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County of San Diego

Comments of Tentative Order No. R9-2013-0001

April 10-11, 2013

## Provision A – Receiving Water Limitations SDRWQCB Response LGL-1

- Response LGL-1 asserts nothing has changed as a result of *NRDC* Ninth Circuit opinion.
- The reality is that a court has now issued a ruling with the result that, unless compliance with RWL language is linked to the iterative process, copermittees can be sued for RWL violations at any time.
- Tentative Order, as issued, does not support the WQIP iterative process, it undermines it.

## Provision A – Receiving Water Limitations SDRWQCB Response LGL-1

- MS4 Permit holders seek what Congress intended – MEP to be achieved over time due to unique challenges of stormwater control.
- Including a prohibition that Ninth Circuit interprets as immediately enforceable at third parties' election is bad policy.
- Response glosses over language of State Board Order WQ 2001-15 endorsing compliance with water quality standards over time.

# Provision A – Receiving Water Limitations

## SDRWQCB Response LGL-1

### SOLUTION

- Remove RWL Language; thereby permitting the iterative process you have created to work – discretion exists under *Browner*, as even acknowledged in State Board Order WQ 2001-15;

Or in the alternative,

- Define Compliance in Concrete Terms in Provision A – Linked to the WQIP and Iterative Process.
- Unless Provision A is directly linked, the WQIP process created and supported by copermittees is impaired.

## Bacteria TMDL Numeric Effluent Limitations SDRWQCB Response LGL-4

Reliance on USEPA November 12, 2010 Memorandum is Legally Improper:

- EPA Region 9 affirms the Memo is a basis for supporting incorporating NELs into the Permit.
- Memo Has Still Not Been Reviewed for Propriety by US Office of Management and Budget.
- Regardless, under recent U.S. Court of Appeal decision in *Iowa League of Cities v. EPA No. 11-3412* (8<sup>th</sup> Cir., March 25, 2013) the Memo constitutes improper rule making and cannot support SDRWQCB's analysis.

## Bacteria TMDL Numeric Effluent Limitations SDRWQCB Response LGL-4

- Your responses affirm SDRWQCB's discretion under *Browner* in support of various permit provisions.
- However, your response disavows SDRWQCB's discretion to recognize the flawed scientific basis for Bacteria TMDL provisions and revisit the bacteria WLAs through a Basin Plan amendment process.
- SDRWQCB has absolute discretion under CWA 402 and *Browner* to fix a flawed Bacteria TMDL which, when implemented through this permit, will cost billions with unknown public dollar benefit to clean water efforts.

## Bacteria TMDL Numeric Effluent Limitations SDRWQCB Response LGL-4

- State Board Order WQO 2002-15, “In general, the Board agrees that, where a Regional Water Quality Control Board has evidence that a designated use does not exist and likely it cannot be feasibly attained, it is unreasonable to require a discharger to incur control costs to protect that use.” See also, *California Assn. of Sanitation Agencies v. State Water Resources Control Board* 208 Cal.App.4<sup>th</sup> 1438 (2012)
- This principle of unreasonable costs for an infeasible result should be reviewed in context of Bacteria TMDL.

## **Bacteria TMDL Numeric Effluent Limitations SDRWQCB Response LGL-4**

- Costs of compliance with Bacteria TMDL NELs has been reliably quantified. Range of \$2.8B-\$5.1B.
- The assertion in response to comments that we fail to factor in costs of not implementing TMDL is misplaced.
- Fact Sheet affirms that no reliable study has quantified economic value of TMDL. (F-19)
- To contrary, PLNU Study (April 2011) just released to public shows cost outweighs benefit by 6 to 1 ratio.



# Bacteria TMDL Numeric Effluent Limitations SDRWQCB Response LGL-4

## SOLUTION

- Do not Incorporate Bacteria TMDL Numeric Effluent Limitations into this Permit.
- Open a process to revisit the Basin Plan Amendment for Bacteria in Beaches/Creeks that is scientifically sound, incorporates recent and nearly completed studies, has positive cost-benefit to taxpayers.

