Response to Comments
Section G: Compliance Determination (Order, Parts X.A-B and D)

The below table includes all significant comments on the tentative permit section described above and the corresponding Fact Sheet section.

#	Commenter(s)	Comment	Response
G.1	SGVCOG 2nd Letter and ULAR Group	The Tentative Permit specifies that Permittees must comply with water-quality 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. 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	**Change made.** It is unclear whether the commenters are referring to the 2012 Permit requirement regarding the timing of extension requests, which is "at least 90 days *prior to the deadline*" (emphasis added), or the three-month period to submit a final WMP after receiving the Board's comments on the draft WMP. (See Part VI.C.6 and Table 9, respectively, of the 2012 Permit.) Neither one of these provided 90 days to meet compliance deadlines as suggested by the commenters. Compliance deadlines for water quality-based effluent limitations are based on the TMDL-specific implementation schedules. As in the 2012 Permit, Tables 10 and 11 in Parts IX. F and G, respectively, of the Tentative Permit, allow Permittees up to three months to submit a final WMP in response to comments received from the Los Angeles Water Board. Part X.B.1.b.iii.a of the permit has also been revised to cross-reference the provisions that allow Permittees to revise their WMP. As to the concerns related to the trial court's findings

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		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 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**. The process of planning, designing, constructing, testing and operating projects to implement best management practices takes longer than five years. In addition, the SCW Program funding schedule could exceed this timeframe. Instead, **if compliance within five years is not feasible for a Permittee, then the Permittee should be able to demonstrate a plan towards compliance that it will implement as funding becomes available**.	in the Cities of Duarte and Gardena lawsuits, these centered on the sufficiency of the Los Angeles Water Board's Water Code section 13241 findings. The Court of Appeal found that the Board's findings were adequate. Additionally, these lawsuits have no bearing on whether a 90-day "grace period" is appropriate. On March 11, 2021, the Los Angeles Water Board approved eight Basin Plan amendments for nine TMDLs, which extended their programs of implementation and associated schedules. Although the Board approved these amendments, the revised TMDLs are not in effect until approved by the State Water Resources Control Board and the Office of Administrative Law. Nonetheless, language was added to the revised Tentative Permit and applicable attachments to prospectively incorporate the revised TMDL deadlines, i.e. the extended programs of implementation and associated schedules will automatically take effect in the Regional MS4 Permit upon approval by the Office of Administrative Law (OAL). Regarding the time to plan, design, and construct BMPs, Los Angeles County Public Works staff and other Permittees have provided input to the Board that

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			projects generally take five to seven years from design to completion. The time permitted under the TMDL implementation schedules in combination with additional time if warranted through a TSO addresses the concern that projects may take more than five years to complete. Further, with regard to funding availability, the Tentative Permit addresses this by noting that in a request for a TSO, Permittees must include a demonstration that the time schedule requested is as short as possible, *considering the technological, operation, and economic factors* that affect the design, development, and implementation…" (Tentative Permit, Part X.E.5.e). To the extent that the commenters may be concerned about the five-year limitation on the length of a time schedule order (TSO), TSOs may be extended for an additional period beyond the initial five years (i.e. for a total of ten years) if the Board finds that the discharger is making diligent progress toward compliance with the WQBEL and the discharger demonstrates that additional time is necessary to comply. (Wat. Code § 13385(j)(3)(C)(ii)(II).) Further, it should be noted that a request for a TSO would only be necessary if the Permittee were unable to achieve

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			compliance during the period of the initial implementation schedule. For Permittees in the San Gabriel Valley and Upper Los Angeles River Watershed, for controlling metals and bacteria in stormwater, these implementation schedules are typically between 19-25 years from the effective date of the applicable TMDLs.
G.2	SGVCOG 2nd Letter and ULAR Group	***Better Define Compliance Attainment:*** The compliance pathway through approved WMPs should clarify receiving credit for local pollutant load reductions with pre- and post-implementation monitoring versus an observed response in receiving waters. This is related to final compliance attainment. If an approved WMP is properly implemented and all project milestones are met, but final WQBELs or RWLs are still exceeded, we recommend that the Permit provide coverage for the Permittees through deemed compliance to address through the adaptive management process, rather than being at risk of an immediate violation. The whole concept of the adaptive management process is to continue improving the program towards attainment of environmental objectives and this coverage will further encourage Permittees to fully embrace adaptive management. In addition, we recommend establishing a clear policy and guidelines for Permittees to demonstrate that all work	**No change.** As an initial matter, compliance with final WQBELs and Receiving Water Limitations may be demonstrated in the receiving water or at an MS4 outfall, or by retaining all conditionally exempt, non-essential non-stormwater and all stormwater runoff up to and including the volume from the 85th percentile, 24-hour event for the drainage area. A Permittee(s) that implements the retention approach, may still be deemed in compliance with final WQBELs and Receiving Water Limitations where retention of the prescribed volume does not achieve these limitations provided the Permittee(s) is implementing all actions and schedules in an approved Watershed Management Program (WMP), including but not limited to the ongoing monitoring and adaptive management requirements. A Permittee(s) implementing other strategies in their WMP to attain final WQBELs and RWLs, generally, are not

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		associated with prior and current milestones was completed. This will help assure all stakeholders that established milestones are being met and further justifies coverage under final compliance with the use of adaptive management as needed. Regarding the alternative compliance pathway to address the 85th percentile, 24-hour event, it is important to recognize that volume capture may not provide a viable compliance strategy for certain pollutants (e.g., bacteria) and other types of water quality impairments (e.g., habitat-related impacts). The Permit should allow flexibility in determining an alternative compliance pathway that can be used to demonstrate final compliance. This flexibility will allow for greater compliance certainty and aligns with recent scientific studies and the development of innovative approaches and tools that can be used to enhance water quality improvement. For example, this is consistent with the intent of the Load Reduction Strategy (LRS) Adaptation Plan the ULAR Group is pursuing to better align implementation actions with meaningful outcomes.	afforded deemed in compliance with final deadlines that have passed. However, the purpose of the Reasonable Assurance Analysis (RAA), which is a required element of a WMP, is to demonstrate the ability of the WMP to ensure that Permittees' MS4 discharges achieve applicable WQBELs and do not cause or contribute to exceedances of RWLs. The RAA must be revisited during the adaptive management process. This process is intended to ensure that Permittees regularly modify their WMPs based on new data, information, and modeling to achieve WQBELs and RWLs. Further, if through the adaptive management process, the Permittee(s) determines that the current WMP will not achieve the WQBELs and RWLs, the Permittee(s) may propose modifications, including new compliance deadlines, or request a TSO for final compliance deadlines established in a TMDL. Regarding the comment requesting a clear policy and guidelines for Permittees to demonstrate that all work associated with prior and current milestones was completed. No change is necessary. The Tentative Monitoring and Reporting Program (MRP) has been updated from the MRPs of the existing MS4 permits to

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			include clearer requirements for reporting implementation of WMP milestones. Regarding the comment about the retention-based alternative compliance pathway and its efficacy in addressing certain pollutants/impairments, the commenter has not submitted evidence or proposed alternatives for the Board's consideration. It should be noted that stormwater retention is effective for many pollutants and is a good approach when there is a need to address multiple pollutants. Where this approach is not appropriate, the option of a direct demonstration of compliance also remains available. No change is made in response to this comment because there is not data or information to support alternative compliance pathways beyond that already included in the Tentative Permit at this time.
G.3	Heal the Bay, the Natural Resources Defense Council, and Los Angeles Waterkeeper 2nd Letter	**The Deemed Compliance with Water Quality Standards Provisions ("Safe Harbor") Violates the Anti-Degradation Requirements of Federal and State Law** As with the 2012 MS4 Permit, the Tentative MS4 Permit provides that no matter what concentration of pollutants are discharged to Los Angeles area creeks, rivers, and beaches, cities are deemed to be in compliance so long as they continue to	**Change made.** 40 CFR section 122.44(l) apply to receiving water limitations. The statutory provisions do not apply because receiving water limitations are not "effluent limitations", as they are not "restrictions . . . 'on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are *discharged from point sources*' into waters." (NRDC v. SWRCB, *4, quoting 33 United States

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		develop and/or implement Watershed Management Plans ("WMP"). (*Tentative MS4 Permit* at pp. 94-96.) The Tentative MS4 Permit's rationale for insulating permittees from liability for documented violations of applicable Water Quality Standards and Waste Load Allocations in area receiving waters is that: "…permittees have stated that they would not be willing to make the investment in long-term controls required by the WMPs without assurance that they would not be subject to enforcement actions while building and investing in long-term structural and programmatic controls." (*Tentative MS4 Permit* at Attachment F ("Fact Sheet"), III.H.2, pp. F-68-69.) The 2012 MS4 Permit contained identical Safe Harbor language shielding permittees, yet Safe Harbors have failed to result in meaningful progress towards either implementation of the Best Management Practices set out in the WMPs, or in protecting area receiving waters. Since the Safe Harbor provisions were first included in the 2012 MS4 Permit, the twelve enhanced watershed management groups are, on average, only 9 percent of the way towards completing their volume reduction requirement to achieve compliance as	Code section 1362(11), emphasis added.) The regulatory provisions do not apply because they do not apply to permit limitations based on water quality based standards, i.e. receiving water limitations. (*Id*. at 14.) As neither the statutory nor regulatory backsliding prohibitions apply, the Board need not consider whether an exception to backsliding applies.

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		identified in their EWMPs. *See Stormwater Report, Tracking Progress Towards Managing Stormwater Pollution in Los Angeles County from 2012 through 2018 (2019, Heal the Bay)* ("Exhibit B) at p. 10. Further, rather than improving water quality, the years since the 2012 MS4 Permit was adopted have seen stagnant or worsening pollutant levels in Los Angeles rivers and beaches. While the failure of the Safe Harbor provisions to prevent continued degradation of Los Angeles area waters makes clear that insulating dischargers from enforcement is bad public policy, it also makes clear that the Safe Harbor provisions of the Tentative MS4 Permit violate the Anti-Degradation and Anti-Backsliding requirements of State and Federal law. Because the Safe Harbor provisions authorize discharges that degrade receiving waters and backslide from the 2001 MS4 Permit's strict prohibition on violations of Water Quality Standards, the Tentative MS4 Permit violates the baseline requirements of those laws.	
G.4	VCSQWP	Part X.A.1. Page 94. The Permittees appreciate the modifications in this section based on our previous comments. However, we are concerned that the language specifies that compliance points are specific to outfalls and/or alternative access points. Receiving	**Change made.** The "Compliance Points" provision is related to the "Direct Demonstration of Compliance" provision in Part X.B.2.a. Compliance demonstration when implementing a WMP is addressed under Part X.B.1.b and Part X.B.2.b.

