Regional Board Meeting
June 21, 2006

Item 3

Supporting Document # 9

Written Comments from Copermittees

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Written Comments from Copermittees

A. San Diego Copermittees' Collective Comments (submitted by County of San Diego)

B. City County Managers Association (submitted by City of Encinitas)

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M. San Diego Unified Port District

June 21, 2006 Regional Board Meeting
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A. San Diego Copermittees' Collective Comments (submitted by County of San Diego)

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County of San Diego

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June 7, 2006

Mr.John Minan
Chairman
California Regional Water Quality Control Board
San Diego – Region 9
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Dear Chairman Minan:

Thank you for the opportunity to comment on Tentative Order No. R9-2006-0011 ("Tentative Order"). As lead Copermittee, the County of San Diego is submitting these collective comments on behalf of all the Copermittees. They are intended to assist the Regional Water Quality Control Board (RWQCB) in understanding the technical and legal issues faced by the jurisdictions that must raise the funds and implement the Programs required by this Tentative Order.

We appreciate the efforts that the RWQCB staff has put into the Tentative Order and in working with the Copermittees – both before and after its release. While we still have substantial concerns regarding certain elements of the Tentative Order, as described in the attachments to this letter, we think that the process the RWQCB has provided to involve stakeholders have resulted in a better Tentative Order than one produced with less local involvement. In particular, we appreciate the second Public Workshop that was added to the adoption schedule to further encourage dialogue regarding the Tentative Order.

The Copermittees have organized their comments as follows: Attachment A to this letter contains a discussion of the legal issues associated with the Tentative Order. Attachment B discusses the technical concerns with the Tentative Order. In the alternative, we have proposed textual changes to the Tentative Order which are attached as Appendices to this letter and shown in "track changes" format.

Overview of Legal Concerns

The Copermittees' legal concerns focus on the following: unfunded mandates; the scope of the MS4 and receiving waters; and the overreaching or ambiguous terms of the Tentative Order. For example, the Tentative Order mandates an increased level of service for the Copermittees. To the extent these increased levels are required under state law, they constitute an unfunded mandate. Thus, the state must either fund these new requirements or suspend them until funding becomes available. We seek clarification of the RWQCB's authority to impose these requirements and suggest alternative permit language so as not to jeopardize the Copermittees local authority to implement its local programs and regulations in furtherance of clean water programs.

Please refer to Attachment A for a complete discussion of Copermittees legal concerns regarding unfunded mandates as well as other aspects of the Tentative Order.

Overview of Technical Concerns

In reviewing the Copermittees' technical comments, you will note that many of them initially appear to make the permit less prescriptive. However, in many instances by removing excessive detail, the Tentative Order will better focus on its overarching objective of improving water quality. Additionally, by removing or simplifying certain specific language, and allowing Copermittees to determine how best to implement the Tentative Order based on local conditions (technical, financial and political priorities), our suggested changes are more in line with the intent of the federal Clean Water Act and the state Porter-Cologne Water Quality Control Act.

In some instances the Copermittees have indicated changes to schedules that are needed for implementation of specific elements of the Tentative Order. These changes reflect a range of issues and activities that must be considered, such as Copermittee collaboration, consultant contracting, internal administrative procedures, and the time required to implement the requirements. Additionally, schedule modifications reflect the cumulative workload increases of the Tentative Order as a whole, i.e. front-loading many of the requirements will result in a significant fiscal and administrative burden for the Copermittees.

Obviously, we remain concerned about these fiscal impacts. For example, by our calculations, the regional monitoring expenses could increase by up to $2 million annually. In addition, the HMP portion of the permit will cost well in excess of $1 million. Jurisdictions will have to make difficult decisions regarding how best to allocate limited resources given competing priorities in protecting the public's health and safety

Finally, I would like to emphasize that the Copermittees have included a proposed rewrite of the Watershed Urban Runoff Management Program (WURMP). The Copermittees strongly advocate that a strategy for addressing water quality issues should be adopted at a watershed level and that the activities necessary to implement

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those strategies ought to be conducted wherever it makes the most sense – jurisdictionally, at the watershed level, or regionally. These changes better reflect that strategic approach, and alleviate a number of specific technical concerns regarding the version in the Tentative Order.

