

July 28, 2015

San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108

Re: San Diego Coastkeeper's Comments on the SD County MS4 WQIPs

Sent via email

Dear Wayne Chiu, Christina Arias, and Laurie Walsh:

Thank you for the opportunity to comment on the San Diego County Municipal Storm-Water Water Quality Improvement Plans ("WQIP"s). San Diego Coastkeeper ("Coastkeeper") is a non-profit organization working to protect and restore the San Diego region's bays, beaches, watersheds, and ocean.

Due to the length and scope of the eight WQIPs submitted and in light of the rather short time period for comment, rather than singling out any one WQIP these comments are meant to apply to the WQIPs as a whole. We recognize that the issues we point out and concerns we have may not apply to each and every one of the WQIPs. They are, however, general issues that appear to be present in several, if not most, of the submitted plans and issues we believe render the plans as submitted inconsistent with the permit's requirements and intent.

Coastkeeper supported the adoption of this permit with the understanding that the 2013 San Diego County Municipal Storm Water Permit ("MS4" or "permit") would require – or at the very least incentivize - efforts by Copermitees significantly above and beyond what has occurred to date. Yet, in reviewing the WQIPs it is apparent that little, if any, additional actions and strategies will necessarily result. We know the efforts that have been made over the last 20 years under the iterative process have failed to adequately address both dry and wet weather MS4 pollution in our region. If we truly are in a new era of understanding about stormwater as the State Board and LA Regional Board would have us believe based on recent justifications of receiving water limitations ("RWL") safe harbors, Coastkeeper fully expects to see goals set and actions taken to usher in that new era in San Diego that will comply with the Clean Water Act and this permit. On the whole, the WQIPs fail to reflect this by not complying with even the permit's minimum requirements.

The WQIPs may not adequately consider data and public input for priority pollutants and conditions:

To reiterate comments we made in June of 2014 (attached), section F.1.a.2. of the permit requires Copermitees to consider revisions to the priority water quality conditions based on recommendations from the Water Quality Improvement Consultation Panel. Yet, substantive revisions to the plans based on Panelist feedback often failed to take

place, and where they did take place they were often minor in scope. There appear to have been relatively few instances where designations of Highest Priority Water Quality Conditions (HPWQCs) or Priority Water Quality Conditions (PWQCs) were amended or added following stakeholder input. This is the case even once sufficient data had been provided and concern had been expressed to Copermittees by the public and environmental stakeholders. This is problematic not only from a water quality perspective, but may be an indication that Copermittees did not adequately consider all relevant data in making their priority water quality condition determinations as required under permit sections B.2.a-d.

One such instance is clearly evident with the San Diego River WQIP. It is common knowledge to those in the San Diego water quality arena that trash is an obvious and significant issue in the San Diego River. Various surveys done by San Diego Riverpark Foundation, as well as trash cleanups confirm this. Yet trash never rises to the level of a highest priority pollutant.

Instead, TMDL-focused priorities were overwhelmingly chosen across the WQIPs, though significant high priority conditions exist across the various sub-watersheds throughout our region that are not covered by TMDLs and for which strategies and schedules have not been developed. Additionally, in far too few cases were subwatersheds utilized as tools to address multiple highest priority conditions.

Unfortunately it remains unclear whether the selection of priority conditions and the methodologies used to establish HPWQCs and PWQCs were based on the review and analysis of legitimate data and public input, or if they instead were simply designated to fit conveniently into existing JURMP or TMDL requirements.

The WQIPs fail to list numeric goals and strategies that address the highest priority water quality conditions by effectively prohibiting non-storm water discharges to the MS4, reduce pollutants in stormwater discharges from the MS4 to the MEP, and protect the water quality standards of receiving waters.

Numeric Goals:

The numeric goals listed in several of the WQIPs fail to show how the chosen goals themselves will result in the achievement of water quality standards. Specifically, the numeric goals, “must be based on measurable criteria or indicators capable of demonstrating one or more of the following:

- (i) Discharges from the Copermittee’s MS4s will not cause or contribute to exceedances of water quality standards in receiving waters, AND/OR
- (ii) The conditions of receiving waters and associated habitat are protected from MS4 discharges, AND/OR
- (iii) Beneficial uses of receiving waters are protected from MS4 discharges and will be supported.”¹

¹ 2013 MS4 Permit, B.3.a.(1).(a).

To a large degree the WQIPs fail to include sufficient goals to show that these requirements will be achieved. Many of the WQIPs contain goals, strategies, and schedules that are either unsupported by data or do not meet the requirements of the permit.

Perhaps the best example of a numeric goal being devised without demonstration that one or more of the three requirements of B.3.a.(1)(a) would be met is with dry weather anthropogenic surface water runoff in the Buena Vista Creek HA. The proposed plan is to reduce such flows incrementally on a 10-20-40-60-80% schedule. The Clean Water Act and MS4 permit require the effective prohibition (read: *elimination*) of dry weather flows. An 80% reduction is not an effective prohibition. Thus, in this case, the provided numeric goal itself does not even comply with the Clean Water Act's and permit's requirements. Other examples such as this exist throughout the WQIPs².

The WQIPs fail to demonstrate a link between chosen strategies and required outcomes

Equally important is the fact that the WQIPs fail to show how the chosen goals are based on reliable "measurable criteria" or "indicators capable of demonstrating" compliance with the permit.³

Numerous examples exist where chosen strategies incorporate educational undertakings, increased inspections, and other similar actions seen in previous iterations of the permit. And with each, there are no further details as to how taking those actions will necessarily result in the achievement of any of the three permit requirements in B3a(1)(a).