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## **Technical Concerns with the Inclusion of Bacteria TMDL into the San Diego Region MS4 Permit**

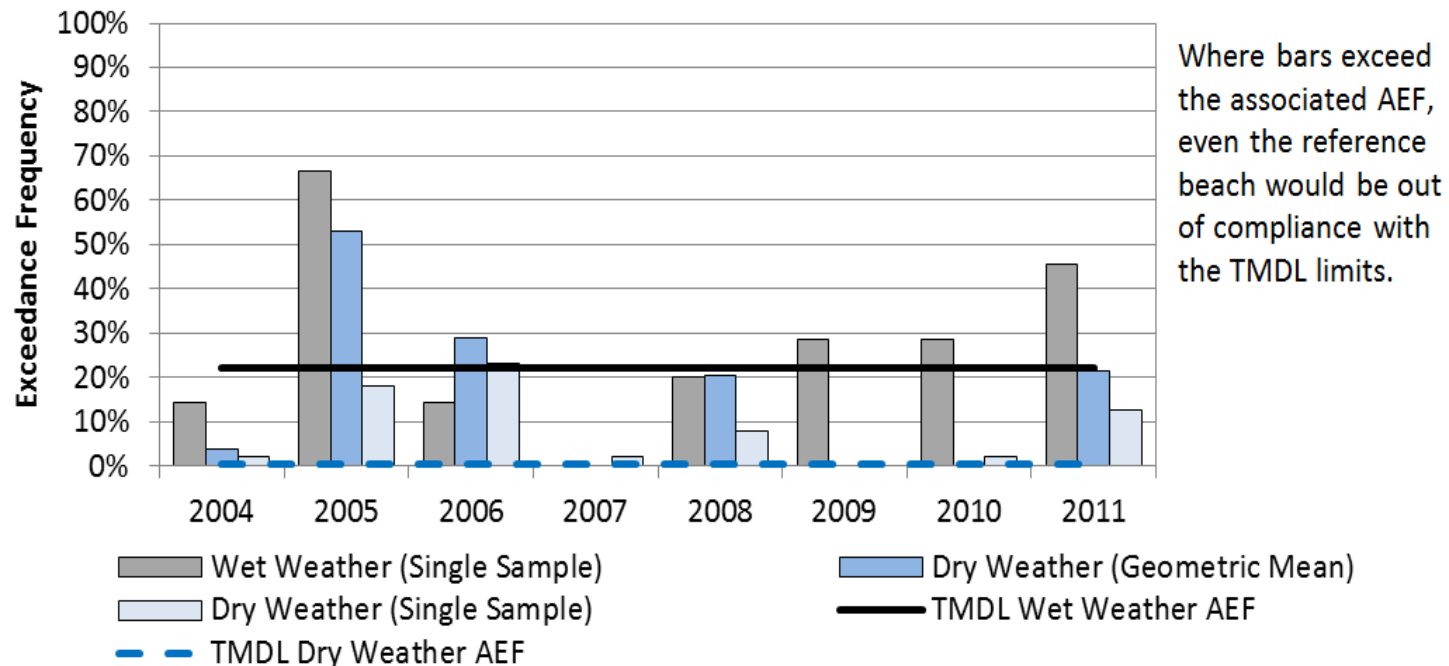
Todd Snyder, County of San Diego

Ken Susilo, PE, D.WRE, CPSWQ, Geosyntec Consultants



## Science (Reference Approach)

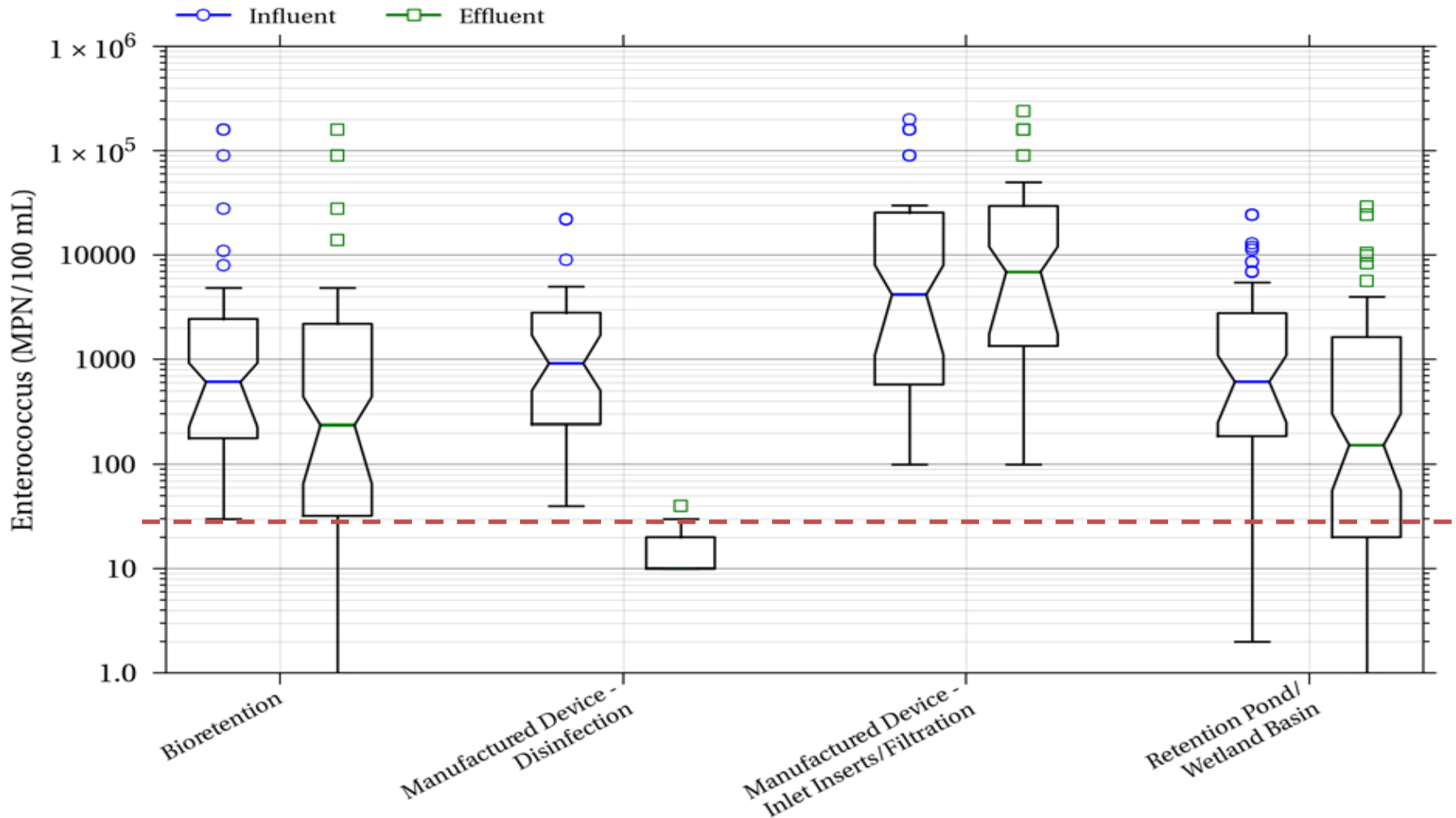
- Reference Watershed Exceeds Wet Weather TMDL Standard about 50% of the Wet Time (Dry over 85%)



### Notes:

- 30-day Rolling GM - Geometric mean calculation performed every week, on the dry weather samples within the previous 30-days period, if 5 or more samples have been taken in the 30-day period.

# Attainability (BMP Performance vs WQBELs)



Clary, J., B. Steets, J. Jones, E. Strecker, M. Leisenring.

*Fecal Indicator Bacteria Reduction in Urban Runoff*. October 2012. <[www.stormh20.com](http://www.stormh20.com)>.