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		water monitoring locations can also be compliance points if so specified in the MRP. Additionally, while we appreciate the added language regarding compliance through a WMP, we request clarification of this language to make sure the intent is clear. Modify X.A.1 as follows: A Permittee shall demonstrate compliance with WQBELs and receiving water limitations in Part IV, Part V, and Attachments K through S of this Order, at the compliance monitoring locations identified in monitoring programs per Attachment E of this Order, ~~unless a Permit is implementing~~ or through implementation of a Watershed Management Program per Part IX of this Order. Compliance points may include outfalls, alternative access points, such as manholes or in channels at the Permittee's jurisdictional boundary, or receiving water monitoring locations.	Therefore, no change is needed to the clause regarding Permittees implementing a WMP. The Board agrees to the requested clarification that compliance points may include locations in the receiving water where such locations are designated for measuring compliance in a monitoring program per Attachment E. This is consistent with the intent of the proposed permit language.
G.5	Los Angeles County and LACFCD 2nd letter and City of Malibu	Order/ Part X.A/ Pg. 94. Part VI.E.2.c.ii of the 2012 Permit (see below for text) clearly outlines that compliance with applicable TMDL requirement(s) constitutes compliance with receiving water limitations for the pollutant(s) addressed in the TMDL. The Permittees request that the 2012 MS4 Permit language (Part VI.E.2.c.ii) be incorporated into the new Permit.	**No change.** This provision is included in the Tentative Permit, it has just been moved to Part X "Compliance Determination for WQBELs and Receiving Water Limitations." See Part X.B.2.b.i, which states "[a] Permittee shall be deemed in compliance with the receiving water limitations in Part V of the Order if it is implementing the applicable TMDL requirement(s) in Part IV.B and Attachments K though S of this Order."

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		"*A Permittee's full compliance with the applicable TMDL requirement(s), including compliance schedules, of this Part VI.E. and Attachments L through R constitutes compliance with Part V.A. of this Order for the specific pollutant addressed in the TMDL."*	See also Part X.B.1.a regarding interim WQBELs and receiving water limitations associated with a TMDL.
G.6	City of Los Angeles	Main Body, Part X.A, 94. In the 2012 Permit, Part VI.E.2.c.ii explicitly states "A Permittee's full compliance with the applicable TMDL requirement(s), including compliance schedules, of this Part VI.E. and Attachments L through R constitutes compliance with Part V.A. of this Order for the specific pollutant addressed in the TMDL." The Tentative Order does not include the same language, which removes the linkage between complying with interim and final TMDL requirements and complying with RWLs in Part V. LASAN requests similar language be included.	**No change.** See response to comment # G.5.
G.7	SGVCOG 2nd Letter and ULAR Group	Part X.B.1.b; Page 94. Necessary deviations from an approved WMP may justify adjustments to the final deadlines for project completion or program implementation, under approval of the Executive Officer and appropriately incorporated in the WMP through the adaptive management process. Recommend removing this circumstance from allowing minor deviations in an approved WMP.	**No change.** Part X.B.1.b does not replace or nullify the provisions in Part IX.C and Part IX.E.2. The purpose of Part X.B.1.b is to allow minor deviations without the requirement for approval by the Los Angeles Water Board. More significant modifications such as adjustments to the final deadlines for project completion or program implementation must go through the approval process in Part IX.C or Part IX.E.2.

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G.8	City of Los Angeles	Main Body, Part X.B.1.b.ii, Page 94. Revise to request addition of the following to ii.(b) "The final deadline for project completion or program implementation will still be met within a timeframe beyond the original deadline determined to be as short as technically feasible.	**No change.** See response to comment # G.7.
G.9	Los Angeles County and LACFCD 2nd letter and City of Malibu	Order/ Part X.B.2.a.i/ Pg. 95. 40 C.F.R. §122.26(a)(3)(vi) provides that "Co-Permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators." Please revise Part X.B.2.a.i to be consistent with this regulation.	**No change.** Part X.B.2.a.i is one among several ways for Permittees to demonstrate compliance with WQBELs and receiving water limitations. Additionally, provisions consistent with 40 CFR § 122.26(a)(3)(vi) are included in Part X.D "Commingled Discharges," and operate in concert with the provision cited by the commenter. These provisions reflect the nature of the MS4 in the Los Angeles Region, while addressing the federal Clean Water Act and implementing regulation's requirement that permittees must monitor their discharges sufficient to determine compliance. (See, e.g., *U.S. v. Brittain* (10th Cir. 1991) 931 F.2d 1413, 1416 [self-reporting is critical to the NPDES program, which "fundamentally relies" upon it].) See also response to comment #G.37.
G.10	VCSQMP	Part X.B.2.a.i and X.B.2.a.ii. Page 95. Requiring that the Permittees have no exceedances of WQBELs or receiving water	**No change.** WQBELs and receiving water limitations incorporate averaging periods consistent with the corresponding water

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		limitations is inconsistent with averaging periods for objectives, the impaired waters policy that allows for some exceedances, and provides a significant burden on Permittees to comply under all conditions, including extreme storm events. These provisions should be modified to allow for occasional exceedances that are not persistent and do not impact beneficial uses. Modify X.B.2.a.i and ii as follows: There are no <u>persistent</u> exceedances . . .	quality objective or TMDL wasteload allocation. For example, WQBELs for bacteria indicators are generally expressed as a rolling geometric mean. Similarly, some receiving water limitations for bacteria indicators are expressed as allowable exceedance days such that some exceedances are allowed during the winter season and during wet weather. Another example is WQBELs for total ammonia and nitrite plus nitrate as nitrogen; in both cases WQBELs are expressed as a 30-day average and a one-hour average. Finally, in a number of cases, WQBELs are expressed as a mass load over a day or year. The Clean Water Act and the regulations promulgated under it make no provision for "rare" violations. (*Sierra Club v. Union Oil Co. of California*, 813 F.2d 1480, 1491 (9th Cir. 1987), vacated on other grounds.) To the extent that there is an exceedance, there are ways to account for the seriousness and/or persistence of an exceedance in any enforcement-related actions. For example, the State's Water Quality Enforcement Policy outlines a liability calculation process that accounts for actual harm or potential for harm from the discharge violations and per gallon and per day assessments for discharge

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			violations that address the persistence and magnitude of a violation. For certain violations of WQBELs, the Los Angeles Water Board does not have the authority to waive penalties. Water Code sections 13385(h) and 13385(i) require the Los Angeles Water Board to issue mandatory minimum penalties of $3,000 if the violation meets the definition of a "serious" violation or a chronic violation, respectively. However, not all violations are subject to mandatory minimum penalties. For example, Water Code section 13385(h) only applies to pollutants listed as a Group I or Group II pollutant in Appendix A to 40 CFR 123.45. Trash and bacteria are not listed as a Group I or II pollutant. Therefore, violations of these WQBELs would never trigger a mandatory minimum penalty for a "serious" violation. Even where the Los Angeles Water Board lacks enforcement discretion, Water Code section 13385(j)(1)(B) provides an exception for "A violation caused by one or any combination of the following: …(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight."

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			Note that to the extent the commenter relies on the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (Listing Policy) to support its comment, this policy only establishes procedures for including waters on California's 303(d) List of Impaired Waters and does not include any guidance in regard to establishing permit limitations.
G.11	Los Angeles County and LACFCD 2nd letter	Attachment F/ Part XI/ Pg. F-215. The Fact Sheet states that: "Provisions specifying that compliance with the Watershed Management Program provisions in Part IX of the Order may constitute compliance with the receiving water limitation provisions in Part V of the Order were previously included in the 2012 Los Angeles County Permit and the 2014 Long Beach Permit. They were not previously included in the 2010 Ventura County Permit. In the Order, the Los Angeles Water Board continues to offer multiple paths to compliance with receiving water limitations." For clarity, the County and LACFCD, request the a revision to the following sentence or similar to clarify that the Order retains the approach previously included in the 2012 Los Angeles County Permit that compliance with the Watershed Management Program provisions of the Order may constitute compliance with the receiving water limitation	**No change.** The requested language is addressed in the subsections of Part XI of the Tentative Fact Sheet, including subsection XI.B.3 and subsection XI.C.

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		provisions of the Order: "In the Order, the Los Angeles Water Board continues to offer multiple paths to compliance with receiving water limitations <u>including provisions specifying compliance with the Watershed Management Program provisions in Part IX of the Order may constitute compliance with the receiving water limitation provisions in Part V of the Order</u>."	
G.12	Los Angeles County and LACFCD 2nd letter	Attachment F/ Part XI.B.3/ Pg. F-217. The Fact Sheet states that: "All Watershed Management Programs must include a Reasonable Assurance Analysis (RAA) that is quantitative and performed using a peer-reviewed model in the public domain." This is the case except in instances where the WMP uses an approach based on the 85th percentile storm. For clarity, the County and LACFCD request the sentence be revised as follows: "<u>For areas not addressed by projects that retain the 85th percentile, 24-hour storm, ~~All~~</u> Watershed Management Programs…"	**Change made.** The Board agrees to the clarification in the Revised Tentative Fact Sheet (see Part XI.B.3) for consistency with the language of Part IX.A.4.k of the Tentative Permit, which states the same.
G.13	Heal the Bay, the Natural Resources Defense Council, and Los Angeles Waterkeeper 2nd Letter	**The Safe Harbor Provisions of the Tentative MS4 Permit Violate the Non-Stormwater Discharge Prohibition of the Clean Water Act** In addition to violating the anti-degradation provisions of the Clean Water Act, the Tentative MS4 Permit's Safe Harbor provisions also violate the non-stormwater discharge prohibition of the Clean Water Act.	**No change.** A Permittee's implementation of an approved Watershed Management Program only provides an alternative compliance pathway for WQBELs and Receiving Water Limitations as set forth in Part X "Compliance Determination for WQBELs and Receiving Water Limitations." Permittees that are fully implementing an approved Watershed

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		(CWA 402 (p)(3)(B)(ii).) The Tentative MS4 Permit provides that no matter what concentration of pollutants are discharged during dry weather, cities are deemed to be in compliance so long as they continue to develop and/or implement WMPs. (Tentative MS4 Permit at pp. 94-96.) The Tentative Permit's actual allowance for non-stormwater discharges, despite its proclaimed prohibition in Section III B, violates Section 402(p)(3)(B)(ii) of the Clean Water Act.	Management Program are not deemed in compliance with the non-stormwater discharge prohibition provisions in Part III.B (Part III.A in the revised Tentative Order). This was true in the 2012 Permit as well. The several provisions stating that Permittees will be deemed to be in compliance with the receiving water limitations of the 2012 Permit for implementing a WMP/EWMP specifically reference Parts V.A and VI.E of the Order and not Part III.A. Where there is an unauthorized non-stormwater discharge, the Board explains in the Fact Sheet that it "would conduct a fact-specific analysis of the nature and source of the unauthorized non-storm water discharge and the efforts of the Permittee to prohibit the discharge in support of any enforcement action under Part III.B of the Order." (See Part IV.B.9 of the Fact Sheet.) While a Permittee's implementation of its Watershed Management Program may be relevant to this inquiry, there is no language in the Order that deems a Permittee(s) in compliance with Part III.A if it is fully implementing an approved Watershed Management Program. See also response to comment #F.13