Please refer to Attachment B for a complete discussion of Copermittees technical concerns and the Appendices for suggested new permit language.

Conclusion

There is much to learn about stormwater, particularly when faced with an often confusing array of data. By suggesting the enclosed changes, Copermittees believe that we will be better able to learn and adapt to new information that is presented during the next Permit cycle.

We respectfully urge the RWQCB to once again adopt the most progressive Permit in the State by including the Copermittees recommended changes. This will ensure a continued focus on water quality improvement.

Sincerely,

Chandra Wallar

Chandra L. Wallar
Deputy Chief Administrative Officer
Land Use and Environment Group

Attachments

cc: Eric Anderson, Board Member
Alan Barrett, Board Member
Daniel Johnson, Board Member
Janet Keller, Board Member
Jennifer Kraus, Vice Chair
Julianne Nygaard, Board Member
Susan Ritschel, Board Member
Richard Wright, Board Member
John Robertus, Executive Officer

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ATTACHMENT "A"

LEGAL COMMENTS TO TENTATIVE ORDER NO. R9-2006-0011

I. INTRODUCTION

These comments are provided to the Regional Board to provide legal support for the comments submitted by the Copermittees and to address some additional legal issues raised by Tentative Order No. R9-2006-0011 ("Permit"). It is submitted by the legal counsels for the San Diego Copermittees and is intended to assist the Regional Board in understanding the legal issues faced by the Copermittees who must raise the funds in order to implement the Programs required by this Permit.

II. UNFUNDED STATE MANDATES

A. The Permit Mandates an Increased Level of Service for Local Governments

The Permit proposes to increase the level of service required of Copermittees. To the extent that federal law requires this new level of service, the Copermittees are required to bear the cost of this unfunded federal mandate. However, as to those portions of the Permit that fall under the legal authority of the state, the level of service increases are state mandated costs that are subject to reimbursement by the State of California.

The permit that Copermittees are currently operating under, was issued in 2001. Since that time, Cal. Const. art. XIIIB, § 6 requires the state to reimburse local agencies for the costs of programs that "any state agency" mandates for a "higher level of service". (Cal. Const. art. XIIIB, § 6.) In 2004, the voters approved a constitutional amendment that provides that reimbursements to local agencies for state mandated programs must be appropriated by the Legislature into the state budget or the mandated program will be suspended for the fiscal year in which no appropriation was made. (Cal. Const. art. XIIIB § 6(b), Proposition 1A.) The proposed Permit contains provisions, discussed below, which add additional levels of service to the existing permit and, therefore, are covered by Proposition 1A. Proposition 1A requires reimbursement for costs from the 2005-2006 Fiscal Year onward for every state mandated program meeting the criteria set forth in the Proposition. (Cal. Const. art. XIIIB, § 6(b)(1).) Article XIIIB, § 6 prohibits the state from shifting the financial responsibility for carrying out state mandated governmental functions to local agencies which are often ill-equipped to absorb the costs of the additional levels of service. *County of Los Angeles v. Commission on State Mandates*, 110 Cal. App. 4th 1176, 1188 (2003). The state may not force extra programs on local governments in a manner that negates the ability of a local agency to carefully budget for expenditures, particularly where the cost of compliance with a program restricts local spending in other areas. *Id.* at 1193.

As discussed in these comments, the Permit contains numerous increases in the level of service for program elements not required by the Clean Water Act. The new Permit requires new conditions in the general watersheds of each jurisdiction by requiring efforts by the Copermittees before any flow enters into the MS4. (40 Code of Federal Regulations ("C.F.R.") § 122.26(a)(iii), (b)(4) & (b)(7).) This new level of effort includes the, yet to be adopted, *hydromodification* program. (Permit, D (1)(g).) Most of the watershed management program will also fall into the category of mandates not required by the Clean Water Act but which require levels of effort above the MEP. The Permit does not differentiate between the federal and state mandates in most portions of the Permit. However, before a local agency may avail

itself of the reimbursement provisions of Proposition 1A, the Regional Board must make findings to demonstrate which new levels of service are mandated by it as a "state agency" so that the Legislature can determine which Permit requirements must be funded.