For example, in lieu of actually providing supporting evidence the Tijuana River WQIP states, "fundamentally, strategies were chosen on the basis of their expected effectiveness in reducing pollutant sources and targeting PGAs of concern in the Tijuana River WMA and their suitability and potential to be implemented by the RAs." It continues, "it is challenging to accurately quantify most nonstructural strategy benefits in terms of pollutant load reductions, because it generally requires extensive survey and monitoring information or modeling. In addition, nonstructural strategies may target pollutants, land uses, or populations, resulting in different load reductions depending on the implementation technique."

The Carlsbad WQIP also demonstrates an overall lack of effort to link the strategies and the goals set. In particular the Loma Alta HA includes as one of its core jurisdictional programs a community based social marketing program targeted toward private landscapers. Under the program the Copermitttees will conduct research and hold focus

² Another such example exists in the Tijuana River WQIP. The numeric goal is to achieve 235 mg/L by 2040, without support to show this goal will achieve WQSs. Others examples exist throughout the WQIPs. An exhaustive list of such instances is well beyond the scope of Coastkeeper's review.

³ B.3.a.(1).(a)-(b).

groups with landscape gardeners in order to identify the barriers that impede those individuals from engaging in behaviors that protect water quality. Landscape gardeners would be recruited in collaboration with the local compost facility “Agri-Service” and would be handed a recruitment piece requesting their participation in the focus group when they arrive at the compost facility to deliver their materials. At no point, however, is an explanation provided as to how this program would actually result in attainment of chosen goals and ultimately compliance with B.3.a.(1).(a).

Similar to other WQIPs, the Los Penasquitos WQIP listed strategies but did not link them to the stated numerical goals. Also, while the San Diego Bay WQIP has an appendix of strategy explanations, the numerical goals still appear unrealistic and lack accountability.

In many ways, most of the jurisdictional programs and watershed programs (where they exist) simply mimic the type of largely non-structural JURMP strategies that have been implemented prior to the adoption of the 2013 permit. These non-structural strategies have dominated the approaches taken by Copermitees under previous plans and permits, and have largely proven to be ineffective at protecting receiving waters and beneficial uses from impairments caused by MS4 discharges. If the Copermitees consider these actions enough to meet the requirements of the permit, they must include more specific data to show how these strategies are linked to the required outcomes. In absence of this, the WQIPs as drafted do not meet the minimum requirements of the permit, nor can we expect the plans as drafted to result in the attainment of water quality standards.

The WQIPs Fail to Incorporate All Required Strategies and Associated Data and Trigger Points.

The WQIPs Largely Fail to Consider Structural BMPs, Incentives, Retrofitting, Rehabilitation.

Under the permit, potential strategies that may be implemented *must* include structural BMPs, incentives, and retrofitting, stream, channel, and/or habitat rehabilitation projects.⁴ It is exactly these types of BMPs Coastkeeper had hoped to see planned and implemented through the WQIPs and this permit. Instead, it appears as though most of the WQIPs fail to incorporate the structural BMPs, incentives, retrofitting projects, and/or stream, channel, and/or habitat rehabilitation strategies that section B.2.e. says must be included. Such strategies must be included as chosen strategies and/or optional strategies⁵. A failure to even include and consider these strategies fails to meet even the minimum requirements of the permit.

⁴ B.2.e.

⁵ As discussed below, optional strategies require trigger point explanations.

The WQIPs Fail to Include Adequate Watershed Management Strategies and Schedules

Our review found that many strategies are contained within jurisdictional actions rather than within watershed strategy actions. Under Section B.3.b. the permit makes clear that both jurisdictional and watershed management strategies must be devised, explained, and considered, and that the trigger points for implementing both strategies must be explained. Further, B.3.b. requires schedules for implementing both jurisdictional and watershed management strategies be devised. WQIPs that have failed to do so are not meeting the minimum requirements of the permit.

The WQIPs Fail To Incorporate All Suggested Optional Strategies, As Required

The MS4 permit states that, “Copermittees must include all the potential water quality improvement strategies identified by the public....with the submittal of the priority water quality conditions to the SD Water Board.” Coastkeeper and other members of the public have, since the beginning of the WQIP process, asked for inclusion and consideration of various types of strategies.⁶ Some of those strategies have been listed as optional in various WQIPs and some have not. Those that have been excluded must be included. And, for each optional strategy the Copermittees are required under both the jurisdictional and the watershed plans to explain the circumstances necessary to trigger implementation of these plans.

To that end, Coastkeeper requests the inclusion of the following possible strategies to each submitted WQIP to the extent that they are not already included:

1. Creation of incentives and regulations for private to adopt and implement distributed and/or centralized BMPs throughout the watershed on private property.
2. Implementation of a Stormwater Utility, the purpose of which is to raise the necessary funding to implement stormwater plans and requirements. In instances where funding is inadequate, include a strategy to raise funding levels and appropriations toward compliance.
3. Increased enforcement against polluters and illicit dischargers. Where capacity or funding is an issue, include a strategy to increase funding and capacity to allow for additional enforcement.
4. Strategies *must include* additional regulation and/or enforcement of MS4 and non-MS4 sources of pollutants in water bodies. Examples to be included are (a) the regulation of sites that may be contributors to pollutants in the MS4 system, (b) regulation of non-MS4 activities that ultimately impact the MS4 or receiving waters, and (c) regulation of non-compatible uses or practices within a jurisdiction to help eliminate MS4 pollutant sources. Such potential strategies regulation or protocols *must include*: land use regulations/amendments; development moratoriums; zoning amendments; irrigation scheduling,

⁶ See, for example, comments submitted by Coastkeeper on June 2014, and comments submitted by environmental group representatives to the WQIP panels.