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G.14	City of Port Hueneme, City of Simi Valley, City of Ventura, City of Thousand Oaks, County of Ventura, and VCSQMP	Incorporate additional compliance language for bacteria and trash. - Allow for alternative compliance pathways for bacteria objective compliance based on reducing human health risk. - Provide compliance for Trash receiving water limitations	See response to comments # G.16 and # B.2.1.
G.15	City of Santa Paula, City of Port Hueneme, City of Simi Valley, City of Ventura, City of Thousand Oaks, County of Ventura, and VCSQMP	Allow for alternative pathways for bacteria objective compliance based on reducing human health risk.	See response to comment # G.16.
G.16	VCSQMP	*Provide Options for Utilizing a Human-Health Risk Based Approach for Compliance with Bacteria TMDLs and receiving water limitations* Since the adoption of all the TMDLs in the Los Angeles Region, numerous studies have been conducted that emphasize the fact that current water quality objectives are indicators of the risk to human health and human waste sources of bacteria are the most likely to result in elevated risk to recreators. Both the San Diego and Santa Ana Regional Water Boards have begun exploring regulatory	The Bacteria Provisions as established by the State Water Board (final on March 22, 2019) including Part 3 of the ISWEBE Plan: Bacteria Provisions and Variance Policy and the California Ocean Plan 2019, establish the bacteria objectives in the State of California. The Los Angeles Water Board Basin Plan has been updated to reflect the Statewide Bacteria Provisions (final approvals of OAL and the United States Environmental Protection Agency (U.S. EPA) pending). The Bacteria Provisions supersede numeric REC-1

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		approaches that focus on human waste sources of bacteria and risk, rather than attaining fecal indicator bacteria (FIB) objectives. Additionally, the 2018 Statewide Bacteria Provisions incorporated explicit illness risk levels, in accordance with the risk-based focus of EPA's 2012 recommended recreational water quality criteria. FIB objectives and associated TMDL requirements for wet weather are the single largest driver of costs in Ventura County. As noted above, significant progress has been made in addressing most other pollutants and dry weather bacteria at beaches. However, attempting to attain FIB objectives during wet weather will involve significant resource investments well beyond what is currently available for stormwater agencies in Ventura County. Many of the studies noted above have demonstrated that addressing FIB objectives may not be the most effective way to reduce risk, as many sources of FIB in stormwater are lower risk (e.g. animals) and the higher risk human sources may not be effectively addressed by the capture of stormwater runoff in BMPs. As a result, alternative approaches that focus more on non-structural controls (e.g. sanitary surveys to identify and address human waste sources to the MS4),	water quality objectives for bacteria contained in a basin plan prior to the effective date of the Bacteria Provisions (February 4, 2019). The Bacteria Provisions did not change bacteria TMDLs established before February 4, 2019 and these TMDLs remain in effect. The Bacteria Provisions incorporate illness risk levels into the objective by translating these risk levels into a water quality objective based on epidemiological studies. (Bacteria Provisions and a Water Quality Standards Variance Policy Staff Report, p. 7) The illness rate cannot be used as a means of alternative compliance demonstration that could be implemented in the Order absent other data. The Bacteria Provisions do contemplate that natural sources of bacteria could be addressed by a number of approaches in the context of a TMDL (e.g., a natural source exclusion, antidegradation/ reference approach, and/or a high flow suspension.) (Part 3 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries, Chapter IV.E.1.) Many of these strategies are already implemented in bacteria TMDLs in the Los Angeles Region. While scientific work has been completed which may contribute to the development

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		could be much more cost effective and more significantly reduce the risk to recreators in Ventura County waterways. However, given all the other sources of FIB to receiving waters, it is unlikely that Permittees would attain the receiving water limitations or WQBELs in TMDL areas, even if they had substantially reduced human waste sources of bacteria to below the illness risk thresholds associated with the FIB objectives. To address these concerns, the Ventura County Permittees would like to request that the Tentative Order incorporate language allowing for an alternative compliance determination based on risk to be used for bacteria TMDL and receiving water limitation compliance during wet weather. The Ventura County Permittees request that another alternative compliance determination pathway be included in Part X of the permit that either allows for the demonstration of an equivalent risk threshold or the utilization of human markers to meet the requirements of the natural source exclusion provision of the Basin Plan. Potential permit language is included, but the Ventura County Permittees would be open to exploring other language that would provide for alternative compliance determinations for wet weather bacteria.	of new bacteria objectives or alternative bacteria compliance methods, at this time there is not a scientifically defensible alternative bacteria objective, or alternative compliance method that has not already been included in a TMDL and, by extension, this Order. In addition, it is unlikely that the development of new bacteria objectives or alternative bacteria compliance methods could be completed in the next permit term, much less prior to the adoption of this Order, considering the time needed to complete the necessary scientific studies to develop new objectives or compliance policies (while also working with the State Water Board, U.S. EPA, and interested stakeholders). However, once such information is developed, the Los Angeles Water Board could establish a new numeric bacteria objective, as a site-specific water quality objective, and use alternative indicators or other measures of pathogens in existing TMDLs where appropriate. The Los Angeles Water Board's adoption of a site-specific objective would also require State Water Board and the U.S. EPA approval, as would any such adoption by the San Diego or Santa Ana Regional Water Boards.

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		Recommendation: incorporate proposed language in Part X.B.2.b as shown in Attachment 1. The Program can provide findings that can be incorporated into the Fact Sheet to support this approach if needed. [Attachment 1]: Modifications to Section X. Compliance Determination **2. Final WQBELs and Receiving Water Limitations** **a. Direct Demonstration of Compliance.** A Permittee is in compliance with final WQBELs and receiving water limitations in Part IV.B and Attachments K through S of this Order and/or in Part V of this Order, if the Permittee demonstrates any of the following: **i.** There are no persistent exceedances of the WQBEL for the specific pollutant in the discharge at the Permittee's compliance point(s), including an outfall to the receiving water that collects discharges from multiple Permittees' jurisdictions; ii. There are no persistent exceedances of the receiving water limitation for the specific pollutant in the receiving water(s)	Regarding the commenter's concern about other sources of FIB to receiving waters, per Part X.D.5 Permittees have the opportunity to demonstrate that the pollutant was not discharged from the Permittee's MS4 using current source identification methodologies for FIB. Lastly, in response to the specific request for language modifications, as noted in response to comment # G.10, consideration of the persistence and potential harm of an exceedance is addressed when evaluating the need for enforcement.

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		at, or downstream of, the Permittees' compliance point(s);… **b. Alternative Demonstration of Compliance…** **ii.** A Permittee shall be deemed in compliance with the WQBELs and receiving water limitations ~~for the U.S. EPA TMDLs~~ identified in Part IV~~.B.2.c~~ and Attachments K through S of this Order and/or the receiving water limitations in Part V of the Order if it is implementing an approved Watershed Management Program, consistent with the actions and schedules therein, to address the applicable waterbody-pollutant combination pursuant to Part IX of this Order~~. A Permittee may only rely on this compliance path up until the final deadline for achievement of the relevant WQBEL and/or receiving water limitation~~; or… **iv.** For Bacteria TMDL WQBELs, demonstrate through a method that has been approved by USEPA and/or the State Water Board, or has been accepted by the Los Angeles Water Board, that receiving waters or	

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		discharges from a Permittee's MS4 do not cause gastrointestinal illness rates greater than 32 per 1000 water contact recreators….	
G.17	City of Los Angeles	[add new Part X.B.2.b.iv and v as follows]: iv. The Permittee is implementing an approved WMP, consistent with the actions and milestones therein, pursuant to Part IX of this Order. Minor deviations from actions, milestones and schedules in an approved WMP are permitted under the following circumstances: (a) Notification is provided to the Los Angeles Water Board in the Annual Report, including a clear description of the interim action or requirement in the Watershed Management Program, an explanation for the deviation, and the revised schedule, requirement, and/or action. (b) The final deadline for project completion or program implementation will still be met within a timeframe beyond the original deadline determined to be as short as technically feasible. (c) Any revised action or substituted action(s) will provide equivalent water quality improvement.	**No change.** Part X.B.2.b pertains to demonstration of compliance with final WQBELs and receiving water limitations. The option to demonstrate compliance with WQBELs and receiving water limitations by implementing an approved Watershed Management Program is only available up to the final compliance deadlines. Per Part X.E of the Order, permittees may request more time for compliance with final deadlines through a Time Schedule Order (TSO) pursuant to California Water Code sections 13300 and/or 13385(j)(3) for the Los Angeles Water Board's consideration. Language has been added to the revised tentative Order, Part IX.B.9, clarifying that when identifying and scheduling control measures in WMPs, Permittees can include approved TSO schedules in addition to TMDL-based schedules. See response to comment #F.8.

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		v. Upon notification of a Permittee's intent to develop a Permit-Term Project List pursuant to Part IX.B.8.c.iv of this Order and prior to approval of its WMP or updated WMP, a Permittee's full compliance with all of the following requirements shall constitute a Permittee's compliance final WQBELs and receiving water limitations: (a) Provides timely notice of its intent include a Permit-Term Project List in an updated WMP per Part XI.G.2, (b) Meets all deadlines for the WMP development or update, and (c) Receives final approval of its new or updated WMP.	
G.18	Aleshire & Wynder, LLP on behalf of the cities of Bell, Carson, Flintridge, Glendora, Irwindale, La Cañada, and Rancho Palos Verdes	**Provide Receiving Water Limitation Coverage While Developing a WMP or EWMP** Provide deemed compliance status with receiving water limitations while developing a WMP; The primary goal of the WMP is to provide an alternative compliance pathway for receiving water limitations. However, while a WMP is being developed, the Permit would impose the standard receiving water limitation coverage requirements on a Permittee. Providing the pathway for compliance while leaving Permittees liable for receiving water limitation violations during the development of the plan will only deter participation in WMPs.	**Change made.** See response to comment #G.19

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		As noted in Order 2015-0075, an alternative compliance pathway should provide time to come into compliance with receiving water limitations without being in violation. (Order WQ-2015-0075, page 52) For all these reasons, deemed compliance status should be provided during the development of the WMPs.	
G.19	City of Port Hueneme, City of Simi Valley, City of Ventura, City of Thousand Oaks, County of Ventura, and VCSQMP	Provide compliance coverage for receiving water limitations while developing the WMPs/WMP equivalent plans	**Change made.** The key reason that the Los Angeles Water Board allowed a Permittee's full compliance with permit requirements for development of a Watershed Management Program to temporarily constitute a Permittee's compliance with the Receiving Water Limitations provisions in the 2012 Permit for Los Angeles County MS4 Permittees was because the Board was, for the first time, including provisions to implement 31 TMDLs in the 2012 Permit. The Ventura County MS4 Permit has included TMDL provisions for over a decade since the 2009 Ventura County MS4 Permit reissuance. Nonetheless, the Los Angeles Water Board recognizes that this will be the first permit term during which Ventura County MS4 Permittees are provided the alternative to demonstrate compliance with interim WQBELs and receiving water limitations through implementation of an approved Watershed Management

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			Program. Given that in Ventura County there are a number of waterbody pollutant combinations for which TMDLs have not yet been developed but for which receiving water limitations must be achieved, the Los Angeles Water Board finds it reasonable to allow Ventura County MS4 Permittees to demonstrate compliance with receiving water limitations during the development of a Watershed Management Program where the program explicitly addresses the waterbody pollutant combination. For example, various reaches of Calleguas Creek and its tributaries exceed receiving water limitations for bacteria; however, there is no TMDL in place to address these exceedances. (See, for example, Final 2014/2016 California Integrated Report, Category 5 waterbodies.) This will allow time for proactive planning to address receiving water limitations and WQBELs in a holistic manner, while still maintaining the same level of pollutant control that has been implemented under the current Ventura County MS4 Permit. This is consistent with the principles outlined by the State Board in Order WQ 2015-0075[1]

[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

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			(finding that, "municipal storm water dischargers may not be able to achieve water quality standards in the near term and therefore that it is appropriate for municipal storm water permits to incorporate a well-defined, transparent, and finite alternative path to permit compliance that allows MS4 dischargers that are willing to pursue significant undertakings beyond the iterative process to be deemed in compliance with the receiving water limitations" (p. 76). Part X.B.2.b.iv of the Order was added to allow deemed compliance status with receiving water limitations. Part IX.F.4 of the Order was updated to clarify that Ventura County Permittees need only comply with the receiving water limitations in Part V for waterbody pollutant combinations not listed in the NOI. Part X.D.1 of the Fact Sheet was updated to reflect these changes.

