in Calleguas Creek, its Tributaries, and Mugu Lagoon TMDL. Page N-1. The Tentative Order does not include key language from the implementation section of the Calleguas Creek OC Pesticides and PCBs TMDL that states that compliance will be achieved through the implementation of BMPs. It is requested that the following language, which is found in the Calleguas Creek OC Pesticides and PCBs TMDL, be incorporated in Attachment N, I.B.1 and I.B.2, "MS4 WLAs will be incorporated into the NPDES permit as receiving water limits measured instream at the base of Revolon Slough and Calleguas Creek, and in Mugu Lagoon <u>and will be achieved through the implementation of BMPs as outlined in the implementation plan</u>."	**No change.** The referenced language in the Calleguas Creek OC Pesticides and PCBs TMDL means that compliance *is anticipated to be achieved* through BMPs, not that compliance *will be demonstrated* through BMPs. The actual language in this TMDL is, "Stormwater WLAs… are expected to be achieved through the implementation of BMPs as outlined in the implementation plan." The TMDL goes on to say, "The Regional Board will need to ensure that permit conditions are consistent with the assumptions of the WLAs. If BMPs are to be used, the Regional Board will need to detail its findings and conclusions supporting the use of BMPs in the NPDES permit fact sheets. Should federal, state, or regional guidance or practice for implementing WLAs into permits be revised, the Regional Board may reevaluate the TMDL to incorporate such guidance." (Basin Plan, 7-200.) All TMDLs regardless of the manner of incorporation (i.e., numeric or BMP-based WQBELs/receiving water limitations)

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			require BMP implementation to address water quality impairments. Therefore, the proposed language introduces unnecessary redundancy. Compliance with TMDLs is determined based on the Compliance Determination section of the Order (Part X).
C.8.3	VCSQMP	Attachment N Part II.B Toxicity, Chlorpyrifos, and Diazinon in the Calleguas Creek, Its Tributaries and Mugu Lagoon TMDL. Page N-2. The Tentative Order does not include key language from the implementation section of the TMDL for Toxicity, Chlorpyrifos, and Diazinon in the Calleguas Creek, its Tributaries, and Mugu Lagoon that states that compliance will be achieved through the implementation of BMPs. It is requested that the following language, which is found in the Calleguas Creek Toxicity TMDL, be incorporated in Attachment N, II.B, "Compliance with stormwater WLAs will be achieved through the implementation of BMPs as outlined below. Evaluation of progress of the TMDL will be determined through the measurement of in-stream water quality and sediment at the base of each of the CCW sub watersheds. The following implementation actions will be taken by the MS4s discharging to the CCW: • Plan, develop, and implement an urban pesticides public education program;	**No change.** See response to comment # C.8.2.

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		• Study diazinon and chlorpyrifos replacement pesticides for use in the urban environment; and, • Plan, develop, and implement urban pesticide education and chlorpyrifos and diazinon collection program; • Conduct environmental monitoring as outlined in the Monitoring Plan and NPDES Permits."	
C.8.4	VCSQMP	Attachment N Part III.B Metals and Selenium in the Calleguas Creek, its Tributaries and Mugu Lagoon TMDL. Page N-2. The Calleguas Creek Metals TMDL was designed to address impairments in the lower reaches of the Calleguas Creek watershed. The impaired reaches are hydrologically disconnected from Arroyo Simi/Arroyo Las Posas except during significant storm events. For this reason, allocations were not assigned to discharges to the Arroyo Simi/Arroyo Las Posas subwatersheds. Therefore the interim receiving water limitations in III.B should only apply to the Calleguas and Conejo Creek subwatersheds, not the Arroyo Simi/Las Posas subwatershed. Modify Attachment N, III.B Table of Interim Receiving Water Limitations as follows: "Calleguas and Conejo Creek ~~and Arroyo Simi/Las Posas~~"	**Change made.** Revised table to omit "and Arroyo Simi/Las Posas." The TMDL WLAs apply to the reaches not subwatersheds. Therefore, the language in Revised Tentative Attachment N Part III has been clarified to explain that WLAs apply to the specified waterbodies and compliance shall be determined in-stream at the bottom of Revolon Slough and Calleguas Creek, and in Mugu Lagoon.
C.8.5	VCSQMP	Attachment N Part III.B Metals and Selenium in the Calleguas Creek, its Tributaries and	**Change made.** The Board agrees with this correction.

#	Commenter(s)	Comment	Response
		Mugu Lagoon TMDL. Page N-2. In Provision III.B, it is requested that the typographical error referencing the OC TMDL be removed from footnote 10. Modify Attachment N, III.B, footnote 10 as follows: "Calleguas Creek Watershed ~~OC~~ Metals and Selenium TMDL Technical Report."	
C.8.6	VCSQMP	Attachment N Parts III.C and III.D Metals and Selenium in the Calleguas Creek, its Tributaries and Mugu Lagoon TMDL. Page N-3. The allocations for Revolon Slough were modified in the Tentative Order to remove reference to a Water Effects Ratio (WER). While the permittees recognize that currently the applicable WER is 1.0, the TMDL allows for the allocations to be calculated using a WER for Revolon Slough if approved by the Regional Water Board. The Stakeholders Implementing TMDLs in the Calleguas Creek Watershed are considering the possibility of developing a WER and would like for the WQBELs in the permit to contain the WER to avoid the need to modify the permit if a WER is developed and approved. Modify Attachment N, III.C and III.D WQBELs for copper to include the WER, by including the WQBELs from the Working Proposal.	**Change made.** As noted by the commenter, the water-effect ratio (WER) has a default value of 1.0 unless a site-specific WER has been approved through the Basin Plan amendment process. There are no approved WERs for Revolon Slough; therefore, the WERs are all 1.0. However, since the Permittees are considering developing a WER for copper in Revolon Slough as has already been done for Calleguas Creek and Mugu Lagoon, the Board has included the WER explicitly in the receiving water limitations for copper in Part III.C and Part III.D of Revised Tentative Attachment N. If a site-specific WER is approved and in effect for Revolon Slough, then this site-specific WER may be used to calculate the receiving water limitations for copper applicable to Revolon Slough.
C.8.7	VCSQMP	Attachment N Parts III.B, III.C, III.D, and III.E Metals and Selenium in the Calleguas Creek, its Tributaries and Mugu Lagoon TMDL. Pages N-2, N-3, N-4. The Tentative Order	**No change.** See response to comment # C.8.2.