In the written comments from the Copermittees, the Copermittees have provided the Regional Board with estimates of some of the costs of the increased levels of service called for in the Permit. For example, the estimates include costs for the increased monitoring/reporting requirements and the new hydromodification program. These estimates demonstrate that the monetary impact of implementing the increased levels of service mandated by the Permit is significant. However, the examples provided are illustrative only and do not attempt to identify all of the increased costs that will be incurred by the Copermittees as a consequence of the increased levels of service required by the Permit.

B. Local Governments Lack the Authority to Levy Service Charges, Fees or Assessments Sufficient to Pay for the Mandated Increased Level of Service

Prior to the adoption of Proposition 1A, state mandates could be imposed on a local jurisdiction if fees could be raised to pay for the program. (Gov't. Code § 17566.) Proposition 1A superceded this Government Code provision. The ability to raise fees is not one of the three exceptions listed under Article 13B, §6b of the State Constitution (Proposition 1A).

Cities have relied upon fees as a significant source of financing permit activities. Currently, the City of Solana Beach is defending an action brought by the Howard Jarvis Taxpayers Association challenging a non-property related solid waste fee which was imposed to recover a portion of the cost of the program. Previously, the City of Encinitas settled with the Jarvis group and repealed a water-based fee for its Stormwater Program.

In December 2005, the Regional Board received a memorandum from the Copermittees addressing the fee issue. A copy of that memorandum is attached as Appendix A-1. It listed some of the problems local governments face in funding the mix of state and federal mandates the Permit imposes. We requested that the Board take action to assist the Copermittees in their attempt to seek clarification of the fee issue at the state level. The Board took no action and the state took no action, either legislatively or through an Attorney General's opinion to address the fee issue. The Copermittees now face the possibility of having no fee source to pay for the programs under the Permit if the most recent Jarvis case is successful because few potential fee types remain for the Copermittees to impose to fund Permit activities. Even if local jurisdictions find a fee source, there are aspects of the Permit, as discussed in the December 2005, letter that cannot use fees to support the programs mandated, including the regional and watershed programs and other programs discussed in these comments. The Permit renewal should be considered with these funding and mandate issues in mind.

C. The Permit Mandates Costs Which Exceed the Mandate in the Federal Law

Permit Finding E.9 recognizes that certain mandates in the Permit exceed the requirements of federal law. Finding E.9 provides that "[r]equirements in this Order that are more explicit than the federal storm water regulations in 40 CFR 122.26 are prescribed in accordance with the CWA section 402(p)(3)(iii) and are necessary to meet the MEP standard." Similarly, the Fact Sheet/Technical Report ("Technical Report") provides that the "CWA explicitly preserves independent state authority to enact and implement its own standards and requirements, provided that such standards and requirements are at least as stringent as those that would be mandated by the CWA and the federal regulations." Both the

Permit and the Technical Report, at various locations, cite to the federal law that supports certain mandates in the Permit. However, in many other instances, the report and Permit cite no federal authority to support the imposition of a proposed mandate by the Regional Board. The Copermittees must assume that, without a specific citation to federal authority, mandates in the Permit are state mandates that exceed the mandates of federal law. (*See Topanga Assn'n for a Scenic Community v. County of Los Angeles*, 214 Cal. App. 3d 1348 (1989).) **Please either confirm this assumption or, for each mandate in the Permit, specify the federal authority that requires the mandate.**

The Permit and the Technical Report contain many examples of mandates for which no citation to legal authority is provided. Chief among these examples is the hydromodification mandate. This mandate creates a number of noteworthy new requirements which will result in significant new, unfunded costs. However, neither the Permit nor the Technical Report cite to any federal authority that requires a hydromodification program. Consistent with Finding E.9, the Copermittees assume that the new hydromodification mandate is a state law requirement. **Please either confirm this assumption or specify the federal authority that requires this mandate.**

A second example of a mandate for which no citation to federal authority is provided relates to the mandates which regulate the flow of water "into" the MS4 rather than "from" the MS4. In State Water Resources Control Board Order WQ 2001-15, the State Board struck language in the prior permit, which regulated under federal law the flow of water "into" the MS4. The State Board recognized that regulation of water "into" the MS4 was authorized by state law and certain very specific provisions of federal law. Therefore, the Copermittees must assume that, in the absence of a specific citation to federal authority, the mandates that regulate the flow of water "into" the MS4 are mandated by state law. **Please either confirm this assumption or specify the federal authority that mandates each regulation of flows "into" the MS4.**