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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G.20	VCSQMP	*Provide compliance coverage for receiving water limitations during WMP development* In the 2012 Los Angeles MS4 Permit, the Permittees were provided with compliance coverage for receiving water limitation violations during the period of time in which they were developing their WMP or EWMP. However, this language has been removed from the Regional Permit. As a result, the Ventura County MS4 Permittees would not be provided with the same coverage that had been provided to all the other Permittees in the region while they were developing their plans. This approach is inconsistent with the rationale behind including the WMPs as an alternative compliance pathway for receiving water limitations. As noted in the State Water Resources Control Board OrderWQ-2015-0075 on the 2012 Los Angeles MS4 Permit, an alternative compliance pathway should provide time to come into compliance with receiving water limitations without being in violation. Not providing compliance during the development of the WMPs does not provide this time and could subject the Ventura County Permittees to receiving water violations during plan development. "The Phase I MS4 permits should incorporate an ambitious, rigorous, and transparent	**Change made.** See response to comment # G.19.

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		alternative compliance path that allows Permittees appropriate time to come into compliance with receiving water limitations without being in violation of the receiving water limitations during full implementation of the compliance alternative." (Order WQ-2015-0075 page 52) The Fact Sheet on page F-210 describes the rationale for removing this language as follows: "The Los Angeles Water Board has determined that "deemed compliance" status during WMP development is not appropriate in the Order because TMDL provisions, including water quality based effluent limitations, have been in the Ventura County Permit since 2010 whereas in the 2012 Los Angeles County Permit and the 2014 Long Beach Permit, the vast majority of water quality based effluent limitations were being incorporated for the first time." While this is true, the Ventura County Permittees are requesting deemed compliance status for the receiving water limitations, not the TMDL requirements. The 2001 Los Angeles County MS4 permit had very similar receiving water limitation language to the language in the 2010 Ventura Permit. Therefore, the same deemed	

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		compliance status for receiving water limitations should be provided to the Ventura County Permittees. <u>Recommendation</u> Incorporate suggested edits to Part IX.F, modified from the 2012 Los Angeles MS4 Permit, as outlined in Attachment 1. [Attachment 1]: **F. Ventura County Permittees** **4.** <u>Upon notification of a Permittee's intent to develop a WMP and prior to approval of its WMP, a Permittee's full compliance with all of the following requirements shall constitute a Permittee's compliance with the receiving water limitations provisions in Part V not otherwise addressed by a TMDL, if all the following requirements are met:</u> ~~**5.** Until the WMP is approved by the Los Angeles Water Board, Ventura County Permittees that elect to develop a WMP shall:~~ **a.** Continue to implement their existing storm water management programs, including actions within each of the six categories of minimum control measures consistent with 40 CFR section 122.26(d)(2)(iv) in lieu of Part VIII.D through Part VIII.I in this Order;	

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		b. Comply with all other Parts of this Order, including Parts III, IV, ~~V,~~ VI, VII, and VIII.A and B and Attachments K through S.	
G.21	Santa Ana Region MS4 Permittees	<u>Provide Receiving Water Limitation Coverage While Developing a WMP</u> It is important to provide receiving water limitation coverage during the development of a WMP if they are to be effective tools for permit compliance. The primary goal of the WMP is to provide an alternative compliance pathway for receiving water limitations. Order 2015-0075 (P.16) affirms this goal: "Accordingly, we believe that the MS4 permits should incorporate a well-defined, transparent, and finite alternative path to permit compliance that allows MS4 dischargers that are willing to pursue significant undertakings beyond the iterative process to be deemed in compliance with the receiving water limitations." Providing the pathway for compliance, while leaving Permittees liable for receiving water limitation violations during the development of the plan, is counter to the purpose of the WMPs. Receiving water limitations coverage was provided in the 2012 Los Angeles MS4 permit and should be provided for all permittees for which the pathway is incorporated for the first time. The rationale in the Fact Sheet for not providing this coverage to Ventura County Permittees appears to rely on the fact that	**Change made.** See responses to comments # G.19.

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		TMDLs were already incorporated into the Ventura County permit in 2010. However, the WMPs address receiving water limitations as well, not just TMDLs. The receiving water limitations language in the 2010 Ventura County MS4 Permit is essentially the same as the receiving water limitations language in the 2001 Los Angeles County MS4 Permit. Even though the receiving water limitations were already in the 2001 Permit, the Los Angeles County Permittees were provided with deemed compliance status in the 2012 Permit for receiving water limitations during development of a WMP. As a result, the rationale in the Fact Sheet for not providing coverage for Ventura County Permittees should not be applied to non-TMDL receiving water limitations. As noted in Order 2015-0075, an alternative compliance pathway should provide time to come into compliance with receiving water limitations without being in violation. “The Phase I MS4 permits should incorporate an ambitious, rigorous, and transparent alternative compliance path that allows permittees appropriate time to come into compliance with receiving water limitations without being in violation of the receiving water limitations during full implementation of	

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		the compliance alternative." (Order WQ-2015-0075; P.52) For all these reasons, deemed compliance status should be provided during the development of the WMPs. Provide deemed compliance status with receiving water limitations while developing a WMP.	
G.22	LLAR Group	<u>Regarding TMDL Compliance</u> The Permittees recognize that the recently adopted Order of the State Board (adopted on November 17, 2020) requires the Regional Board to add language to the Permit requiring Permittees to report on compliance over the 2021-2022 reporting year. While the LLAR WMG is encouraged by the modifications made to the Order prior to its adoption, the LLAR WMG is unable to fully comment on this particularly important item as the Regional Board has not yet written this language. Permittees must be able to comment on this issue prior to incorporation into the Permit. The LLAR WMG suggests that added language tie compliance into the effective implementation of the Safe Clean Water Program and allow Permittees to request an extension of TMDL deadlines, including final TMDL deadlines or include revised implementation timelines, without resorting to Time Schedule Orders.	State Water Board Order WQ 2020-0038 requires that the Los Angeles Water Board ensure that Permittees submit demonstrations that they have completed all work associated with their prior and current milestones. This does not require additional language in the Regional MS4 Permit, since the current permit already requires annual reporting on actions taken in compliance with approved Watershed Management Programs, and the Los Angeles Water Board has authority under Cal. Water Code section 13383 to establish reporting requirements that must be met by Permittees. The purpose of this requirement in Order WQ 2020-0038 was not to alter the 2012 Permit's compliance demonstration mechanisms; it was simply to ensure that the commitments Permittees made in their approved Watershed Management

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		The LLAR WMG has previously discussed the possibility of relying on the Biotic Ligand Model (BLM) for Copper as a measure of compliance with the Regional Board and its staff. The LLAR WMG believes that the BLM for Copper represents best science and has made and is continuing considerable efforts to monitor for parameters that are applicable to this model. The LLAR WMG therefore suggests that the Permit include mention that the BLM for Copper (and potentially the BLM for Zinc) can be used as a measure of compliance "upon approval by the Executive Officer."	Programs and Enhanced Watershed Management Programs had been met. Regarding the comment on the BLM for copper, the Los Angeles Water Board's current water quality objectives for copper and zinc are those promulgated by U.S. EPA in the California Toxics Rule (CTR) (40 CFR § 131.38). The CTR metals criteria (and thus the Board's objectives) include a water effect ratio (WER) to account for site-specific water quality characteristics that affect the toxicity of metals to aquatic life. The CTR does not currently incorporate the use of the BLM. However, the Los Angeles Water Board acknowledges that U.S. EPA's updated CWA section 304(a) recommended water quality criteria include usage of the BLM for freshwater copper criteria and a small number of states have adopted the revised criteria in some fashion as part of their water quality regulations. In 2018, the Los Angeles Water Board prioritized consideration of U.S. EPA's new and revised Clean Water Act Section 304(a) recommended criteria, including U.S. EPA's copper criteria based on the BLM. Following this, Basin Planning staff developed a draft document titled "Preliminary Implementation Considerations for Application of BLM-

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			derived Copper Criteria in the Los Angeles Region." This document provided an overview of the BLM and its input parameters and discussed implementation elements to be considered in the development of BLM-derived objectives, which included data requirements, objective derivation, and options for applying these objectives in the Los Angeles Region. Subsequently, in July 2019, the Los Angeles Water Board held a stakeholder workshop on preliminary considerations for the application of U.S. EPA's aquatic life freshwater quality criteria for copper in the Los Angeles Region. The purpose of the workshop was to present and discuss these elements, and to solicit stakeholder input that could be incorporated into the final document intended to assist Los Angeles Water Board staff and stakeholders in developing BLM-derived freshwater copper criteria in a consistent manner throughout the region. Alongside these efforts, the Los Angeles Water Board contracted with the Southern California Coastal Water Research Project (SCCWRP) in May 2019 to develop a database of existing data that could be used in the application of BLM-derived copper criteria in the Los Angeles Region.