#	Commenter(s)	Comment	Response
		does not include key language from the implementation section of the Calleguas Creek Metals and Selenium TMDL that states that compliance will be achieved through the implementation of BMPs. It is requested that the following language, which is found in the Calleguas Creek Metals TMDL, be incorporated in Attachment N, III.B, III.C., III.D, and III.E, "MS4 WLAs will be incorporated into the NPDES permit as receiving water limits measured in-stream at the base of Revolon Slough and Calleguas Creek, and in Mugu Lagoon and will be achieved through the implementation of BMPs as outlined in the implementation plan."	
C.8.8	VCSQMP	Attachment N Part IV. Boron, Chloride, Sulfate and TDS (Salts) in the Calleguas Creek, its Tributaries and Mugu Lagoon TMDL. Page N-4. The TMDL is entitled Calleguas Creek Watershed Salts TMDL. The TMDL does not apply to Mugu Lagoon. Change IV. title to Boron, Chloride, Sulfate and TDS (Salts) in the Calleguas Creek, its tributaries and the Mugu Lagoon Watershed TMDL	**Change made.** This is a typographical error. Consistent with the title of the Basin Plan amendment, the title was revised in Revised Tentative Attachment E Table E-2 and Part XV.D, Revised Tentative Attachment F Part VI.D.4, Revised Tentative Attachment J Table J-5, and Revised Tentative Attachment N Part IV.
C.8.9	VCSQMP	Attachment N Part IV.C Boron, Chloride, Sulfate and TDS (Salts) in the Calleguas Creek, its Tributaries and Mugu Lagoon TMDL. Page N-4. Footnote 19 should also	**Change made.** The Board agrees this change is consistent with the TMDL.

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		reference the portion of the watershed below Potrero Road. The TMDL allocations do not apply below Potrero Road. Add the following language to Attachment N, IV.B, footnote 19: "The receiving water limitations apply upstream of Potrero Road. Downstream of Potrero Road, the creek is tidally influenced and the salt receiving water limitations do not apply."	
C.8.10	VCSQMP	Attachment N Part VI.C Pesticides, PCBs, and Sediment Toxicity in Oxnard Drain 3 TMDL. Page N-5. Modify footnote 27 to remove the reference to the base of each subwatershed. The Oxnard Drain 3 TMDL does not include subwatersheds. Delete "at the base of each subwatershed" from the end of Attachment N, VI.C, footnote 27.	**No change.** The U.S EPA Oxnard Drain 3 TMDL Section 6.1 Wasteload Allocations, Table 16 Wasteload Allocations in Oxnard Drain 3, and Figure 6 Elevation, Water Networks, and Subwatershed Boundaries, clearly assigns WLAs to the base of the Oxnard Drain 3 Northern and Southern subwatersheds. (U.S. EPA Region IX, October 6, 2011, *Total Maximum Daily Loads for Pesticides, PCBs, and Sediment Toxicity in Oxnard Drain 3*, p. 33)
C.8.11	VCSQMP	Attachment N Part VI.D Pesticides, PCBs, and Sediment Toxicity in Oxnard Drain 3 TMDL. Page N-6. The Oxnard Drain 3 TMDL does not include allocations for fish tissue and the Working Proposal did not include fish tissue targets. Fish tissue targets are not applicable to the permit as they are not allocations or receiving water limitations applicable to the MS4 permittees. The water	**No change.** The U.S EPA Oxnard Drain 3 TMDL Section 6.1 Wasteload Allocations states the following: "The water and sediment wasteload allocations are shown in Table 16…The TMDL fish tissue targets in Table 10 are also expected to be achieved."

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		and sediment allocations are designed to attain the fish tissue targets. Delete section VI.D from Attachment N.	Also note that the applicability of the "Sediment" and "Alternate Sediment" WLAs are dependent on achieving the fish tissue targets. Therefore, fish tissue targets were specified in the permit.
C.9.1	City of Los Angeles	Attachment O, Part I.C.3, Table O-1, O-2. LASAN requests the inclusion of Weekly Exceedance Values in conjunction with Daily to remove any confusion regarding how the monitoring limitations should be calculated.	**No change.** The allowable exceedance days are assigned on an annual basis for each of the reporting periods: winter dry weather is defined as November 1st through March 31st; summer dry weather is defined as April 1st through October 31st; and wet weather is from November 1st through October 31st. Table O-1 of Revised Tentative Attachment O lists the interim wet-weather single sample bacteria receiving water limitations for the wet weather period for each jurisdictional group. The allowable wet-weather exceedance days listed in Table O-1 are assigned to all sampling locations in each jurisdictional group. In Table O-1 the allowable exceedance days are not assigned on a daily or weekly basis but for the entire wet-weather period, which allows each jurisdictional group to prioritize water quality control measures for their respective subwatersheds. Tables O-2 and O-3 of Revised Tentative Attachment O lists the annual allowable

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			exceedance days of the single sample objectives for each reporting period on a daily and weekly sampling frequency for each monitoring station.
C.9.2	City of Los Angeles	Attachment O, Part III.B, O-9. In the 2012 MS4 Permit (Attachment M), Permittees were allowed to establish deadlines for attaining the Santa Monica Bay TMDLs for DDTs and PCBs. The determination made in the TMDL that no load reductions were necessary was based on limited data (only three samples each for DDTs and PCBs were used as the basis for evaluating current conditions). Based on the limited data collected during three events in wet season (2/27/06, 3/28/06, and 4/4/06) it appeared that no additional reductions were necessary to attain the TMDL. However, data collected since the 2012 Permit have indicated that there is a potential that reductions will be needed. Significantly more data have been collected since adoption of the 2012 Permit. As such, some Permittees may need to re-evaluate their approach to attaining this TMDL, including the schedule, as part of the June 2021 WMP/RAA updated. Further, no information is presented in the Fact Sheet demonstrating that the Regional Board evaluated the more robust dataset collected since 2012 to make a finding that the TMDL was being attained as asserted in the Tentative Order.	**No change.** See response to comment number C.2.5.