[www.SDMS4Permit.Info](http://www.SDMS4Permit.Info)



## Benefit-Cost (Public Health Benefits)

Regional Public Health Cost Estimates from Los Angeles and Orange County (Given et al, 2006)

	Wet Season (Nov-Apr)		Dry Season (May-Oct)	Total
Health Costs <sup>a</sup>	\$1.6M-\$8.5M		\$19.3M -\$40.8	\$20.9-\$49.3
% of Total Cost	8-17%		80-92%	
Days	Wet Season Wet Weather	Wet Season Dry Weather	Dry Season Dry Weather	
Number of Days	40 <sup>b</sup>	141	184	
Adjusted Health Costs	\$360K-\$1,883K	\$20.5M - \$47.4M		
Adjusted Percent of Total Health Cost	<b>2-4%</b>	<b>96-98%</b>		

<sup>a</sup> Given, et al., 2006.

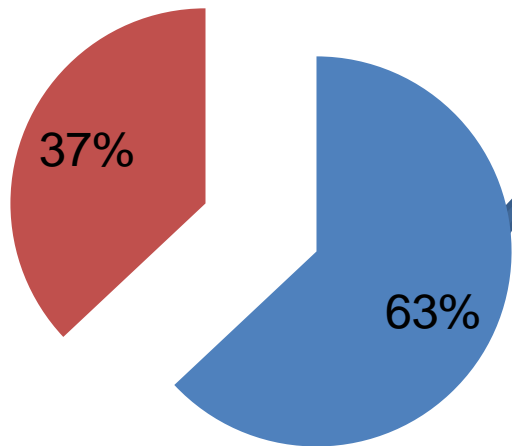
<sup>b</sup> Estimate based on six month wet season (181 days). Costs assumed to be proportional to days within season.



# Benefit-Cost\* (Comparative Public Health Basis)

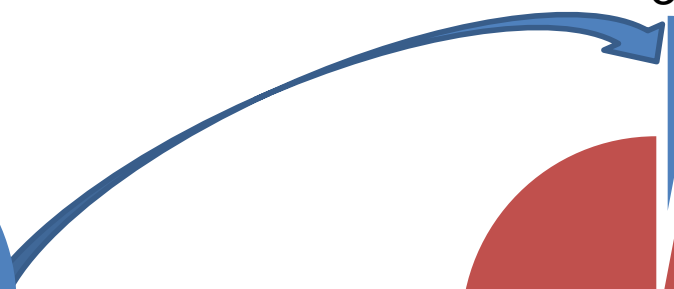
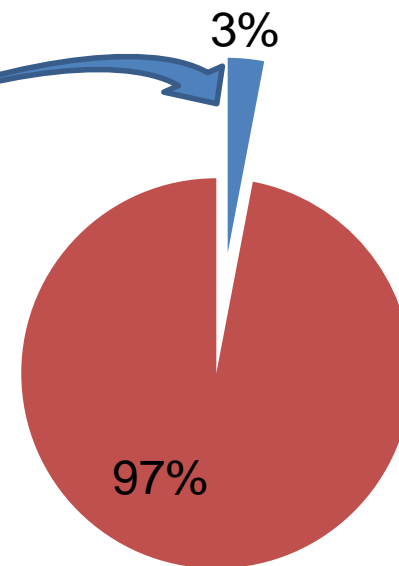
## Relative Implementation Costs On Percentage Basis

- Wet-Weather Cost
- Dry Weather Cost



## Relative Health Care Costs/Benefits On Percentage Basis

- Wet-Weather Benefit
- Dry Weather Benefit



Costs estimated from the average of high and low estimates from the San Diego river and San Luis Rey Watershed CLRPs



## Benefit-Cost (Composite Wet-Dry Study)

- City of San Diego-commissioned study performed by economists at Point Loma Nazarene University (April 2011)
  - Estimated costs to City of San Diego \$3.7B
  - Estimated benefits \$617M
    - Implicit Beach Value (off limit days from 40 to 8)
    - Economic Value (direct spending + multiplier)
    - Health Care Savings (GI, Acute Respiratory Disease, Ear Infection, Eye Infection)
  - Costs outweigh benefits by 6 to 1.



# Recommendations

- Do Not Incorporate Bacteria TMDL Numeric Effluent Limitations into this Permit.
- Open a process to revisit the Basin Plan Amendment for Bacteria in Beaches/Creeks that is scientifically sound, incorporates recent and nearly completed studies, has positive cost-benefit to taxpayers.