- management, and BMPs; pesticide application regulations and prohibitions; regulations requiring and incentivizing distributed BMPs and requiring maintenance of distributed BMPs, and increased overall enforcement.
5. Green infrastructure projects that serve as jurisdictional compliance BMPs, and that may also serve concurrently as Alternative Compliance BMPs. An example might be a constructed wetland or stream rehabilitation, implemented by a Copermittee towards compliance, the scope of which may be broadened in conjunction or partnership with an Alternative Compliance project that absolutely ensures operations and maintenance in perpetuity, perhaps through an endowment or trust.
 6. Any and all green infrastructure or “multi-use treatment area” BMPs for which there exists current data on effectiveness. At a minimum these must include: “green streets”, bioretention, infiltration, swales, rain gardens, downspout disconnections, green roofs, rainwater harvesting, porous pavements, wetlands, and land conservation.
 7. Partnerships and information sharing with NGOs (including San Diego Coastkeeper) and the Board towards enforcement actions against polluters/illicit dischargers impairing receiving waters.
 8. Capture and use of stormwater to augment imported water supplies and to reduce flows in the MS4.
 9. Stream, channel, habitat, and wetlands restoration and other projects that restore both physical stream channel conditions and lost ecosystem services, and that have the potential to provide multiple water quality and societal and recreational benefits.
 10. Implementation of BMPs with multiple benefits in addition to improved water quality, such as those benefiting public health, habitat creation, waters supply augmentation, and additional recreational activities.
 11. Strengthening of Jurisdictional Runoff Management Programs and implementation.
 12. Strategies that address multiple PWQCs to a significant degree
 13. Strategies to maintain open space and natural functions

Any and all additional strategies that were suggested by members of the environmental community must be included as well as analyzed to determine the list the circumstances necessary to trigger their implementation.

As the business-as-usual approach has largely failed to address stormwater pollution, each of these strategies must be implemented immediately, as existing conditions warrant their immediate application.

Coastkeeper respectfully requests that, upon receipt of these comments, the Board ensure Copermittees include all strategies (with associated triggers explanations) that have been recommended but not yet included so the totality of strategies are not prematurely narrowed.

The WQIPs fail to include circumstances under which such strategies would be implemented.

Under Section B.3.b.(1)(b), Copermittees must include optional strategies that will be implemented, as necessary, and they must include (v), “the circumstances necessary to trigger implementation of the optional jurisdictional strategies”.⁷ The Watershed Management Area Strategies contain similar language requiring an identification of such strategies and the circumstances necessary to trigger these strategies.⁸

Coastkeeper’s review found that Los Penasquitos and San Luis Rey were the only WQIPs to demonstrate triggers, with Los Penasquitos providing more information than San Luis Rey. For example, one San Luis Rey optional strategy was to consider dry weather flow diversions or other small-scale LID structural BMPs to mitigate dry weather flows, and the corresponding trigger is listed as, “progress towards interim or final dry weather goals is not significant and watershed analysis indicates the need for additional BMPs to attain the final goals, dry weather diversions may be considered where funding is available.” This language is vague and arbitrary and shows a lack of commitment to provide a meaningful expectation as to when the optional strategy might be implemented. Still other WQIPs largely failed to include the trigger points altogether, or contained equally vague language, rendering them useless for any meaningful execution.

As the Copermittees are required to not only list the strategies but the trigger points for implementation, any WQIPs that fail to contain both of these requirements do not comply with even the minimum requirements the permit.

The WQIPs Fail to Comply With Schedule Requirements:

The permit states that schedules for achieving numeric goals, “must be as soon as possible”, and must reflect the “shortest practicable time” to achieve the asserted goals.⁹ Yet, Coastkeeper has found little to support the timelines present for achieving the goals (some of which do not even comply with the requirements of the permit or CWA), or whether these timelines could be expedited.

Again we point to the example of Buena Vista Lagoon, where anthropogenic dry weather flows are on a long-term schedule to be (ultimately insufficiently) reduced. The 10-20-40-60-80% framework ending in 2038 seems not only arbitrarily manufactured, but ill-conceived and purposefully prolonged. Surely this is not the “shortest practicable time” or “as soon as possible”. To be in compliance with permit requirements, dry weather flows must be 100% eliminated and the elimination time frames must be greatly shortened.

⁷ B3b(1)(b)(v)

⁸ B3b(2)(v)(e)

⁹ B.3.a.(2).

Coastkeeper, our members, and the public have waited 20 years for the elimination of dry weather flows and the improvement of wet weather flows. We will not wait another 20 years while each and every Copermitttee continues to violate the MS4 permit and the Clean Water Act.

WMAA

We understand several Copermitttees that have incorporated the WMAA region-wide analysis into their WQIPs have not updated the analysis with watershed-specific data. To that extent, we believe our comments submitted on the region-wide analysis are still relevant. As such, those comments are attached.

Conclusion

The objective of the 2013 permit is to require goals, strategies, and schedules aimed at achieving WQSs. Instead, several WQIPs simply continue to rely on the business-as-usual jurisdictional-based iterative approach, rather than using existing data to determine what final goals would achieve WQS and what jurisdictional *and* watershed-wide methods would best achieve those final and interim goals, as the permit requires.