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		As such, LASAN requests the following revisions to Attachment O Part III.B and necessary changes to the Fact Sheet to be provided the opportunity to propose and implement BMPs and a schedule. "*Permittees shall comply with the following grouped water quality-based effluent limitations expressed as an annual loading of sediment-bound pollutants discharged to Santa Monica Bay ~~as of the effective date of the Order~~ per the provisions in Part VI.B.2.c.*" (please note the referenced section in Attachment M of the 2012 Permit was Part VI.E.3, which is now in Part IV.B.2 of the Tentative Order)	
C.9.3	City of Thousand Oaks	Extend the Malibu Creek Watershed Bacteria TMDL wet weather compliance deadline for an additional 10 years to allow sufficient time to complete pending assessments, secure funding, develop project concepts, complete planning, construction, and implementation.	**Change made.** On March 11, 2021, the Los Angeles Water Board approved a Basin Plan amendment to revise the Malibu Creek and Lagoon Bacteria TMDL, which extended the program of implementation and associated schedule for five years to July 15, 2026. Although the Regional Board approved the amendment, the revised TMDL is not in effect until approved by the State Water Resources Control Board and the Office of Administrative Law. Language was added to the Regional MS4 Permit to prospectively incorporate the revised

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			TMDL deadlines; i.e., the extended program of implementation and associated schedule will automatically take effect in the Regional MS4 Permit upon approval by OAL. If additional time is needed then Permittee may request a Time Schedule Order pursuant to Part X.E of the Revised Tentative Order.
C.9.4	VCSQMP	Attachment O. Part IV.A.2 Malibu Creek Watershed Bacteria TMDL. Page O-9. The Tentative Order includes WQBELs that are equal to the daily maximum and geometric mean TMDL targets. However, as stated on page 7-108 of the Basin Plan, the WLAs for the Malibu Creek Watershed Bacteria TMDL are expressed as allowable exceedance days. The TMDL clearly states that the WLAs are equal to allowable exceedance days and not the TMDL targets without any exceedance days. While we recognize that with limited monitoring, the equivalent exceedance days may be zero, it is not appropriate for the WQBELs to not allow for the exceedance days to be applied if sufficient monitoring is conducted. Remove the water quality-based effluent limitations table in IV.A.2a and replace it with the allowable exceedance days table from IV.A.3.a. Remove the water quality-based effluent limitations table in IV.A.2.b and replace it with the allowable exceedance days	**No change.** Consistent with the Malibu Creek and Lagoon Bacteria TMDL, WLAs are expressed as allowable exceedance days in the receiving water and are included in Revised Tentative Attachment O Part IV.A.3. Consistent with most other Bacteria TMDLs in the permit, WQBELs applied at the outfall in Revised Tentative Attachment O Part IV.A.2, are set equal to the TMDL numeric targets. The Malibu Creek Bacteria TMDL does not assign allowable exceedance days to outfalls. Table 7-10.2 of the Basin Plan (p. 7-110) assigns allowable exceedance days to monitoring sites in Malibu Lagoon, Malibu Creek and its tributaries. See response to comment C.6.1.

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		table from IV.A.3.b. Additionally, make any corresponding changes to the Fact Sheet.	
C.9.5	VCSQMP	Attachment O. Part IV.C.3.b Malibu Creek Nutrients TMDL. Page O-12. Footnote 23 appears to be incorrectly labeled as Ibid. We believe the footnote should be the same as footnote 21 that describes the term group-based for the Ventura County MS4 Permittees, not footnote 22 that discusses the source categories in the TMDL. Modify Attachment O, Provision IV.C.3.b footnote 23 to state "The effluent limitations are group-based and shared among all Ventura County MS4 Permittees located within the Malibu Creek Watershed."	**Change made.** Footnote 23, now footnote 36 in the Revised Tentative Attachment O, has been revised.
C.9.6	Los Angeles County and LACFCD 2nd letter	Attachment O/ Part IV.C and D/ Pgs. O-11 to O-13. For consistency with the TMDL Implementation Provisions, the County and LACFCD request that Permittees be allowed to demonstrate compliance with the total nitrogen and phosphorus interim and final WQBELs through any one of the following three pathways: (1) there are no violations of the WQBEL at the Permittee's applicable MS4 outfall(s); (2) there are no exceedances of the numeric targets in the receiving water downstream of the Permittee's outfalls; or (3) there is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the WQBEL.	**No change.** The proposed change introduces unnecessary redundancy. Permittees may demonstrate compliance with interim and final WQBELs and receiving water limitations as outlined in Part X.B.1.a (Interim WQBELs and Receiving Water Limitations) and Part X.B.2.a (Final WQBELs and Receiving Water Limitations) of the Revised Tentative Order, which include the three pathways requested.

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C.9.7	Los Angeles County and LACFCD 2nd letter	Attachment O/ Part IV.D.4/ Pg. O-13. This provision only applies to the preceding subpart 3. As such, the County and LACFCD request that subpart 4 be combined with subpart 3. In addition, for consistency with the TMDL, the County and LACFCD request that the combined provision include language outlining how Permittees can demonstrate compliance with the sediment receiving water limitations using a watershed-wide compliance alternative approach.	**No change.** The requested changes are unnecessary. Tentative Attachment O of the Tentative Order is clear that Part IV.D.4 only applies to Part IV.D.3. According to the Implementation Plan for the Malibu Creek and Lagoon Sedimentation and Nutrients TMDL to Address Benthic Community Impairments, "If a watershed-wide approach is chosen all responsible parties for the sedimentation TMDL shall submit an implementation plan and a monitoring plan for a comprehensive approach to reduce sediment transport capacity by 38% watershed-wide **two years** from the effective date of this Implementation Plan." (Basin Plan, p. 7-557, emphasis added.) The Implementation Plan became effective on May 16, 2017; therefore, the implementation plan and monitoring plan for a watershed-wide approach were due by May 16, 2019. These implementation and monitoring plans have not been submitted; therefore, it was unnecessary to include this watershed-wide compliance alternative approach.
C.9.8	City of Los Angeles	Attachment O, Part V.D.2, Pages O-20 to O-21. The final WLAs in the 2010 and 2013 TMDL Basin Plan Amendments include a WER, currently set to a default of 1, which was incorporated into the 2012 MS4 Permit.	**No change.** As noted by the commenter, the water-effect ratio (WER) has a default value of 1.0 unless a site-specific WER has been approved through the Basin Plan amendment process. There are no