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			The scope of the contract also included identification of data gaps and limited sampling and analysis to add to the database. Also, stakeholders including MS4 Permittees have been encouraged to initiate the collection of site-specific data on the input parameters that support the BLM. The Board will continue to prioritize this work to determine a final approach to incorporating the criteria and develop a Basin Plan amendment to adopt the copper water quality objective(s). Once the Basin Plan amendment process is completed, including revisions to TMDLs as necessary, the Los Angeles Water Board can incorporate the BLM into future permitting actions.
G.23	LSGR Group	<u>Regarding TMDL Compliance</u> The Permittees recognize that the recently adopted Order of the State Board (adopted on November 17, 2020) requires the Regional Board to add language to the Permit requiring Permittees to report on compliance over the 2021-2022 reporting year. While the LSGR WMG is encouraged by the modifications made to the Order prior to its adoption, the LSGR WMG is unable to fully comment on this particularly important item as the Regional Board has not yet written this	Regarding the 2020 State Board Order, WQ-2020-0038, see response to comment # G.22. Regarding tying implementation plans to Safe, Clean Water Program funds, see response to comments # F.12 and G.25. Regarding falling out of deemed compliance status for occasional exceedances, Permittees that exceed interim WQBELs and receiving water limitations can maintain deemed compliance status provided they are fully

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		language. Permittees must be able to comment on this issue prior to incorporation into the Permit. The LSGR WMG requests that added language tie compliance into the effective implementation of the Safe Clean Water Program. • One of the ways this can be accomplished by allowing Permittees to prepare and submit implementation plans to the Executive Officer. Permittees would be "deemed compliant" while this plan is being implemented. Due to limited Safe Clean Water Program funds, there is and will continue to be competition for project funds between subwatershed groups and individual cities. Therefore, since these funds are awarded by separate committees effectively beyond the control of Permittees, the project schedule within the implementation plans will be subject to change due to circumstances beyond the permittees' control. Therefore, flexibility allowing for changes in project timing is needed. • Additionally, given the variability of storm water quality, even as projects are constructed and become operational, it is likely that exceedances of numerical targets will occur from time to time. This should not result in permittees falling out of "deemed compliance" rather only necessitate changes to the	implementing their watershed management program or in compliance with applicable TMDL provisions. Permittees that exceed final WQBELs and receiving water limitations can maintain deemed compliance status through an adaptive management process only if they have implemented structural BMPs designed to address the 85th percentile, 24-hour runoff volume for the drainage area, or if they incorporated a schedule to comply with a final receiving water limitation into their Watershed Management Program. Deemed compliance status for all other final WQBELs and receiving water limitations is not warranted. The Clean Water Act and its implementing regulations require compliance with water quality standards and the iterative process that was largely the focus of the second and third generation MS4 permits has failed to achieve compliance with these standards (see also response to comments #F.22, G.25, and H.1.2.a). In some cases, however, the Los Angeles Water Board has enforcement discretion that can take into account the magnitude and frequency of an exceedance (see response to comment #G.10.)

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		implementation plans such as building more or better BMPs.	
G.24	PVP Group	The State Board adopted an Order on November 17, 2020, requiring the Regional Board to add language to the MS4 permit, which would require Permittees to report on past and present compliance. This is potentially an important item; however, the PVP Group is unable to fully comment on this as the Regional Board has not written this language yet. The PVP Group wishes to provide input regarding this issue prior to incorporation into the MS4 Permit.	See response to comment # G.22.
G.25	Los Angeles County and LACFCD 2nd Letter	**Incorporation of Safe Clean Water Program** It is essential that the next MS4 Permit gives Permittees the fullest opportunity for success. This is especially critical in the context of the recently passed Measure W (Safe Clean Water Program) that is providing the largest commitment of public resources in Los Angeles County history to implement clean water projects, such as those included in the approved EWMPs/WMPs. In order to allow an opportunity for the Safe Clean Water Program's purpose — to capture billions of gallons of stormwater each year to increase local water supply, improve water quality, and protect public health — to be fully achieved, the Regional Board should provide EWP/WMP Groups with the support needed to continue to develop and implement these	The Tentative Regional Permit provides Permittees with a permitting framework that is specifically designed for watershed-based collaboration and implementation. This permitting framework, which was first incorporated into the 2012 Los Angeles County MS4 Permit, was instrumental in the passage of Measure W in November 2018, which created and funded the Safe, Clean Water Program. The Tentative Regional Permit continues the watershed-based permitting framework, including the alternative compliance provisions, to support Permittees' continued efforts to develop and implement programs to improve water quality and comply with the permit. Many of the projects approved in the first round of the Safe Clean Water

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		programs. The success of these programs is crucial for the health and stability of the region's compliance with regulatory water quality requirements. On October 13, 2020, the Board of Supervisors approved the first round of the Safe Clean Water Program Stormwater Investment Plans for the Regional Program funds consisting of 41 infrastructure projects, 16 technical resources program projects, 4 scientific studies, and 12 watershed coordinators. In total, the Safe Clean Water Program will provide $379 million in funding over 5 years with matching funding from municipalities of $339 million. The 41 infrastructure projects will capture stormwater from 61,000 acres of drainage area covering over 21 municipalities. This does not include the annual $115 million of municipal funds that will be transferred to all the municipalities to be used towards MS4 Permit compliance. The Safe Clean Water Program is expected to generate $285 million annually with a priority toward implementation of the MS4 Permit. Compliance with the MS4 Permit should be considered reasonably achieved to the maximum extent practicable with the implementation of the Safe Clean Water Program, as time is needed to plan and build stormwater capture projects in conjunction	Program funding distribution were ones identified in approved WMPs and EWMPs. Regarding the commenter's reference to "the maximum extent practicable" (MEP), CWA 402(p)(3)(B) requires permittees to implement MEP *as well as* such other provisions that the permitting agency determines appropriate for the control of such pollutants. These "appropriate" water pollution controls include WQBELs. Because MS4 discharges impair many waterbodies in the Los Angeles Region, MEP is not sufficient to meet water quality standards and so other provisions, in the form of WQBELs, are appropriate and necessary. (See also response to comment #H.1.2.a.) Limiting the projects in WMPs to those that can be funded solely by Safe, Clean Water Program would likely not meet WQBELs per the compliance schedules in the TMDLs. Permittees must therefore find alternative sources of funding for near-term control measures. For additional discussion on MEP, see response to comment #F.22.

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		with the availability of funds from the Safe Clean Water Program.	
G.26	Los Angeles County and LACFCD 2nd Letter	Costs must be considered in determining what is reasonably achievable, the Fact Sheet does not establish that sufficient funding is available to implement the level of BMPs needed to attain water quality objectives. In November 2018, the voters of Los Angeles County passed the SCWP which will generate approximately $285 million annually for stormwater projects... The SCWP prioritizes the implementation of projects that assist with for MS4 Permit compliance, with cities receiving approximately 40% of these funds. The SCWP is the largest tax of its kind in the nation. Use of SCWP funds towards MS4 Permit compliance should be considered as “reasonably achieved” for and the maximum extent practicable for purposes off or MS4 Permit compliance.	The Safe Clean Water Program is one source of revenue and does not preclude permittees from seeking other sources of funding as they have in the past (e.g., Prop 1, Prop 12, Prop 13, Prop 84, ARRA). See changes made to Fact Sheet Part XIII.D.3 to specify additional sources of funding. Additionally, the Board considered permit implementation costs at multiple stages, including when TMDLs were initially adopted, during proceedings to revise TMDLs and their implementation schedules, and during past and current MS4 permit proceedings, including multiple Board workshops and agenda items on the pending Regional MS4 Permit from 2018 through the present. The Tentative Regional Permit also allows for a continued consideration of costs and adjustments to permit requirements where warranted. See, e.g., revised Tentative Order, Part IX.B.9.c.iii.(c) [Compliance Schedules], Part IX.C.2-3 [Watershed Management Program Implementation], Part IX.E.1.g [Adaptive Management Process], and Part X.E.5.e [Time Schedule Orders]. See also response to comments # F.12, F.22, and G.25.

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G.27	City of Beverly Hills	Considering the economic impacts of Covid-19, Beverly Hills and most of the Permittees will have critical revenue shortfall that directly affect our abilities to fund our stormwater compliance obligations. Therefore, Permittees will be solely relying on Measure W Municipal Program to fund to meet our obligations. For most Permittees, the Municipal Program revenues are expected to be less than $1M annually and would be insufficient to cover the cost for compliance. Therefore, the City is requesting that the Regional Board heavily considers these financial conditions and adopt a Permit that would consider Permittees to be in compliance as it continuous [sic] to significantly progress in their Watershed Management Programs (WMPs). One pathway to achieve the proposed approach is to base compliance on how stormwater revenue funds, such as Measure W, are dispersed towards water quality improvements especially in constructing regional stormwater projects that are detailed in the Permittees' Watershed Management Programs (WMPs).	See response to comments # G.25 and G.26.
G.28	BizFed	The Board should exercise its regulatory authority to direct cities to use the most cost effective means available for compliance with MS4. Without directing a particular compliance method, the Board can build into	**No change.** The Tentative Permit's Watershed Management Programs provisions state that, "Each WMP shall: … Maximize the effectiveness of available funds …" (Part IX.A.4.f). The Los Angeles

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		it compliance determination policy consideration of whether permittees employ cost effective methods and make full use of available funding sources including Measure W. This would put permittees on notice that schedules for compliance and penalties will be set with due consideration of available compliance methods, costs, and funding, including Measure W. Measure W not only authorizes such use of funds but expressly recognizes MS4 compliance as a priority.	Water Board has discretion to take into account whether Permittees have been implementing permit requirements diligently; e.g., when taking enforcement actions if warranted or considering requests for modifications of deadlines in a Watershed Management Program and/or TSO.
G.29	BizFed	The Board should not reinvent the wheel. Strategies have been adopted in other regions that could be used here to achieve the same goals. For example, Ventura County has unique circumstances and no comparable Measure W. LA County and its 88 cities should be given options that are being used successfully in Orange County, San Diego County and San Francisco City and County. Flexibility should be provided to achieve compliance in the most cost-effective manner given the local circumstances. A one-size-fits-all will only delay projects and pollution reduction efforts.	**No change.** The Los Angeles Water Board is not reinventing the wheel. The Tentative Permit largely follows the MS4 permits adopted in 2012 and 2014 for Los Angeles County MS4 Permittees, including the City of Long Beach, in terms of the watershed-based permitting framework and alternative compliance provisions. The Tentative Permit follows all three MS4 permits, including the 2010 Ventura County MS4 Permit, in terms of the incorporation of provisions to implement TMDL wasteload allocations as water quality-based effluent limitations. This permit framework, including how TMDL wasteload allocations are incorporated and how compliance is determined, was also endorsed with only minor modifications by the State Water Board in Order WQ 2015-0075. Additionally, the Tentative Permit's framework is the antithesis of a one-size-

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			fits-all approach. Instead, it gives Permittees the flexibility to develop Watershed Management Programs on a watershed or subwatershed scale that tailored to address the specific characteristics of the watershed through customized strategies, control measures and BMPs. (See revised Tentative Order, Part IX.A.1 and revised Tentative Fact Sheet, Part X.B.) Further, there is nothing in the Tentative Permit that would preclude Permittees from employing stormwater strategies or controls that have been used in other regions.
G.30	City of Beverly Hills	As the Regional Board is aware, Permittees have been progressing well in their WMPs. Several ongoing regional projects are close to construction or currently ongoing. This progress is a result of proper financial planning, grant opportunities and the release of the first round of Measure W Regional and Municipal Programs funding. With the current economic conditions, the Permit can help incentivize collaborative funding in WMPs by including a "compliance credit" mechanism in the Permit. "Compliance credit" would allow Permittees in a WMP to fund collaboratively regional projects outside their drainage areas by replacing the original Permittee that drains into the project site. The Permittee who has replaced the original Permittee will be receiving volume credits for compliance	**No Change.** Part X.B.1.b.ii allows minor deviations from interim actions, requirements and schedules in an approved Watershed Management Program. The shift in financial responsibility from one WMP participant to another would not require WMP modification if the final deadline for project completion will still be met.