Coastkeeper requests that the Board require each Copermitttee to choose numeric goals and strategies that will be capable of showing real progress towards meeting the end goals stated in the permit. These would most likely include measurable criteria with a proven link to outcomes that comply with the permit's requirements. The best, most effective way to meet this requirement would be to measure the levels of pollutants or conditions over time and establish targets on expedited timeframes for achieving each interim and final goal that actually will meet WQSs. Those actions alone will bring the Copermitttees into compliance with the MS4 permit and the Clean Water Act.

Thank you for the opportunity to comment on the Draft WQIPs. Please feel free to contact me with any questions or for additional feedback. We look forward to working with the Regional Board and Copermitttees toward development of a meaningful and effective approach to MS4 Permit compliance and achievement of clean, healthy waters in our region.

Sincerely,



Matt O'Malley
Legal & Policy Director

Attachments



June 12, 2014

Wayne Chiu, Christina Arias, Laurie Walsh
San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego CA 92108-2700

Re: San Diego Coastkeeper's comments on Draft WQIPs for Mission Bay, San Luis Rey, San Dieguito, Los Penasquitos, and San Diego River; Permit No. R9-2013-0001 (MS4 Permit).

Sent via email

Dear Mr. Chiu, Ms. Arias, and Ms. Walsh:

San Diego Coastkeeper is the leading watchdog organization in San Diego County exclusively dedicated to the protection and restoration of fishable, swimmable, and drinkable waters in San Diego County. San Diego Coastkeeper has a long-standing involvement in, and commitment to, water quality in our region, including the Regional Water Quality Control Board's permits related to regulation of stormwater pollution and urban runoff.

Coastkeeper is committed to ensuring that the beneficial uses of our region's water bodies are protected and restored. Our staff, members, and allied organizations serve alongside you on the Water Quality Improvement Panels that are working to develop the water quality protection plans required under the MS4 permit. Coastkeeper played an active role in the development and adoption of the new MS4 stormwater permit and it is our hope that these comments will contribute to the appropriate implementation of the permit and meaningful development of the WQIPs throughout our region. Our goal is to ensure that the Water Quality Improvement Plans (WQIPs) will effectively implement the standards of protection under the Clean Water Act and the MS4 permit while realizing the outcomes-oriented approach of the permit through appropriate strategies. Thank you for this opportunity to comment on the process and outputs to date.

Coastkeeper sincerely appreciates the time and effort put into the development and implementation of the permit and the associated WQIP plans to date by the Board staff and Copermittee staff, especially given the time and other constraints facing them.

Because we've witnessed similar processes, outcomes, and concerns across all WQIPs, these comments are applicable to each and every one of the five currently submitted draft deliverables to the Regional Board, including Mission Bay, San Luis Rey, San Dieguito, Los Penasquitos, and San Diego River.

Public Participation Process:

As you may recall, Coastkeeper was considerably active in advocating for greater public participation and engagement in development of the WQIPs and the stormwater permit in general, and we believe a participation process was developed in the permit that, if

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implemented properly, could truly allow for civic engagement throughout the development of the WQIP and beyond. While we are seeing some promising and genuine engagement from the City and County of San Diego and other Copermittees regarding potential strategies for dealing with priority conditions in our watersheds (including best management practice (BMP) workgroups, stakeholder roundtables, etc.) and we applaud the Copermittees for these efforts, the level of engagement regarding the methodologies for assessing priority conditions in our region's watersheds could have been more proactive and engaging of the public and panelists prior to development.

Coastkeeper remains concerned that the length of time provided to Panelists for meaningful review and assessment of draft WQIP documents and supporting documents was, at times, insufficient. In some instances, drafts were given to participants in the process just days before a meeting, and limited time was provided for comment. Furthermore, some Plans were developed almost in their entirety prior to public input and very few substantive changes or recommendations were considered in amended drafts. For future stages of the development of WQIPs (in these initial deliverables and in subsequent stages of this permit and permit renewals), Coastkeeper recommends that documents be provided well in advance to allow more time for Panelist and public review.

Additionally, section F.1.a.2. of the permit requires Copermittees to consider revisions to the priority water quality conditions based on recommendations from the Water Quality Improvement Consultation Panel. Yet, substantive revisions to the plans based on Panelist feedback often failed to take place, and where they did take place they were often minor in scope. There appear to be few - if any - instances where designations of Highest Priority Water Quality Conditions (HPWQCs) or Priority Water Quality Conditions (PWQCs) were amended or added to following stakeholder input.

Finally we request that moving forward, the Project Clean Water Clearinghouse website contain each panelist comment made and every draft version for each watershed so that interested non-panelist members of the public may review all materials and their evolution towards finalization. While input from the general public is not officially taken until submitted to the Regional Board, members of the public should be allowed to access all pertinent data throughout the process to enable it to be as transparent as possible.

Methodology for determining HPWQCs and PWQCs:

Highest Priority Water Quality Conditions:

In identifying water quality priorities, the MS4 permit §II.B.2.b embodies the over-arching goal of the Clean Water Act by requiring the consideration of, among other things, “physical, chemical, and biological” data, including data on “chemical constituents,...bioassessments, and physical habitat” and “available evidence of adverse impacts to the chemical, physical, and biological integrity of receiving waters.”