#	Commenter(s)	Comment	Response
		The load based and concentration based WQBELs should be consistent with the 2013 BPA, 2012 MS4 Permit, and 2019 Working Proposal by including the WER term. Omitting the WER term would only potentially result in a burden on the Regional Board and Regional Board staff by necessitating that the Permit be amended in the event that a WER was adopted by the Regional Board through a Basin Planning process. LASAN requests that the WER term and the WER footnote from the TMDL BPA be included consistent with the 2012 MS4 Permit.	approved WERs for the Ballona Creek Watershed; therefore, the WERs are all 1.0. If site-specific WERs are approved and in effect for waterbodies in the Ballona Creek Watershed, then the Regional MS4 Permit will be reopened and modified per Part VI.G of the Order.
C.9.9	Los Angeles County and LACFCD 2nd letter	Attachment O/ Part V.D.2/ Pgs. O-20 to O-21. The TMDL BPA includes the water-effect ratio (WER) in the targets. The WER should be included in the concentration based WQBELs consistent with the TMDL BPA.	**No change.** See response to comment number C.9.8.
C.9.10	City of Los Angeles	Attachment O, Part V.D.2.iv, Page O-21. There are no concentration-based wet weather WLAs expressed in the TMDL for MS4 Permittees. However, the TMDL does include concentration-based WLAs for other NPDES Permits which are set equal to the wet weather numeric targets. As currently proposed, the wet weather concentration-based WQBELs are set equal to 95% of the TMDL target, meaning MS4 Permittees must discharge at concentrations below the TMDL target while other NPDES Permittees are allowed to discharge at the numeric target. Note that all other Permittees are authorized	**No change.** Although, the Ballona Creek Metals TMDL assigns the wet-weather numeric targets as concentration-based waste load allocations to minor NPDES permits and general non-stormwater NPDES permits, these permits are not considered to be a significant source of metals loading to Ballona Creek during wet weather. As stated in the source analysis for this TMDL, “During wet weather, most of the metals loadings in Ballona Creek are in the particulate form and are associated with wet-weather stormwater flows. On an annual basis,

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		to discharge to the MS4 system and, in this instance, have been authorized by the Regional or State Board to discharge concentrations higher than the MS4 Permittees. The intent of the TMDLs are to attain the protective condition, which is interpreted as meeting the TMDL target. Discharges from the MS4 at the TMDL target represent the MS4 Permittees meeting their obligations to protect water quality. It would be consistent with the assumptions of the WLAs, which are intended to result in attaining the TMDL target, to set concentration based WQBELs equal to the numeric target. LASAN requests that the wet weather concentration-based WQBELs be set equal to the wet weather numeric targets consistent with the approach used for setting the dry weather concentration-based WQBELs.	stormwater contributes about 91% of the copper loading and 92% of the lead loading to Ballona Creek." (Basin Plan, p. 7-125.) The wet weather concentration based WQBELs cannot be set equal to the wet weather numeric targets because that would result in metals loading from MS4s greater than the waste load allocations assigned in the Ballona Creek Metals TMDL. Also, see Part VI.D.2 of Attachment F for further discussion on the Metals TMDLs.
C.9.11	Los Angeles County and LACFCD 2nd letter	Attachment O/ Part V.D.2/ Pg. O-21. For dry weather, the concentration based WQBELs are set equal to the dry weather numeric targets. Although there are no wet weather concentration-based targets in the TMDL, the WQBELs are expressed in the Tentative Order as an equation dependent on the daily volume with a maximum value below the wet weather numeric targets. The use of this approach results in WQBELs that are set	**No change.** See response to comment number C.9.10.

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		below TMDL targets, resulting in the requirement for MS4 Permittees to discharge concentrations at 95% of the TMDL targets. Given that other NPDES Permittees are allowed to discharge at the numeric target, other authorized discharges permitted by the Regional Board, could legally discharge to the MS4 system while causing or contributing to the exceedance of the MS4 Permit's WQBELs. The County and LACFCD request that, if wet weather concentration based WQBELs are incorporated into the Permit, they be set equal to the wet weather numeric targets.	
C.10.1	Los Angeles County and LACFCD 2nd letter	Attachment P/ Part IV.C.2.c/ Pg. P-9. Flow from the Permittees' respective drainage areas should not be required to be reported unless Permittees elect to demonstrate compliance by meeting the annual mass-based WQBELs specified in Part IV.C.2.a or b. As such, the County and LACFCD request that the following text in bold be added to this provision: "***If electing to demonstrate compliance with water quality-based effluent limitations by demonstrating reduction of total nitrogen and total phosphorous on an annual mass basis measured at the storm drain outfall of the Permittee's drainage area****, t~~T~~he County of Los Angeles and the City of Torrance shall report the flow*	**No change.** The requested language is unnecessary. The Regional MS4 Permit is clear that the County of Los Angeles and the City of Torrance only need to report flow as measured from their respective drainage areas if the County of Los Angeles or the City of Torrance elect to demonstrate compliance by meeting the annual mass-based WQBELs as specified in Part IV.C.2 of Attachment P to the Order. By contrast, the compliance path in Part IV.C.1 of Attachment P does not include any flow reporting requirements.

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		measured at the storm drain outfalls of the Permittees' respective drainage areas."	
C.11.1	SGVCOG 2nd Letter	***Permit Contradictions:*** **The Board should clarify with a statement (in the appropriate section of the Permit) as to why Permittees in Reach 2 and Reach 3 of the Rio Hondo River are included for the Los Angeles River Metals TMDL**. Permittees are listed within the approved TMDL and current MS4 permit; however, Reaches 2 and 3 are not included in the 303(d) lists. **The SGVCOG is requesting an explanation and justification for this apparent contradiction.**	**No change.** As discussed in response to comment number C.1.36, discharges to a non-303(d) listed waterbody may still be assigned a waste load allocation when these discharges to an unimpaired reach cause or contribute to a downstream impairment. Further, assigning a waste load allocation to Reaches 2 and 3 of the Rio Hondo in the Los Angeles River and Tributaries Metals TMDL (Los Angeles River Metals TMDL) was not contradictory. As stated in the Los Angeles River Metals TMDL Staff Report, no copper, lead or zinc allocations are assigned to reaches above Rio Hondo Reach 1 "because little or no flow from these reaches enters Rio Hondo Reach 1 during *dry weather*." (TMDL Staff Report (June 2, 2005) Section 6.1, page 48. Emphasis added.) However, the Los Angeles River Metals TMDL included separate *wet-weather* WLAs for cadmium, copper, lead and zinc for the Los Angeles River Reach 1 and the upstream reaches and tributaries that drain to Reach 1 of the Los Angeles River to meet the TMDL for Reach 1. Discharges to these upstream reaches