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		based on the cost-sharing agreement that equates to a volume capacity between the new project partners. The "compliance credit" mechanism does not reduce the Permittee's compliance volume obligations under their WMP but shifts it towards the original Permittees compliance volume obligation under the same WMP. The City recommends that the Regional Board reviews and approves "compliance credit" requests. However, the Permittees should use the Adaptive Management process to reflect the change of project responsibilities rather than amending the WMP, which requires a thirty-day comment period.	
G.31	RWG Law on behalf of various Permittees	**The Watershed Management Program Provisions Should Permit Capacity Credits and Exchanges Between the Participating Permittees.** The Regional Board has recognized that in certain circumstances it is appropriate for permittees participating in a WMP to exchange structural BMP capacity credit. A capacity credit program incentivizes permittees to collaboratively fund regional projects and offers a creative approach to fund stormwater projects. This may happen, for example, where one permittee is unable to fund a BMP that it was initially assigned to build in a WMP, but another permittee within the same WMP is willing to fill the void and take on the responsibility. Or, where a	**No change.** See response to comment # G.30. Note that WMP modifications related to extensions of deadlines identified through the adaptive management process are subject to Board approval per Part IX.C.3 unless they fall within the definition of a minor deviation per Part X.B.1.b.ii.

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		permittee wishes to contribute money toward a BMP outside of its jurisdiction in order to meet its capacity requirements under the WMP. This recently occurred within the Ballona Creek Watershed Management Group, where the City of Beverly Hills substituted for the City of Los Angeles as the co-sponsor of the Culver Median Project with Culver City. Because Beverly Hills was able to obtain capacity credit for its financial contribution toward this important stormwater capture project, the project became financially feasible and is nearing completion. Unfortunately, neither the current 2012 Permit nor the Tentative Permit provides a mechanism to formally recognize a capacity credit program. Instead, permittees must formally modify their WMP in order to change the designated parties for a structural BMP project and adjust each permittee's capacity requirements. This is an unnecessarily protracted process for a program that amounts to a win-win for the permittees and environment. Therefore, the Cities request that the Tentative Permit be revised to incorporate a capacity credit program, such as through the WMP adaptive management process, rather than through a formal modification to a WMP.	

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G.32	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	A workable Permit recognizes each permittee's financial means to implement and comply with the Permit's requirements. No permittee has at its disposal the sums of general fund moneys apparently needed to achieve compliance based on the Regional Board's own cost estimates. Therefore, the Cities offer an approach through this letter that respects financial limitations while eventually leading to attainment of water quality standards. Compliance should be demonstrated by the permittees' commitment to expending and earmarking funding sources specifically dedicated to stormwater treatment and capture, such as the Los Angeles County Safe, Clean Water Program ("Measure W") approved by voters in 2018. **The Cities' Proposed Compliance Approach that Recognizes Permittee Financial Resources Using Dedicated Stormwater Revenue.** The Fact Sheet acknowledges that the Regional Board's own cost estimates are unreliable because it is difficult to estimate actual compliance costs and that, so far, actual expenditures on WMPs and EWMPs have been lower than initial cost projections. [footnote] 30 It further acknowledges that other funding sources are available to help permittees offset the massive compliance costs. [footnote] 31 The primary source of	**No Change.** For a discussion of determining compliance based on expending and earmarking funding sources, see response to comments # F.12, G.25, and G.26. With respect to the comment that the cost estimates in the Fact Sheet are unreliable, it should be noted that the Stormwater Management Program costs included in the Method 1 and 2 cost estimates are based on the annual expenditure and budget data that are self-reported by Permittees in their annual reports. This is very current cost compliance data, and these data reflect the best estimates of costs to comply with the Tentative Order. In fact, while the Los Angeles Water Board knows that Permittees have already "incurred costs associated with implementation of their programs such that the remaining cost for achieving final compliance under the Order is some fraction (less than 100%) of the original cost estimate," Method 1 "conservatively assume[s] that no costs have already been incurred by Permittees." (Fact Sheet, F-287.) Furthermore, the cost estimates for full implementation of (E)WMPs were set forth, analyzed and considered in 2019 dollars. So were the O&M costs. (pp. F-288 – F-307.)

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		new, dedicated stormwater funding for Los Angeles County permittees is Measure W. [footnote 30]: Tentative Permit, Fact Sheet Part XIII.D.2., pgs. F-307-08. [footnote 31]: Tentative Permit, Fact Sheet Part XIII.D.3., pgs. F-314-17. As the Regional Board is aware, in 2018 Los Angeles County voters approved Measure W as a special parcel tax to generate revenue specifically to capture and clean stormwater. Measure W is expected to generate roughly $300 million per year, with fifty percent devoted to including regional projects intended to deliver watershed-scale benefits ($140.6 million in fiscal year 2020-2021) and 40 percent delivered to municipalities ($112.6 million in fiscal year 2020- 2021). [footnote] 32 Unlike general fund revenues, which fund many critical municipal services, Measure W revenues are dedicated to stormwater projects. [footnote 32]: Measure W Estimated Revenues, available at: https://safecleanwaterla.org/estimated-revenues-2/. The Tentative Permit recognizes that Measure W will significantly improve the region's water quality and help permittees achieve Permit compliance. It does so by stating that the Regional Board will consider	Regarding the usage of TSOs and Basin Plan amendments to extend final compliance deadlines in TMDLs, Basin Plan amendments and TSOs are viable options to provide more time beyond the current TMDL deadlines. The Los Angeles Water Board understands some Permittees' perspective that these tools lack regulatory certainty. However, water quality improvement in a reasonable period of time is the primary consideration for the Los Angeles Water Board. The Los Angeles Water Board has determined that a combination of Basin Plan amendments and future TSOs, where justified, best leverage its regulatory tools to attain water quality standards in the Los Angeles Region in as short a time frame as possible. Water quality considerations should not be overridden by perceived concerns about regulatory certainty, particularly when TSOs and Basin Plan amendments are both viable and well used mechanisms to extend final compliance deadlines that are authorized by and consistent with the California Water Code. The Los Angeles Water Board recognizes that TSOs do not provide citizen suit protection. However, the Office of Enforcement has previously found that

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		using other mechanisms outside of the Permit to modify TMDL schedules so that they better align with the availability of funding resources provided by Measure W and, with respect to Ventura County permittees, its benefit assessment program. [footnote] 33 [footnote 33]: Tentative Permit, Fact Sheet Part VI.H., pg. F-168. The identified mechanisms to extend the TMDL implementation schedules are time schedule orders and basin plan amendments to revise those schedules. Unfortunately, these mechanisms do not provide permittees with certainty that they will remain in compliance with the Permit and enjoy protection under the Clean Water Act's permit shield. A time schedule order under Water Code Section 13300 is an enforcement tool that does not, in and of itself, immunize permittees from the liability exposure associated with a citizens suit under the Clean Water Act. [footnote] 34 And, reopening TMDL implementation schedules through the basin planning process is a time consuming, resource heavy process that can take many years. As a result, TMDL amendments are not well suited to respond to annual budget determinations of whether financial resources are sufficient to meet Permit requirements.	"citizen enforcement does not conflict with the enforcement priorities of the regional water boards but instead acts as an independent complement to the enforcement activities of the Water Boards." (Office of Enforcement Citizen Suit Enforcement Under the Federal Clean Water Act: a Snapshot of the California Experience Based on Notices of Intent to Sue March 2009 through June 2010, May 2011.)

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		[footnote 34]: *Friends of Frederick Seig Grove #94 v. Sonoma Cty. Water Agency*, 124 F.Supp. 2d 1161, 1171 (N.D. Cal. 2000). Despite the foregoing concerns about achieving water quality standards, the Cities have never objected to the Permit's alternative compliance approach outlined in the 2012 Permit and largely carried over in the Tentative Permit. Indeed, the Cities [footnote] 35 intervened on behalf of the State Board and the Regional Board to defend the alternative compliance approach in litigation filed by the Natural Resources Defense Council and Los Angeles Waterkeeper. [footnote] 36 The Cities continue to believe that an alternative compliance path is critical to achieving timely Permit compliance. Moreover, the WMPs and EWMPs are producing tangible results in the form of large-scale structural BMP projects that actually achieve water quality benefits. [footnote 35]: Maywood did not participate in the litigation. [footnote 36]: *Natural Resources Defense Council et al. v. State Water Resources Control Board et al.*, Los Angeles Superior Court Case # BS156962. In order to incentivize implementation of the WMPs and promote compliance certainty, the Cities respectfully request that compliance be	

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		demonstrated by a timely expenditure of Measure W funds, other local stormwater taxes, and the benefit assessment program in the case of Ventura County permittees. This compliance determination should be incorporated directly into the Permit and specifically address both interim and final WQBELs and receiving water limits. To that end, the Cities suggest that Part X.B. be revised to incorporate language that reads as follows: A Permittee shall be deemed in compliance with the WQBELs and receiving water limitations for the U.S. EPA TMDLs identified in Part IV.B.2.c of this Order, the receiving water limitations in Part V of the Order, and the WQBELs and receiving water limitations in Part IV.B and Attachments K through S of this Order if it is implementing an approved Watershed Management Program to address the applicable waterbody-pollutant combination pursuant to Part IX. A Permittee is implementing an approved Watershed Management Program consistent with the actions and schedules therein if it is reasonably expending or earmarking available revenue sources dedicated to stormwater treatment and capture within the fiscal year in which the revenues are received.	