Coastkeeper has significant concerns that the submitted draft plans prematurely limit the conditions that may be listed as PWQCs and HPWQCs by inordinately focusing on chemical-

based constituents and conditions, and do not focus enough on biological or physical conditions. To that end, the established methodologies in the existing WQIPs inappropriately favor conditions subject to existing TMDLs above all other conditions, resulting in a near-certainty that only TMDL constituents, which have traditionally been chemically-based, will be able to be elevated to the status of HPWQCs. To illustrate this point, each of the submitted five WQIPs designated conditions subject to existing TMDLs as HPWQCs.

While this focus may be only somewhat problematic when aimed at addressing already-established TMDLs in our region, Coastkeeper finds the WQIP TMDL focus very troubling for future and ongoing designation of HPWQCs, as the Board has made mention of its intent to rely less on the development of TMDLs as the primary method for achieving fishable, swimmable waters and to instead rely on alternative mechanisms (such as the MS4 permit or other 4b methods). In any scenario where developing and assigning TMDLs is no longer a paramount priority of the Regional Board, the existing WQIP methodologies are wholly inadequate to accurately assess and address HPWQCs, as TMDLs would no longer be the best indicator of severe impairment. While the wisdom of relying on mechanisms other than TMDLs may be the subject of some debate, in practice that approach creates significant problems under the developed WQIP methodologies that favor prioritizing TMDLs.

In certain watersheds, such as San Diego River, draft plans automatically elevate PWQCs that are subject to TMDLs to the status of HPWQC. (See San Diego River WQIP, p. 45, "PWQCs subject to an approved TMDL are automatically elevated to HPWQC.") Copermittees have stated that multiple HPWQCs may stretch limited resources too thin, and the designation of HPWQCs will be very limited in number. Given that prioritization is mandated and resources limited, the result is that conditions and constituents not subject to TMDLs may never rise to the level of HPWQCs under existing methodologies. While other watersheds may place less of an "automatic" designation of HPWQC on existing TMDLs, the outcome is essentially the same. TMDLs have been designated as HPWQCs across the board, and to our knowledge no HPWQCs have been designated that are not also subject to existing TMDLs.

A timely and illustrative example of the impact of this situation exists with the San Luis Rey watershed methodology (and most, if not all, other methodologies). That methodology uses the existence of TMDLs as a primary consideration in both designating a PWQC and elevating a PWC to HPWQC (e.g., "*Approved TMDL in effect?*"). The determination in that watershed which led to bacteria becoming the designated HPWQC was due in large part to the existence of a TMDL for bacteria. **If, however, TMDLs are no longer the preferred mechanisms of the Regional Board for addressing impairments of designated uses and water quality objectives throughout our region (as is the direction in Oceanside for nutrients and Tijuana for trash, sediment, and other constituents of concern), then existing WQIP TMDL-focused methodologies for determining HPWQCs will discount serious existing impairments in waterbodies.** In the Loma Alta instance, the Board is currently considering moving towards allowing the MS4 permit to address nutrient impairment in Loma Alta rather than developing a TMDL. One can see the problem with this arrangement when considered alongside the current methodologies for determining HPWQCs; if a TMDL doesn't exist or is not required, the condition does not rise to a HPWQC. If it is not a HPWQC, under the MS4 permit it will not be prioritized, and is not likely to receive the full attention it deserves or be adequately addressed. In this example San Luis Rey has chosen bacteria as the HPWQC due to an existing TMDL. Nutrients are not the highest priority, and as a result may not receive enough

attention. This problem with WQIP methodologies and TMDL designation must be addressed to alleviate any gaps in coverage of water body impairments. In this particular instance, one solution may be to subdivide the watershed to allow a HPWQC for nutrients/eutrophication to be designated for Loma Alta Slough.

Several changes could take place to address this overall issue. Either the Board could move to implement and develop TMDLs throughout our region at an accelerated pace, or the Copermittees could develop different methodologies that are less TMDL-focused. Assuming Copermittees and the Board hope to escape TMDLs as regulatory mechanisms, Coastkeeper urges the reconsideration of the drafted methodologies for prioritization.

One way to correct the deficiency in current methodologies is to more fully consider biological and physical data by putting less emphasis on designated TMDLs or regulatory drivers, and instead put emphasis on “impairments” that are collectively biological, physical, and chemical in nature. Existing TMDLs are heavily chemically-based, and biological and physical health assessments are deficient in the WQIP methods for prioritizing water body health (though they are required by the Clean Water Act and the MS4 permit). It is suggested that, where data exists, equal weight be given to each of the assessment methods of receiving water conditions in §II.B.2.b. of the permit. Where data does not exist it should be **aggressively** sought, and priority should be given to collecting adequate data including biological and physical characteristics of water bodies.

If the Board accepts the WQIP assessment and prioritization methodologies as submitted, Coastkeeper respectfully requests that the Board fast-track and adopt all additional necessary and planned TMDLs within our region, so that the conditions subject to TMDLs can be accurately prioritized within the existing methodologies that favor TMDLs. Coastkeeper further requests the Regional Board adopt biological objectives for our Regional Basin Plan as soon as practicable, assuming the State Water Board does not develop state-wide objectives. Regulated biological objectives would require additional data acquisition and assessment to get a more thorough understanding of water body health, MS4 impacts on water body biological and ecological health, and would allow for a more informed analysis and methodology for determining PWQCs and HPWQCs where biological and physical TMDLs and criteria are on equal footing with chemical conditions and constituents.

Priority Water Quality Conditions:

Like with HPWQCs, the draft plans generally prematurely limit the conditions that may be listed as PWQCs by inappropriately focusing on chemical constituents and conditions. Many, if not all, of the submitted plans focus on impairments of a chemical nature in determining PWQCs.