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			during wet weather may cause or contribute to exceedances of water quality standards in the Los Angeles River Reach 1. By applying the WLAs to upstream reaches during wet weather this also addresses the water quality impairments in the Los Angeles River Reach 2, Compton Creek and Tujunga Wash. (*Id.*, Section 2.2.1, page 23.)
C.11.2	City of Los Angeles	Attachment Q, Part III.B, Pages Q-2 to Q-3. The final WLAs in the 2010 and 2015 TMDL Basin Plan Amendments include a WER term, which was incorporated into the 2012 MS4 Permit. The load based and concentration based WQBELs should be consistent with the 2010 and 2015 BPAs, 2012 MS4 Permit, and 2019 Working Proposal by including the WER term. Omitting the WER term would only potentially result in a burden on the Regional Board and Regional Board staff by necessitating that the Permit be amended in the event that a WER was adopted by the Regional Board through a Basin Planning process. LASAN requests that the WER term and the WER footnote from the TMDL BPA be included consistent with the 2012 MS4 Permit.	**No change.** The water-effect ratio (WER) has a default value of 1.0 unless a site-specific WER has been approved through the Basin Plan amendment process. Site-specific WERs for copper were approved for the Los Angeles River Reaches 1 through 4, Tujunga Wash, Verdugo Wash Reaches 1 and 2, Burbank Western Channel, Arroyo Seco Reaches 1 and 2, Compton Creek, and Rio Hondo Reaches 1 and 2. The copper WERs for these waterbodies have been incorporated into the load-based and concentration-based WQBELs. There are no approved site-specific WERs for copper for Los Angeles River Reaches 5 and 6 or Bull Creek. Also, there are no approved WERs for lead or zinc for the Los Angeles River Watershed. If site-specific WERs are approved and in effect for additional waterbodies in the Los Angeles River

<table>
<tr><th>#</th><th>Commenter(s)</th><th>Comment</th><th>Response</th></tr>
<tr><td></td><td></td><td></td><td>Watershed, then the Regional MS4 Permit will be reopened and modified per Part VI.G of the Order.</td></tr>
<tr><td>C.11.3</td><td>City of Los Angeles</td><td>Attachment Q, Part III.B.4, Page Q-3. There are no concentration-based wet weather WLAs expressed in the TMDL for MS4 Permittees. However, the TMDL does include concentration-based WLAs for other NPDES Permits which are set equal to the wet weather numeric targets. As currently proposed, the wet weather concentration-based WQBELs are set well below the TMDL target and the effective concentration varies widely depending on the daily storm volume as outlined in the table below. As shown in the table below, MS4 Permittees could be expected to discharge at concentrations as low as 43% of the TMDL target while other NPDES Permittees are allowed to discharge at the numeric target. Note that all other Permittees are authorized to discharge to the MS4 system and, in this instance, have been authorized by the Regional or State Board to discharge concentrations higher than the MS4 Permittees.
<table>
<tr><th rowspan="3">Constituent</th><th rowspan="3">TMDL Target (ug/L)</th><th colspan="2">Daily Storm Volume Flow Rate</th></tr>
<tr><th>500 cfs</th><th>10,000 cfs</th></tr>
<tr><th colspan="2">Tentative Order Effective Concentrations (ug/L) and % of TMDL Target</th></tr>
<tr><td>Cadmium</td><td>3.1</td><td>1.3 / 43%</td><td>2.7 / 88%</td></tr>
<tr><td>Copper</td><td>67</td><td>51.8 / 77%</td><td>59.2 / 88%</td></tr>
<tr><td>Lead</td><td>94</td><td>58.8 / 63%</td><td>83.7 / 89%</td></tr>
<tr><td>Zinc</td><td>159</td><td>72.2 / 45%</td><td>137 / 86%</td></tr>
</table></td><td>No change. Although the Los Angeles River Metals TMDL assigns the wet-weather numeric targets as concentration-based waste load allocations to minor NPDES permits, general non-stormwater NPDES permits, and major NPDES permits other the Tillman, LA-Glendale and Burbank POTWs, these permits are not considered to be a significant source of metals loading to the Los Angeles River during wet weather. As stated in the source analysis for this TMDL, “During wet weather, most of the metals loadings are in the particulate form and are associated with wet-weather stormwater flow. On an annual basis, stormwater contributes about 40% of the cadmium loading, 80% of the copper loading, 95% of the lead loading and 90% of the zinc loading.” (Basin Plan, p. 7-143.) The wet weather concentration based WQBELs cannot be set equal to the wet weather numeric targets because that would result in metals loading from MS4s greater than the waste load allocations assigned in the Los Angeles River Metals TMDL. Also, see Part VI.D.2 of Attachment F for further discussion on the Metals TMDLs.</td></tr>
</table>

#	Commenter(s)	Comment	Response
		The intent of the TMDLs are to attain the protective condition, which is interpreted as meeting the TMDL target. Discharges from the MS4 at the TMDL target represent the MS4 Permittees meeting their obligations to protect water quality. It would be consistent with the assumptions of the WLAs, which are intended to result in attaining the TMDL target, to set concentration based WQBELs equal to the numeric target. LASAN requests that the wet weather concentration-based WQBELs be set equal to the wet weather numeric targets consistent with the approach used for setting the dry weather concentration-based WQBELs.	
C.11.4	Los Angeles County and LACFCD 2nd letter	Attachment Q/ Part III.B.4/ Pg. Q-3. For dry weather, the concentration based WQBELs are set equal to the dry weather numeric targets. Although there are no wet weather concentration-based targets in the TMDL, the WQBELs are expressed in the Tentative Order as an equation dependent on the daily volume with a maximum value below the wet weather numeric targets. The use of this approach results in WQBELs that are set below TMDL target, resulting in the requirement for MS4 Permittees to discharge concentrations up to 50% lower than the TMDL target during wet weather flows (at 500 cfs). Given that other NPDES Permittees are allowed to discharge at the numeric target,	**No change.** See response to comment number C.11.3.