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		The Cities believe this language balances the goal of implementing the WMPs and EWMPs with the understanding that they have limited financial resources to do so. And, a compliance measure based on expenditures allows the Regional Board and stakeholders to monitor whether permittees are actually designing and building the structural BMPs identified in their WMPs and EWMP. **Conclusion** The Cities remain dedicated to the protection and enhancement of water quality by implementing their WMPs. However, their general funds simply cannot absorb the financial burden that the Tentative Permit would impose upon them, as demonstrated in the Tentative Permit's own Fact Sheet. Fortunately, dedicated stormwater funding is now available to assist the Cities with their compliance costs. The Cities therefore believe that a measured approach that tethers compliance to dedicated stormwater funding is appropriate and feasible.	
G.33	ULAR Group	**Integration of the Safe, Clean Water Program:** *The SCW Program and passage of Measure W was a major success for the Los Angeles Region and should be further leveraged knowing the available funds that can be used towards meaningful implementation and compliance.*	See response to comment # F.12, G.25 and G.26. Bullets 1-4 and 6 are already addressed by the Tentative Permit. Bullets 1, 3 and 4 are addressed in the revised Tentative Order, Part IX.B.9.c.iii.(c) [Compliance Schedules], Part IX.C.2-3 [Watershed Management Program Implementation], Part IX.E.1.g [Adaptive

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		The SCW Program is the primary source of dedicated funding for the Los Angeles County Permittees. The municipal and regional programs are expected to significantly support implementation of the ULAR EWMP and implementation of these infrastructure projects will be the primary factor in achieving TMDL compliance. The SCW Program establishes multiple goals, including in addition to water quality benefits also water supply, cost efficiency, nature-based solutions, and community investment benefits. Therefore, the funds will not be exclusively spent on compliance, though this will be a significant portion, and additional time is required to ensure optimization across these benefits. To improve the certainty that actions taken will ultimately result in attainment of beneficial uses, the Permit should provide flexibility such as alternative compliance pathways and extended time to implement appropriate actions utilizing scientific advancements and best available information/data. Given the success securing this funding measure, which helps enable the commitment towards implementation of approved WMPs, **we recommend that the Permit integrate the fundamental aspects of the program to help align regulatory compliance with realistic and achievable implementation.** Initial recommendations to integrate the program include the following:	Management Process], and Part X.E.5.e [Time Schedule Orders]. Bullet 2 is already addressed through the Board's participation (both at the staff management level and by the Board Chair) in WASC meetings and in the Regional Oversight Committee. Finally, Bullet 6 has been addressed through meetings with LACFCD on its online Watershed Reporting Adaptive Management & Planning System (WRAMPS) for tracking stormwater capture and supporting watershed-based MS4 annual reporting, which have informed the development of the reporting requirements in Attachments E and H of the Tentative Regional Permit.

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		• **Allow the EWMP to incorporate schedule adjustments to projects based on the Local Return and regional program support identified in the Stormwater Investment Plans (SIPs) through the adaptive management process.** • **Coordinate with the Los Angeles County Flood Control District and the Watershed Area Steering Committee to evaluate anticipated SCW Program funding in relation to planned and proposed infrastructure projects and TMDL deadlines.** • **Provide credit to cities and agencies contributing funds through the regional program to projects outside their jurisdiction through extensions on their milestones. This recognizes the competitive aspect of the regional program, which should prioritize projects with the greatest watershed benefit but could result in certain jurisdictional projects being pushed to later fiscal years. This would not necessarily impact the number of projects to be implemented but provided flexibility to the schedule.** • **Allow for extensions to compliance deadlines based on the available funding, with sufficient justification**	

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		that the updated deadline can be met with the known funding. • **Tie permit compliance requirements to the availability of funding, and the Permittee's agreement that such requirements are appropriate.** • **Align SCW Program reporting requirements in terms of format and schedule to satisfy the Permit required reporting.** If these recommendations are incorporated in the Permit, this will also help facilitate the selection of projects under the SCW Program that are best aligned with Permit compliance.	
G.34	City of Los Angeles	However, a number of TMDL final deadlines will come due over the term of the 2020 Permit, including but not limited to: wet weather requirements for the Santa Monica Bay Beaches Bacteria TMDL, Ballona Creek Bacteria TMDL, Ballona Creek Metals TMDL, and Ballona Creek Toxics TMDL. As such, the one component we are now missing to maintain compliance while implementing our plans with our new resources is time. We need time to: • Build up our programs through the implementation of the Safe Clean Water Program's (SCWP) municipal and regional program funds.	**Change made.** In response to concerns expressed by Permittees regarding near-term TMDL final deadlines, the Los Angeles Water Board recently considered and adopted revisions to the implementation schedules for 9 TMDLs, including the four identified by the commenter. For each of these TMDLs, the final implementation deadline was extended by 3-5 years. These new deadlines are included in the Revised Tentative Permit and will automatically become the operative compliance deadlines once approved by the State Water Board and the State Office of

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		• Update our WMPs through a coordinated, stakeholder driven process (which would include community members from disadvantaged communities) to identify new projects and maximize the effectiveness of City funds and SCWP municipal and regional funds. This update would be heavily informed by the data we have collected over the past seven years at a total cost of over $5M. • Conduct the environmental review, design, permitting, bid, construction, and optimization of projects. It is important to recognize that this is not a question of whether the City will implement all necessary measures to meet the effluent and receiving water limitations. As previously illustrated, the City has stepped up to the plate in the past and will continue to do so moving forward to accomplish our core mission of protecting our residents and the environment. The reality is the level of effort and resources are so large that a timeline is needed that considers technical, environmental review and permitting, and economic feasibility factors (including considering the financial impacts of the current pandemic). The 2020 Permit needs to provide a realistic mechanism for compliance with effluent and receiving water limitations while we begin to add the newly available	Administrative Law. (See also response to comment #G.1.) Additionally, the Los Angeles Water Board has clarified in Part IX.B.9 of the Revised Tentative Permit that Permittees can include approved TSO schedules in addition to TMDL-based schedules when identifying and scheduling control measures in their WMPs. See response to comment # G.17. The Los Angeles Water Board does not agree, however, that compliance should be tied to expenditure of available funds. For additional discussion on this issue see response to comments # F.12, G.25 and G.26. Regarding the use of a “project-based approach,” see response to comments # F.11, # G.35, and # H.1.2.a. Regarding the similarities between Caltrans and the municipalities, the circumstances the drove the requirements of the Caltrans permit are different. Caltrans, a single discharger, is subject to 84 TMDLs statewide. These TMDLs were adopted by every single region (as well as U.S. EPA), address many of the same pollutants, and vary greatly in detail, specificity, and implementation

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		funds to the funds that the City has been spending since the program's inception. If not, we run the risk of Measure W being seen as a failure (which could have negative ramifications for Permittees inside and outside of Los Angeles County). In addition, the Regional Board, Permittees, and NGOs will not be able to focus on implementation (including meaningful discussions about how Permittees can do more with what they have) instead of responding to enforcement actions or lawsuits. The 2020 Permit should be the vehicle to provide the time and clarity needed for those who effectively use the new financial resources to implement the WMPs. As outlined in the City's February 2020 letter on the 2019 Working Proposal, and stated in a number of Regional Board meetings and workshops, our suggested solution is to provide an option to Permittees in the new MS4 Permit that, if followed, results in compliance coverage: • MS4 Permittees update (or develop) the massive effort identified in our WMPs that outline best management practices (BMPs) needed to attain all effluent and receiving water limitations. • MS4 Permittees evaluate what can feasibly be accomplished when	requirements. Additionally, the Fact Sheet to the Caltrans Permit states that, "In most of the relevant TMDLs, the Department's contribution to impairment is a small portion of the overall contribution from multiple sources (less than five percent)." The State Board concluded that there was significant efficiency to be gained by streamlining and standardizing control measure implementation throughout Caltrans' state-wide stormwater program given these facts. The State Water Board also concluded that high variability in the TMDLs and their implementation requirements rendered numeric effluent limitations infeasible. By contrast, the Los Angeles Water Board has determined that numeric effluent limitations are feasible and necessary. See response to comments #C.1.5, #F.11 and #H.1.2.a.

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		considering technical, environmental review and permitting, and financial factors through a coordinated, stakeholder driven process. • Based on what can feasibly be accomplished, MS4 Permittees will list the BMP capacity or specific projects they are committed to implementing over the next five years, starting with the new Permit, and update as additional funding becomes available. MS4 Permittees would submit their commitments for the following five-year period as part of their Report of Waste Discharge. • The list would be included in the WMPs and would: ○ Be sufficiently detailed to measure progress; ○ Include interim milestones, such as design, environmental review and permitting; and ○ Support transparent and easy to follow reporting, utilizing a table similar to the one suggested in the Working Proposal. • The Regional Water Board will approve these elements as part of the review of the WMPs. If an MS4 Permittee implements their list, then compliance coverage is maintained. If an MS4 Permittee does not implement their	

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		list, then the MS4 Permittee no longer has compliance coverage. This approach is similar in concept to the California Department of Transportation (Caltrans) MS4 Permit (Order 2012-0011-DWQ) adopted by the State Water Resources Control Board (State Water Board) and the District of Columbia MS4 Permit (NPDES Permit # DC0000221) adopted by the United States Environmental Protection Agency (USEPA). The Tentative Order outlines the rationale for the incorporation of the water quality-based effluent limitations (WQBELs) and acknowledges the discretion the Regional Board has in specifying how those WQBELs are expressed. Since the adoption of the 2012 MS4 Permit, significant new and relevant information has been developed, including, but not limited to, the WMPs that outline the level of BMP implementation needed to meet the WQBELs, a dedicated funding source in the SCWP, and the State Water Board's adoption of the Caltrans MS4 Permit. There are meaningful similarities between the challenges faced by Caltrans and the City. Both entities are addressing numerous TMDLs with Caltrans addressing 84 TMDLs and the City addressing 24 TMDLs. When considering population size in relation to the number of TMDLs, City residents carry a higher financial	

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		burden then those faced by Caltrans. [footnote] 1 Additionally, the fact sheets in both the Caltrans Permit and the Tentative Order cite similar regulations and guidance documents in regards to the requirements and approaches to establishing limitations. As stated in the Caltrans Permit and found within the Tentative Order, effluent limitations that implement TMDLs may be expressed in the form of BMPs, and where effluent limitations are expressed as BMPs, there should be adequate demonstration that the BMPs will be sufficient to comply with the WLAs. Where the Caltrans Permit and the Tentative Order differ significantly is the manner in which the TMDLs are incorporated. While the Regional Board incorporates the TMDLs as numeric WQBELs, 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. [footnote 1]: There are approximately 500,000 California residents to fund each Caltrans	

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		TMDL and approximately 164,000 City residents to fund each City TMDL. The Regional Board has the opportunity to consider a different approach that will result in improved water quality through an implementable MS4 Permit with which Permittees can comply. LASAN has outlined a potential approach (described above and detailed in Attachment B to this letter) and identified examples of alternative approaches in the Caltrans and District of Columbia MS4 Permits. Regulatory agencies at the state and national levels have recognized the challenges faced by municipalities. Those agencies have identified and executed creative solutions that will bring about meaningful results while allowing permittees to effectively implement programs and maintain compliance. LASAN is asking that the Regional Board choose to do the same in the Los Angeles region. LASAN has presented our ideas and requests that the Regional Board propose and allow for the public discussion of alternatives even if our alternative or the examples we have identified are not preferable at this time.	
G.35	City of Calabasas Mayor	Consider a "project-based" or "action-based" compliance approach similar to that provided through Order # R2-2015-0049 by the San Francisco Regional Water Quality Control	**No change.** TMDL waste load allocations are incorporated into permits as water quality based effluent limitations. Water quality based effluent limitations can be numeric effluent limitations or narrative,

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		Board, in lieu of the proposed effluent-based compliance approach.	AKA “BMP-based” or “action-based,” effluent limitations. Numeric effluent limitations are incorporated when their calculation is feasible. Narrative effluent limitations are incorporated when the calculation of numeric effluent limits infeasible. If the calculation is infeasible, the permit’s administrative record must demonstrate that the specific BMP requirements are adequate to achieve the numeric waste load allocations in the TMDLs. The Revised Tentative Permit uses a hybrid approach, 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 the 85th percentile stormwater volume for the drainage area. (See response to comments # F.11 and # H.1.2.a for additional discussion and rationale for this “hybrid approach”.) The San Francisco Regional Board MS4 permit has narrative WQBELs because the circumstances determining the requirements of that permit are different.
G.36	Rutan & Tucker, LLP on behalf of	**The Joint Responsibility Provisions of the Tentative Permit Violate Due Process.**	**No change.** The joint responsibility provisions do not violate due process. The Los Angeles Water Board does not dispute