By way of example, the San Diego River and San Luis Rey methodologies to determine PWQCs “Step 3” includes a five part “Criteria Tally” analysis, giving scores in response to particular questions. Two of the five questions are: 1) “Does the potential pollutant/conditions exceed Regional water quality benchmarks in receiving water?” and 2) “Is condition an impairment of beneficial uses [e.g. 303(d) or other]?” These two questions in particular appear to put an emphasis on approaches that are primarily chemistry-based (303(d) list and water

quality benchmarks). This approach and others like it are not likely to identify or consider the biological or physical conditions of water bodies, resulting in the neglect of non-chemistry-based conditions. Coastkeeper believes this approach leads to a preliminarily narrowing of the scope of possible priority conditions.

As above, Coastkeeper would like to see WQIP methodologies more fully consider biological and physical data in determining PWQCs and put less emphasis on designated TMDLs or 303(d) listings. Instead, the plan should focus on “impairments” that are collectively biological, physical, and chemical in nature. Where data does not exist it should be **aggressively** sought, and priority should be given to collecting adequate data, including biological and physical characteristics of water bodies.

While the majority of available data on water body conditions to date may focus on chemical conditions and constituents, the consideration of whether adequate data exists to determine whether a PWQC is also a HPWQC that can be addressed by potential strategies should come only once a more complete determination is made regarding priority and highest priority conditions based on chemical, biological, and physical information and assessment.

Data Incorporation, Review, and Assessment:

Coastkeeper respectfully requests the Board to ensure all relevant data has been incorporated and assessed as part of the WQIP development and implementation. The MS4 permit §II.B.2. calls for assessment and inclusion of all water quality data relative to MS4 sources. Though it is beyond Coastkeeper’s capacity to investigate every submitted WQIP to determine whether all existing data in the San Diego region has been incorporated and evaluated as part of the prioritization and designation process, Coastkeeper asks the Board and Board Staff to ensure all applicable studies and data have been considered. This includes all existing data on biological, physical, and chemical data, studies, and analyses, including SWAMP data at the very least. That information should also include data that may not in itself be conclusive or complete, but that still has a role determining priority conditions of water bodies and MS4 and non-MS4 sources. If such data has not been reviewed, incorporated, and assessed as part of a WQIP, we respectfully ask the Board to require amendment to the drafts as they now stand, and a re-assessment of PWQC and HPWQCs occur in those instances.

Subdividing Watersheds:

The MS4 permit §II.B.2 allows for Watershed Management Areas (WMAs) to be separated into subwatersheds to focus water quality prioritization and jurisdictional runoff management program implementation efforts by receiving waters. In fact, the Fact Sheet of the MS4 permit at page F-44 encourages subdividing, stating “The Copermittees are encouraged to separate the WMA into subwatersheds, as appropriate. This allows the Copermittees to identify priorities applicable to a subset of the Copermittees or specific water bodies or areas within the WMA”.

Coastkeeper supports and encourages further subdivision of watersheds into upper and lower watersheds, or by receiving water body within watersheds, where applicable. Subdividing would

allow for additional priority conditions to be assessed for HPWQCs in those sub-watersheds that are not located within the sub-watershed containing the already-chosen HPWQC, or for which a different highest priority impairment or condition actually exists. Further, it would allow those additional HPWQCs to be addressed with associated numeric interim and final goals, allowing for further documentation of progress.

By way of examples, the San Dieguito watershed could be divided between regions upland of Lake Hodges and below Lake Hodges, allowing for an additional HPWQC (such as nutrients) where applicable. Loma Alta Slough should be subdivided out to allow for multiple HPWQCs in the San Luis Rey watershed, including bacteria and biostimulatory substances. Coastkeeper respectfully asks the Board to urge each watershed to strongly re-consider taking approaches by dividing between upper and lower watersheds, or between receiving water bodies upstream from the Pacific Ocean (eg. Loma Alta Slough).

Potential Strategies:

Section F.1.a.2. of the permit *requires* Copermittees to include all the potential water quality improvement strategies identified by the public and the WQIP Consultation Panel with the submittal of the priority water quality conditions to the Board. For any strategies that have been recommended but not yet included upon receipt of these comments, Coastkeeper respectfully requests that the Board ensure Copermittees have included all potential strategies available so the totality of strategies are not prematurely narrowed. Several Copermittees (including both the City and County of San Diego) are conducting workgroups, technical advisory committees, and studies aimed at investigating which strategies are most beneficial to water quality and that fit our local and regional environment. Coastkeeper applauds these efforts by these Copermittees and hopes the Board will encourage all Copermittees to participate in these or similar undertakings. At this early stage, all potential strategies must remain on the table.

To that end, Coastkeeper requests the inclusion of the following possible strategies to each submitted WQIP to the extent that they are not already included:

1. Incentivization and regulation of private actors to adopt and implement distributed and/or centralized BMPs throughout the watershed on private property.
2. Implementation of a Stormwater Utility, the purpose of which is to raise the necessary funding to implement stormwater plans and requirements. In instances where funding is inadequate, include a strategy to raise funding levels and appropriations toward compliance.
3. Public-private partnerships, private-NGO partnerships, and public-NGO partnerships aimed at best management practice (BMP) implementation (structural and non-structural, source control and technological control) on private and public property.
4. Increased enforcement against polluters and illicit dischargers. Where capacity or funding is an issue, include a strategy to increase funding and capacity to allow for additional enforcement.
5. Strategies *must include* additional regulation and/or enforcement of MS4 and non-MS4 sources of pollutants in water bodies. Examples to be included are (a) the regulation of sites that may be contributors to pollutants in the MS4 system, (b) regulation of non-MS4

activities that ultimately impact the MS4 or receiving waters, and (c) regulation of non-compatible uses or practices within a jurisdiction to help eliminate MS4 pollutant sources. Such potential strategies regulation or protocols *must include*: land use regulations/amendments; development moratoriums; zoning amendments; irrigation scheduling, management, and BMPs; pesticide application regulations and prohibitions; regulations requiring and incentivizing distributed BMPs and requiring maintenance of distributed BMPs, and increased overall enforcement.