#	Commenter(s)	Comment	Response
		other authorized discharges permitted by the Regional Board, could legally discharge to the MS4 system while causing or contributing to the exceedance of the MS4 Permit's WQBELs. The County and LACFCD request that, if wet weather concentration based WQBELs are incorporated into the Permit, they be set equal to the wet weather numeric targets.	
C.11.5	City of Los Angeles	Attachment Q, Part IV.E.1, Page Q-11. As stated in Attachment F (F-137): "Some TMDLs specify alternative means of demonstrating compliance with WLAs; these alternative means of demonstrating compliance are included in the TMDL provisions in Part IV.B and Attachments K through S of the Order." The LA River Bacteria TMDL BPA (page 6) outlines the following means for demonstrating compliance: MS4 dischargers can demonstrate compliance with the final dry weather WLAs by demonstrating that the final WLA are met instream or by demonstrating one of the following conditions at outfalls to the receiving waters: 1. Flow-weighted concentration of E. coli in MS4 discharges during dry weather is less than or equal to 235 MPN/100mL, based on a weighted-average using flow rates from all measured outfalls;	**No change.** See response to comment number C.8.2.

#	Commenter(s)	Comment	Response
		2. Zero discharge during dry weather; 3. Demonstration of compliance as specified in the MS4 NPDES permit which may include the use of BMPs where the permit's administrative record supports that the BMPs are expected to be sufficient to implement the WLA in the TMDL, the use of calculated loading rates such that loading of E. coli to the segment is less than or equal to a calculated loading rates that would not cause or contribute to exceedances based on a loading capacity representative of conditions in the River at the time of compliance or other appropriate method. The first two means are incorporated into the Tentative Order. However, the third alternative is only partially incorporated and disregards the BMP based alternative means for demonstrating compliance. The Tentative Order must be consistent with the WLAs as outlined in the BPA. As such, LASAN requests that Attachment Q, Part IV.E.1.c be revised to match the third means identified in the TMDL BPA.	
C.11.6	Los Angeles County and LACFCD 2nd letter	Attachment Q/ Part IV.E.1/ Pg. Q-11. For consistency with the TMDL implementation provisions, the County and LACFCD request that the third option for demonstrating compliance with final dry weather limitations at outfalls to receiving waters be revised to state that demonstration of compliance "May	**No change.** See response to comment number C.8.2.

#	Commenter(s)	Comment	Response
		include the use of BMPs where the permit's administrative record supports that the BMPs are expected to be sufficient to implement the WLA in the TMDL, the use of calculated loading rates such that loading of E. coli to the segment or tributary during dry weather is less than or equal to a calculated loading rates that would not cause or contribute to exceedances based on a loading capacity representative of conditions in the River at the time of compliance or other appropriate method."	
C.11.7	Los Angeles County and LACFCD 2nd letter	Attachment Q/ Part VII.A.4.c./ Pg. Q-15. The numeric target in the TMDL allows for the dissolved oxygen concentration to be less than 6 mg/L "when natural conditions cause lesser concentrations" mirroring water quality objective language found in the Basin Plan. Natural conditions could include decay of organic material from trees and vegetation or algae blooms. The County and LACFCD request that this allowance be incorporated into the in-lake water quality objectives incorporated into the Permit. For pH, the numeric target of 6.5 – 8.5 applies when "as a result of waste discharges". As such, the County and LACFCD also request that element to be incorporated into the instantaneous value as it is for the ambient pH values. If a strict instantaneous value is applied, the County and LACFCD request	**Change made.** The dissolved oxygen language has been revised as appropriate for Attachment Q Parts VII.A.4.c, VII.B.4.c, VII.C.4, and VII.H.3 and Attachment R Part III.A.4.c. The change to the pH language is unnecessary because Part X.D.5 of the Tentative Order allows a Permittee to demonstrate that its discharge did not cause or contribute to an exceedance of an applicable receiving water limitation by demonstrating that there was an alternative source of a pollutant that is not typically associated with MS4 discharges that caused the exceedance, and that pollutant was not discharged from the Permittee's MS4.

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		that it be 6.5 – 9.0 as that is the secondary target for pH incorporated into the TMDL.	
C.11.8	City of Los Angeles	Attachment Q, Part VII.C through F, Pages Q-17 though Q-20. Attachment F (F-154 through F-155) lists a number of TMDLs developed by USEPA that are stated as being incorporated into the Tentative Order with the option of proposing BMPs that have a reasonable assurance of achieving the TMDL WLAs along with a schedule to implement the BMPs. The TMDLs for chlordane, dieldrin, and PCBs in Echo Park Lake are included in the list. However, in reviewing Attachment Q Parts VII.C through VII.F, no language is provided that would allow for a BMP based approach to implementation. Rather, Attachment Q only includes numeric effluent limitations and receiving water limitations (for the Echo Park Lake Nutrient TMDL) or daily maximum effluent limitations and alternative daily maximum effluent limitations (for the Echo Park Lake PCBs, chlordane, and dieldrin TMDLs. As such, LASAN requests that Attachment Q Parts VII.C through VII.F be revised to include the option for proposing BMPs that have a reasonable assurance of achieving the TMDL WLAs along with a schedule to implement the BMPs.	**No change.** See response to comment number C.2.9. Also see Part IV.B.2 of the Order, which specifies a BMP-based approach to achieve WQBELs for certain U.S. EPA established TMDLs if Permittees participate in a WMP.
C.11.9	Los Angeles County and LACFCD 2nd letter	Attachment Q/ Part VII. H.3/ Pg. Q-21. The numeric target in the TMDL allows for the dissolved oxygen concentration to be less than 5 mg/L “when natural conditions cause	**Change made.** See response to comment number C.11.7.