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	City of Duarte 2nd Letter	Due process dictates that an enforcement agency must prove the alleged violation, and does not allow for an agency to force the alleged violator to prove its innocence. Despite this clear Constitutional requirement—under both federal and state law—and the Permit's acknowledgment that "federal regulations state that co-permittees need only comply with permit conditions relating to discharges from the MS4 for which they are owners or operators" (Fact Sheet, F-219 [citing 40 CFR § 122.26(a)(3)(vi)]), the Permit goes on to provide: "Where Permittees have commingled MS4 discharges to the receiving water, compliance at the outfall discharging to the receiving water or compliance in the receiving water shall be determined for the group of Permittees as a whole unless an individual Permittee demonstrates that its discharge did not cause or contribute to the exceedance."). (Tentative Permit, p. 97, Section X(D)(2); see also Section X(D), generally.) This requirement inappropriately flips the burden on to the permittees to prove their innocence, and should be removed. Federal courts have long held that the enforcement agency must "prove, by a preponderance of the evidence, that defendants actually violated the CWA in the manner alleged" "according to traditional rules of evidence and	it has the burden of proof in an enforcement action. But monitoring reports are conclusive evidence of permit violations. (*Sierra Club v., Union Oil Co.* (9th Cir. 1987) 813 F.2d 1480, 1491, vacated and remanded on other grounds, (1988) 485 U.S. 931.) The evidentiary value of monitoring for purposes of assessing compliance with the permit was considered in *NRDC v. County of Los Angeles (9th Cir. 2013) 725 F.3d 1194*. That case was a Clean Water Act citizen enforcement suit brought against the County of Los Angeles and the Los Angeles County Flood Control District for alleged violations of the 2001 permit. Defendants argued plaintiffs could not prove causation because the receiving water monitoring was insufficient to prove that the pollutants detected in the receiving water were actually discharged by them, as opposed to any of the other 80+ MS4 permittees. (*Id.* at p. 1202 [the "central legal question underlying the watershed claims [is] what level of proof is necessary to establish defendants' liability"].) The Ninth Circuit disagreed, holding that receiving water monitoring alone was sufficient to establish liability as a matter of law because the data collected was intended to determine the permittees' compliance with the permit, and permittees

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		burdens of proof." (*Sackett v. EPA* (9th Cir. 2010) 622 F.3d 1139, 1145-47, reversed on other grounds 132 S.Ct. 1367]; Rapanos v. U.S. (2006) 547 U.S. 715, 745 ["agency must prove that the contaminant-laden waters ultimately reach covered waters."]; and *U.S. v. Range Prod. Co.* (N.D. Tex. 2011) 793 F.Supp.2d 814, 823 [expressing doubt penalties may be obtained without proof violator caused the contamination].) Similarly, under California law, the Regional Board plainly bears the burden of proving a violation of either the CWA or the CWC. (*See* Evidence Code section 500; *State v. City and County of S.F.* (1979) 94 Cal.App.3d 522, 530.) The federal regulations conclusively show an alleged violator is only responsible for its own discharges, and not discharges of others. (40 C.F.R. § 122.26(a)(3)(vi).) In this case, the Tentative Permit not only contains a presumption of liability for co-mingled exceedances, it recognizes that a violator may incur mandatory minimum penalties. The concept of "presumed guilt" violates basic tenants of due process, and such Permit terms cannot be included in the final permit. The Tentative Permit must be revised to recognize that the burden falls on the enforcing entity to prove that a violation has	chose the location of those monitoring stations. (*Id.* at pp. 1205-1206.) The Ninth Circuit concluded that to find that the monitoring data could not demonstrate liability would be contrary to the purpose of the 2001 permit and the Clean Water Act. (*Id.* at p. 1207.) It further held that the Clean Water Act's limit on a permittee's responsibility to "discharge[s] for which it is the operator" applied to the appropriate *remedy* for permit violations, not to *liability* for those violations because to read the permit otherwise would be to render the monitoring provisions meaningless. (*Id.* at p. 1206, citing 33 U.S.C. § 1342(a)(2), (k); 40 C.F.R. §§ 122.26(d)(2)(i)(F), 122.41(a), 122.44(i)(1) (emphasis in original).) As such, the Permit's joint responsibility provisions are not contrary to accepted legal principles, rather they reflect the federal Clean Water Act's requirement and implementing regulations that MS4 permittees engage in inter-governmental cooperation and monitor their discharges sufficient to determine compliance. (40 C.F.R. § 122.26(d)(2)(i)(D); *NRDC v. County of Los Angeles, supra,* 725 F.3d at p. 1205, fn. 16 ["An NPDES permitting authority has wide discretion concerning the terms of a permit. It could, for example, lawfully write an MS4 permit that provides

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		occurred, and not require the permittees to prove they are innocent.	that all permittees will share liability in some ratio for any measured exceedance of applicable pollutant limits."]; *U.S. v. Brittain, supra,* 931 F.2d at 1416 [self-reporting is critical to the NPDES program, which "fundamentally relies" upon it].) Furthermore, outfall monitoring, in conjunction with instream monitoring, may be used to isolate which Permittee(s) are causing or contributing to an exceedance of an applicable WQBEL or receiving water limitation. For permittees with commingled MS4 discharges in the receiving water, compliance in the receiving water will initially be determined for the group of permittees as a whole. However, the Permit allows an individual permittee to demonstrate that: it did not discharge during the relevant time period, its discharge was at a permissible level, there is an alternate pollution source, or the permittee is in compliance with the Permit's Watershed Management Program provisions, in which case the permittee would not be responsible for the exceedance in the receiving water. Permittees can use to this information to exculpate themselves from responsibility for commingled discharges that exceed applicable limitations through the provisions in Part X.D of the Order. The

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			Permit thus does not illegally shift the burden of proof to the permittees in an enforcement action; rather it simply incorporates the Clean Water Act's monitoring and reporting requirements, in exchange for receiving a permit in the first place. Given the inherent interconnectedness of the MS4 prior to discharge, the structure of the compliance determination section is appropriate and does not violate due process. In fact, during the adoption of the 2012 LA County MS4 permit, U.S. EPA stated that similar concerns about the 2012 permit's compliance determination provisions were "not warranted" given that the monitoring structure could be used "to identify particular MS4s which may be responsible for exceedances at the instream location." (Letter from U.S. EPA to the Los Angeles Water Board dated July 23, 2012).
G.37	Los Angeles County and LACFCD 2nd letter and City of Malibu	Order/ Part X.D.2 / Pg. 97. 40 C.F.R. §122.26(a)(3)(vi) provides that "Co-Permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators." Part X.D.2 is inconsistent with this regulation in that it could be construed as holding an individual downstream permittee responsible for	**No change.** See response to comment # G.9 and # G.36.

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		upstream permittees' discharges. A downstream permittee does not have control over the discharges of upstream permittees and may not have access to information about the upstream discharge in question. In those circumstances, holding the downstream permittee responsible is contrary to 40 C.F.R. §122.26(a)(3)(vi). Please revise this section to incorporate 40 C.F.R. §122.26(a)(3)(vi).	
G.38	Los Angeles County and LACFCD 2nd letter and City of Malibu	Order/ Part X.D.3/ Pg. 97. 40 C.F.R. This section should be eliminated or modified to the extent it applies to commingled discharges. 40 C.F.R. §122.26(a)(3)(vi) provides that "Co-Permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators." Putting the responsibility on innocent, downstream permittees where there are commingled discharges is inconsistent with 40 C.F.R. §122.26(a)(3)(vi) that provides that Permittees need to comply with permit conditions only for their own discharges. Please revise this section to incorporate 40 C.F.R. §122.26(a)(3)(vi).	**No change.** See response to comment # G.9 and G.36.
G.39	RWG Law on behalf of various Permittees	**The Permit's Imposition of Joint Liability for Violations Is Contrary to Accepted Legal Principles.** The Tentative Permit improperly imposes joint liability for an exceedance of a WQBEL or receiving water limitation. Although the	As an initial matter, the term used in the Tentative Permit is "joint responsibility," which does not have the same meaning and scope as the legal doctrine of "joint liability" referred to by the commenter. Joint responsibility means that the

#	Commenter(s)	Comment	Response
		Tentative Permit states that permittees are only "responsible for discharges from the MS4 for which they are owners and/or operators," [footnote] 37 the reality is that permittees are generally unable to prove otherwise. The Tentative Permit places the burden squarely on individual permittees to prove "that their discharge did not cause or contribute to an exceedance of an applicable WQBEL or receiving water limitation." [footnote] 38 [footnote 37]: Tentative Permit, Part X.D.1, pg. 97. [footnote 38]: Tentative Permit, Part X.D.2-3, pg. 97. As argued during the development of the 2012 Permit, the Cities continue to believe it is both unlawful and inequitable to impose liability on a permittee based on actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. [footnote] 39 Because a permittee cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot hold one permittee jointly liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or	Permittees that have commingled discharges are responsible for implementing programs in their respective jurisdictions, or within the MS4 for which they are an owner and/or operator, to meet the water quality-based effluent limitations and/or receiving water limitations assigned to such commingled MS4 discharges. State Water Board Order 2015-0075-DWQ clarified some of the 2012 Permit provisions regarding comingled discharges, and the Los Angeles Water Board carried over these clarifications in Part X. Compliance Determination of the Tentative Permit. For a discussion on why the Permit's joint responsibility provisions are not contrary to accepted legal principles, see responses #G.9 and #G.36.

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		proposing the discharge." [footnote] 40 Enforcement is directed towards "a person who (1) violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." [footnote] 41 In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. [footnote] 42 Thus, there is no provision for joint liability under either the Water Code or the Clean Water Act. [footnote 39]: See *Jones v. E.R. Shell Contractor, Inc.*, 333 F.Supp.2d 1344, 1348 (N.D. Ga. 2004). [footnote 40]: Cal. Water Code § 13263(f). [footnote 41]: Cal. Water Code § 13350(a). [footnote 42]: 33 U.S.C. § 1319(a). Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. [footnote] 43 For any such discharge, it would be unlawful to impose joint liability. The issue of imposing liability for contributions to "commingled discharges" of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.	

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		[footnote 43]: *Kesmodel v. Rand*, 119 Cal.App.4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal.App.2d 698, 701 (1940). The Tentative Permit should be modified to specify that the burden is on the Regional Board to show that a comingled discharge that caused or contributes to an exceedance is attributable to a single permittee's discharge. Permittees should not be required to prove they did not do something, particularly when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee's actions. [footnote] 44 [footnote 44]: See *Cal. Evid. Code § 500; Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal.App.4th 1658, 1667-1668 (2003).	