6. Green infrastructure projects that serve as jurisdictional compliance BMPs, and that may also serve concurrently as Alternative Compliance BMPs. An example might be a constructed wetland or stream rehabilitation, implemented by a Copermittee towards compliance, the scope of which may be broadened in conjunction or partnership with an Alternative Compliance project that absolutely ensures operations and maintenance in perpetuity, perhaps through an endowment or trust.
7. Any and all green infrastructure or “multi-use treatment area” BMPs for which there exists current data on effectiveness. At a minimum these must include: “green streets”, bioretention, infiltration, swales, rain gardens, downspout disconnections, green roofs, rainwater harvesting, porous pavements, wetlands, and land conservation.
8. Partnerships and information sharing with NGOs (including San Diego Coastkeeper) and the Board towards enforcement actions against polluters/illicit dischargers impairing receiving waters.
9. Capture and use of stormwater to augment imported water supplies and to reduce flows in the MS4.
10. Stream, channel, habitat, and wetlands restoration and other projects that restore both physical stream channel conditions and lost ecosystem services, and that have the potential to provide multiple water quality and societal and recreational benefits.
11. Implementation of BMPs with multiple benefits in addition to improved water quality, such as those benefiting public health, habitat creation, and additional recreational activities.
12. Strengthening of Jurisdictional Runoff Management Programs and implementation.
13. Strategies that address multiple PWQCs to a significant degree (*this is especially important under any scenario where a regulatory or policy gap might exist in addressing impairments not subject to TMDLs and not prioritized under the existing WQIP methodologies, as mentioned above*).

Coastkeeper sincerely appreciates the time and effort put into the development and implementation of the permit and the associated WQIP plans to date by the Board, Copermittees, and staff. We continue to believe the permit as written serves as a good starting point towards achieving greatly improved water quality related to MS4 in our region. In order to achieve the purposes of the permit and fishable, swimmable waters in San Diego County, it is important that the permit’s potential be realized through collaborative and informed implementation, taking into consideration a wide variety of both proven and innovative approaches, and all available data on water quality conditions.

Thank you for this opportunity to comment on the submitted WQIP drafts to date. Please feel free to contact me with any questions you might have. Coastkeeper looks forward to remaining

engaged in the MS4 permit implementation and WQIP development process, and to partnering with Board and Copermittee representatives and staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. O'Malley", with a long horizontal flourish extending to the right.

Matt O'Malley
Waterkeeper
Legal & Policy Director



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IMPACT

August 1, 2014

Trevor Alsop
Geosyntec Consultants
TAlsop@geosyntec.com

Sent via email

Re: San Diego Coastkeeper Comments on Watershed Management Area Analysis Draft

San Diego Coastkeeper is the leading watchdog organization in San Diego County exclusively dedicated to the protection and restoration of fishable, swimmable, and drinkable waters in San Diego County. San Diego Coastkeeper has a long-standing involvement in, and commitment to, water quality in our region, including the Regional Water Quality Control Board's permits related to regulation of stormwater pollution and urban runoff.

Coastkeeper is committed to ensuring that the beneficial uses of our region's water bodies are protected and restored. Coastkeeper played an active role in the development and adoption of the new MS4 stormwater permit and it is our hope that these comments will contribute to the appropriate implementation of the permit and meaningful development of the regional and jurisdictional alternative compliance and hydromodification plans.

Unfortunately, we believe insufficient time was allotted to development and delivery of public comments. The draft document was submitted to the public some 4 business days prior to the workshop, and then an additional 3-4 business days was slated for receipt of public comments. What follows are comments based on a hastened review of the draft.

General Comments:

The assumptions made in this preliminary region-wide WMAA characterization have far-reaching and important consequences for this template WMAA as applied to individual WMAs throughout our region. Therefore, it is important that the data sets upon which information is based, and the assumptions upon which the draft's conclusions were rested, are robust and contain multiple lines of evidence.

The data used in developing the watershed management area characterization appears to be largely limited to desktop investigations including existing GIS map layers and models of the San Diego region, with little to no ground-truthing or site reconnaissance to corroborate information contained in the GIS maps and models. While understanding the limited time and funding made available to this preliminary analysis, Coastkeeper strongly urges each individual WMA that wishes to undertake the optional WMAA process to undertake a much more intensive investigation of watershed characterization and not rely solely on the information or assessments in this draft. Individual WMA

assessments must involve multiple lines of evidence including site investigations representative of each watershed's diverse regions, sub-watersheds, and water body reaches. As it stands, the information is generalized to a degree that does not allow for an accurate assessment of either dominant hydrologic processes or of stream conditions sufficient to allow for hydromodification exemptions.