#	Commenter(s)	Comment	Response
		lesser concentrations," mirroring water quality objective language found in the Basin Plan. The County and LACFCD request that this allowance be incorporated into the in-lake receiving water limitations incorporated into the Permit. For pH, the numeric target of 6.5 – 8.5 applies when "as a result of waste discharges". As such, the County and LACFCD also request that element to be incorporated into the instantaneous value as it is for the ambient pH values. If a strict instantaneous value is applied, the County and LACFCD request that it be 6.5 – 9.0 as that is the secondary target for pH incorporated into the TMDL.	
C.11.10	Los Angeles County and LACFCD 2nd letter	Attachment Q/ Part VII.K.3/ Pgs. Q-24 to Q-25. The Total DDT WLAs incorporated into the Tentative Order are inconsistent with the assumptions of the WLA as stated in the TMDL. The WLA is specifically assigned to 4,4'-DDT, not to Total DDT as required in the Tentative Order. The TMDL acknowledges that there is no CTR criterion for Total DDTs and states the following: "The target water column concentration of 0.59 ng/L specified in the CTR is for 4,4'-DDT. The CTR also specifies targets for DDE and DDD, but does not specify a target for total DDTs. The lowest DDT target is selected for the purposes of representing Total DDTs in this table. If analytical results that resolve individual DDT compounds are available, all of the CTR	**Change made.** Revised footnote 51 in Revised Tentative Attachment Q as requested.

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		criteria should be applied individually." As such, the County and LACFCD request that Total DDTs be removed from the table and the WLA based on the individual CTR criterion for each of the 4,4' DDx be utilized. Alternative, Footnote 51 should be revised to clarify that the Total DDT limitation is not applicable if analytical results resolve the individual DDT compounds to avoid a situation where the footnote is misinterpreted as requiring the application of both the Total DDT limitation and limitations for individual DDT compounds. "*If analytical results that resolve individual DDT compounds are available, then the Total DDTs limitation is not applicable and all the CTR criteria should be applied individually. The CTR criteria should be applied as follows: 4-4' DDT and 4-4' DDE is assigned an effluent limitation of 0.59 ng/L; 4-4' DDD is assigned an effluent limitation of 0.83 ng/L*."	
C.12.1	Los Angeles County and LACFCD 2nd letter	Attachment R/ Part I.C/ Pg. R-1. Wet weather concentration based WQBELs should be set equal to the wet weather numeric targets. They are currently set equal to levels that are 49% to 91.5% of the TMDL targets (see the table below for a comparison). This is due to the mass-based allocation being based on a percentage of the watershed comprised of the MS Permit area. However, percent area is irrelevant for the purposes of setting	**No change.** Although the San Gabriel River Metals TMDL assigns the wet-weather numeric targets as concentration-based waste load allocations for the POTWs and other non-stormwater permits, these permits are not considered to be a significant source of metals loading to the San Gabriel River during wet weather. As stated in the San Gabriel Metals TMDL, section 4.3.4. Wet-

<table>
<tr><th>#</th><th>Commenter(s)</th><th>Comment</th><th>Response</th></tr>
<tr><td></td><td></td><td>concentration based WQBELs. Wet weather concentration based allocations for other NPDES Permittees are set equal to the TMDL targets rather than reducing the concentration by the percent area. For example, the construction stormwater permittee limits were set equal to the numeric target rather than set at 0.7% of the TMDL target. As such, if concentration based WQBELs are incorporated into the Permit, the County and LACFCD request that they be set equal to the wet weather numeric targets, which is the ultimate goal of the TMDL.

<table>
<tr><th>Waterbody</th><th>Constituent</th><th>TMDL Target (ug/L)</th><th>Proposed Concentration Based WQBEL (ug/L)</th><th>Percent of TMDL Target</th></tr>
<tr><td>San Gabriel Reach 2</td><td>Lead</td><td>166</td><td>81.34</td><td>49%</td></tr>
<tr><td rowspan="3">Coyote Creek</td><td>Copper</td><td>27</td><td>24.71</td><td rowspan="3">91.5%</td></tr>
<tr><td>Lead</td><td>106</td><td>96.99</td></tr>
<tr><td>Zinc</td><td>158</td><td>144.57</td></tr>
</table></td><td>Weather Loading, “On an annual basis, stormwater contributes about 83% of the copper loading, 76% of the lead loading, 80% of the zinc loading, and 79% of the selenium loading in Coyote Creek. Wet-weather stormwater runoff is thus the dominant source of annual metals loading, which agrees with previous studies in the Los Angeles River and Ballona Creek watersheds.” (U.S. EPA Region IX, March 26, 2007, San Gabriel River Metals TMDL, p. 31.) The wet weather concentration based WQBELs cannot be set equal to the wet weather numeric targets because that would result in metals loading from MS4s greater than the waste load allocations assigned in the San Gabriel River Metals TMDL. Also, see Part VI.D.2 of Attachment F for further discussion on the Metals TMDLs.</td></tr>
<tr><td>C.12.2</td><td>Los Angeles County and LACFCD 2nd letter</td><td>Attachment R/ Part III.A.4.c/ Pg. R-5. The numeric target in the TMDL allows for the dissolved oxygen concentration to be less than 6 mg/L “when natural conditions cause lesser concentrations,” mirroring water quality objective language found in the Basin Plan. The County and LACFCD request that this allowance be incorporated into the in-lake water quality objectives incorporated into the Permit. For pH, the numeric target of 6.5 – 8.5 applies when “as a result of waste</td><td>Change made. See response to comment number C.11.7.</td></tr>
</table>

#	Commenter(s)	Comment	Response
		discharges". As such, the County and LACFCD also request that element to be incorporated into the instantaneous value as it is for the ambient pH values. If a strict instantaneous value is applied, the County and LACFCD request that it be 6.5 – 9.0 as that is the secondary target for pH incorporated into the TMDL.	
C.12.3	Los Angeles County and LACFCD 2nd letter	Attachment R/ Parts III.F.3 and III.F.4.c/ Pgs. R-8 to R-9. The Total DDT WLAs incorporated into the Tentative Order are inconsistent with the assumptions of the WLA as stated in the TMDL. The WLA is specifically assigned to 4,4'-DDT, not to Total DDT as required in the Tentative Order. The TMDL acknowledges that there is no CTR criterion for Total DDTs and states the following: "The target water column concentration of 0.59 ng/L specified in the CTR is for 4,4'-DDT. The CTR also specifies targets for DDE and DDD, but does not specify a target for total DDTs. The lowest DDT target is selected for the purposes of representing Total DDTs in this table. If analytical results that resolve individual DDT compounds are available, all of the CTR criteria should be applied individually." As such, the County and LACFCD request that Total DDTs be removed from the table and the WLA based on the individual CTR criterion for each of the 4,4' DDx be utilized. Alternative, Footnote 28 should be revised to	**Change made.** Revised footnote 28 in Revised Tentative Attachment R as requested.

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		clarify that the Total DDT limitation is not applicable if analytical results resolve the individual DDT compounds to avoid a situation where the footnote is misinterpreted as requiring the application of both the Total DDT limitation and limitations for individual DDT compounds. Additionally, if the table in Part III.F.4.c is not revised per our request, Footnote 28 should added to the table. "*If analytical results that resolve individual DDT compounds are available, then the Total DDTs limitation is not applicable and all the CTR criteria should be applied individually. The CTR criteria should be applied as follows: 4-4' DDT and 4-4' DDE is assigned an effluent limitation of 0.59 ng/L; 4-4' DDD is assigned an effluent limitation of 0.83 ng/L.*"	
C.13.1	Los Angeles County and LACFCD 2nd letter	Attachment S/ Part I.E./ Pg. S-2. Wet weather concentration based WQBELs should be set equal to the wet weather numeric targets. They are currently set equal to 78% of the wet weather numeric target for copper and zinc and 78% of the average daily existing concentration for lead. There are no concentration-based wet weather WLAs expressed in the TMDL for MS4 Permittees, but the TMDL does include concentration-based WLAs for other NPDES Permits which are set "equal to the wet weather numeric targets for copper and zinc or average daily existing concentration for lead expressed as	**No change.** Although the Los Cerritos Channel Metals TMDL assigns the wet-weather numeric targets for copper and zinc and the average daily existing concentration for lead as concentration-based waste load allocations for minor NPDES permits and general non-stormwater NPDES permits, these permits are not considered to be a significant source of metals loading to the Los Cerritos Channel during wet weather. As stated in the Los Cerritos Channel Metals TMDL, section 4.2 Quantifying Point Source Runoff, "Urban stormwater

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		total recoverable metals as provided in Table 6-2." In addition, similar to wet weather, there are no dry weather concentration based WLAs included in the TMDL for MS4 Permittees, but there are for other NPDES Permits which are also set equal to the numeric targets. In the case of dry weather, however, the concentration based WQBELs are set equal to the dry weather numeric targets. As such, if concentration based WQBELs are incorporated into the Permit, the County and LACFCD request that they be set equal to the numeric targets, which is the ultimate goal of the TMDL.	has been recognized as a substantial source of metals." (U.S. EPA Region IX, March 17, 2010, Los Cerritos Channel Total Maximum Daily Loads for Metals, p. 23.) The wet weather concentration based WQBELs cannot be set equal to the wet weather numeric targets because that would result in metals loading from MS4s greater than the waste load allocations assigned in the Los Cerritos Channel Metals TMDL. Also, see Part VI.D.2 of Attachment F for further discussion on the Metals TMDLs.

Miscellaneous Modifications

1. Revised Tentative Attachment F, Part III.I, Table F-21. Changes to Effluent Limitations in Previous MS4 Permits. Updated the "New Limitation" column for the Los Angeles River Nitrogen Compounds and Related Effects TMDL, Ammonia 30-day Average to be consistent with ammonia WQBELs as listed in Revised Tentative Attachment Q.
2. Revised Tentative Attachment F, Part III.I.2.c. Los Angeles River Nitrogen Compounds and Related Effects TMDL. Updated the dates of the site specific data used to calculate the ammonia 30-day average WQBELs.
3. Revised Tentative Attachment F, Part VI.C, Table F-24. Incorporated TMDLs and Programs of Implementation. Corrected the date in the "State Water Board Approval Date" column for the Legg Lake Trash TMDL (Revised) to 1/21/2020.
4. Revised Tentative Attachment F, Part VI.D.3. Expression of Nutrient TMDLs as Permit Limitations, Los Angeles River Nitrogen Compounds and Related Effects TMDL. Updated the dates of the receiving water monitoring data used to calculate the ammonia WQBELs.
5. Revised Tentative Attachment F, Part VI.G, Table F-26. TMDL Final Implementation Deadlines. Per Basin Plan Amendment Resolution Number R14-010, corrected the "Final Implementation Deadline has passed" column for the Upper Santa Clara River Chloride TMDL to April 28, 2015.

6. Revised Tentative Attachment F, Part VI.G, Table F-26. TMDL Final Implementation Deadlines. Added footnotes to the Santa Monica Bay Nearshore and Offshore Debris TMDL (SMB Debris TMDL) and the revised SMB Debris TMDL to indicate when the deadlines in the revised SMB Debris TMDL are applicable.
7. Revised Tentative Attachment F, Part VI.G, Table F-26. TMDL Final Implementation Deadlines. Clarified the Permittees responsible for meeting the TMDLs for Nutrients - Malibu Creek Watershed and the Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments.
8. Revised Tentative Attachment M, Part IV.C Table. Deleted “sample” from top-left first cell.
9. Revised Tentative Attachment N, Part III.D Table. Added “Conejo Creek” for consistency with Tables 77-79 of the Calleguas Creek Watershed Metals and Selenium TMDL Technical Report, March 29, 2006.
10. Revised Tentative Attachment O, Part II.F and Part II.H Table. Corrected references to the effective date of the “revised SMB Debris TMDL” instead of the “Order.”
11. Revised Tentative Attachment O, Part II.H Table. In footnote 15, identified the specific Permittees for clarity.
12. Revised Tentative Attachment O, Part IV.A.3.b Table. In footnote 23, specified the single sample bacteria objectives to use for Malibu Lagoon and Malibu Creek and its tributaries.
13. Revised Tentative Attachment O, Parts IV.A.3.c and IV.A.3.d. Corrected the waterbodies.
14. Revised Tentative Attachment O. Parts V.B Ballona Creek Estuary Toxic Pollutants TMDL, V.D Ballona Creek Metals TMDL, and VI.B Marina del Rey Harbor Toxic Pollutants TMDL. Defined “baseline loading” per the TMDLs for clarity.
15. Revised Tentative Attachment Q, Part II.B Table. Updated the 30-day average ammonia WQBELs based on pH and temperature receiving water monitoring data from January 1, 2018 through December 31, 2020.
16. Revised Tentative Attachments F and J. Revised the Santa Monica Bay Beaches Bacteria TMDL abbreviation to SMB Bacteria TMDL.
17. Revised Tentative Attachments F, O, Q, R and S. Updated past compliance dates, as appropriate.
18. Revised Tentative Attachments R and S, Part I.G Table. Updated the table to clarify final compliance deadlines.