Dominant Hydrologic Processes:

Coastkeeper disagrees that Evapotranspiration (ET) should be summarily dismissed and not included in the list of dominant hydrologic processes, especially since – as the draft points out – ET is *the* dominant process. The MS4 permit requires a description of dominant hydrologic processes (plural), and does not limit its call to infiltration and overland flow, but instead merely points out 2 examples (“such as”). Further, the draft assumes that BMPs sized to account for ET would be impractical. We believe such assumptions would foreclose any opportunities for individual WMAs to develop innovative, dispersed, or other strategies to take advantage of ET to benefit water quality throughout our region. For this reason, we request that ET be given equal consideration in the WMAA regional draft, as well as in any subsequent WMAA adoptions by individual WMAs. To do otherwise could serve to prematurely foreclose options that seek to take advantage of the natural ET process, which is the dominant hydrologic process throughout the San Diego region. Then, using appropriate multiple lines of evidence data, the WMAA can seek to establish whether infiltration or overland flows are the next most prevalent processes in a given area. The same or similar process should occur on a site-specific basis if, and when, adopted by individual WMAs.

Additionally, assigning “overland” to developed areas has the potential to ignore the infiltration capacity of particular areas that are candidates for redevelopment. Since infiltration is required where and when possible during redevelopment, the designation of overland to already-developed areas is problematic. A more site-specific assessment with multiple lines of evidence should occur.

Stream Characterization:

Coastkeeper requests the draft include more information about how the 27 streams were chosen for characterization, and specifically include a definition of “stream” for the purposes of this analysis.

As above, we hope to see additional evidence considered where appropriate, such as ground-truthing of the modeling and digitization of the streams chosen. Many local watershed groups exist that are intimately familiar with many of the streams and stream segments throughout our region. Working closely with them would allow for a more accurate description and assessment of streams and proper stream characterization. If it does not occur in this draft, that work must occur in individual watershed WMAs if they chose to do adopt a WMAA.

“All lagoons” should be removed from the “Engineered” designation. While lagoons may have been modified over the years, and some may be substantially modified, the same can be said for many water bodies throughout our region that are still natural in origin. Further clarification or categorization is necessary, such as “natural, with modification”. To characterize “all lagoons” as engineered is improper. Similarly, amended, stabilized, or channelized waterways should be listed as “natural” or “natural, with modification” to recognize that such waterways exist in their current modified states as a result of un-natural activities, and to avoid unintentionally precluding restoration of these waterways. And finally, we fail to understand the designation of “sand mining operations” as “natural”. Further clarification of this would be appreciated.

Designated modified waterbodies as “engineered” will likely preclude future restoration efforts throughout the region and allow for further degradation of ecological and biological conditions. Once exempted flows are introduced into waterways, the character and composition of that waterway and surrounding area and vegetation are changed. Restoration may not be possible if the additional hydrologic impacts are not accounted for. The Clean Water Act expressly calls for the protection and restoration of the waters of the U.S. For this reason, we suggest limiting to the “engineered” category only those waterbodies that are artificial in their entirety and not modified, once-natural waterways.

Finally, the designation of bed and bank material for individual streams without existing data is based on aerial photography in this draft. Instead, multiple lines of evidence including on-the-ground inspection should be required.

Hydromodification Exemptions:

Coastkeeper does not believe the data and rationale provided in the WMAA draft for hydromodification exemptions are sufficient to support any of the listed exemptions. While the data presented may show examples that some receiving waters may not be susceptible to erosion due to natural or engineered characteristics, the MS4 permit does not limit its hydromodification analysis to merely increased potential for erosion. Instead, the permit expressly lists within the hydromodification management requirements the additional consideration of “degraded instream habitat” impacts¹. The existing data sets and analyses presented in this draft do not include impacts of flows to instream habitat, and do not adequately consider flow impacts on ecology and biota in receiving waters. This information is essential in determining downstream impacts and instream impacts to the receiving water.

Specifically, exemptions of natural receiving waters (which should include lagoons and modified rivers and streams, as noted above) fails to consider resulting biological impacts, freshwater/saltwater balances or mixing, and associated impacts on receiving water biota and ecology. While critical shear levels for erosion may not be reached under given scenarios, additional flow impacts are not adequately considered under the

¹ Sections E3c2(a) and E3c2(a)(ii) of the MS4 permit

existing framework. Consideration of biological impacts in a multiple lines of evidence assessment is crucial to understanding true impacts to receiving waters. Biological assessments are more closely related to the designated uses of waterbodies than to course yield sediment analyses. As the current exemptions analysis is based solely on sediment erosion analysis and does not consider additional flow rate and duration impacts on biological and instream habitat conditions, the exemptions analysis is incomplete, and the listed exemptions are unsupported.

Further, exemptions related to engineered or stabilized receiving waters are improper and will likely impede or preclude restoration of channelized or otherwise amended waterways. As mentioned above, we disagree with the characterization of all waterways besides those having been altered by human activity as “engineered”. One could characterize nearly all waters in our region as having been altered by some human activity. Certainly our past misdeeds should not doom us to a perpetual state of decline and alteration in our waterways.

Based on the information presented and the potential impact that exemptions could have on downstream biota and ecosystems, Coastkeeper does not support the exemption of any river reaches, stabilized conveyance systems draining to exempt water bodies, impervious/urbanized watersheds, urban infill, or lagoons from hydromodification requirements under the permit.

Thank you for your consideration of these comments.

Sincerely,



Matt O'Malley
Waterkeeper
Legal & Policy Director

CC:

Christine Sloan, County of San Diego
David Gibson, Executive Officer, Regional Water Quality Control Board