In addition to these two significant examples, the following items are examples of other mandates that lack a specific reference to federal authority:

- Annual Inspection and Cleaning of MS4s: This mandate appears to be based on the prohibition under state law that waste may not enter the MS4. **Please confirm this assumption or specify the federal law which requires this mandate.**

- Street Sweeping: This mandate also appears to be based on the prohibition under state law that waste may not enter the MS4. **Please confirm this assumption or specify the federal law which requires this mandate.**

- General Plan/Land Use Review: Under Section D.(1)(a) of the Permit, the Copermittees are required to revise their General Plans "as needed". The Technical Report provides no legal authority for this requirement and the Copermittees are unaware of any legal authority under either federal law or state law which allows the Regional Board to mandate a General Plan amendment. In coastal cities, amending the General Plan requires Coastal Commission approval. State law specifically delegates to the Coastal Commission the authority to oversee the Local Coastal Plan elements contained in a General Plan. However, nothing in either state or federal law gives similar authority to the Regional Board for General Plan provisions that either affect or are affected by the Permit. Exclusive General Plan authority is granted to each Copermittee pursuant to the planning

and zoning law found in the Government Code. (Gov't. Code § 65000, *et. seq.*; Technical Report, pp. 49-50.) **Please specify the legal authority for this requirement.**

- Environmental Review: The Permit also contains a requirement that the Copermittees revise their environmental review process on an "as needed" basis to reflect storm water issues. (Permit, D.(1)(b); Technical Report, pp. 49-50.) It is unclear what this section requires. The California Environmental Quality Act (Pub. Res. Code § 20000, *et. seq.*) already requires that local jurisdictions assess issues related to stormwater in the same manner as they assess other significant environmental impacts. This provision adds a redundant requirement that already exists in state law. **Please confirm that the Regional Board is relying upon state law for this requirement or specify the federal authority for this mandate.**

- Regional Monitoring: This mandate appears to be based on the prohibition under state law that waste may not enter the MS4. **Please confirm this assumption or specify the federal law which requires this mandate.**

- Watershed Program: This mandate appears to be based on the prohibition under state law that waste may not enter the MS4. **Please confirm this assumption or specify the federal law which requires this mandate.**

- Additional Monitoring: This mandate appears to be based on the prohibition under state law that waste may not enter the MS4. **Please confirm this assumption or specify the federal law which requires this mandate.**

The request from the Copermittees' that the Board specify the legal authority (federal or state) for the new mandates of the Permit is important for several reasons. First, as detailed in Section A, mandates required by state law, which exceed the requirements of federal law, potentially constitute unfunded state mandates. It is the Copermittees' intent to pursue an unfunded state mandate test case in order to help fund the increased costs of the Permit which exceed the requirements of federal law. It is, therefore, imperative that the Board specify the legal authority for each mandate.

Second, to the extent mandates in the Permit are based upon state law, they are subject to the accompanying requirements of state law. For example, Water Code section 13360 restricts the ability of the Regional Board to dictate the manner of compliance with requirements imposed under state law. Many of the mandates of the Permit are highly prescriptive. If those mandates are based upon state law, their prescriptive nature is inconsistent with Water Code section 13360. In addition, the Regional Board's attempt to make the Permit more prescriptive actually creates more ambiguity in the Permit and will only serve to increase the costs of compliance for the Copermittees. Because the provisions of Water Code section 13360 are critical to the Copermittees' ability to determine methods of compliance, it is discussed in detail below.

Third, specific citation to the underlying legal authority for the mandates in the Permit is needed because the Copermittees cannot pass the mandates of the Permit onto users of the MS4s through local laws and regulations without proper authority. If the source of the legal authority for the mandate is unclear, users of the MS4s will likely challenge the Copermittees' authority to regulate on a local level. Absent a clearly stated legal basis for their actions, the Copermittees will have difficulty responding to

such a challenge and enforcement actions related to potential violations of those portions of the Permit lacking legal underpinnings will be difficult for the Copermittees to pursue.

Finally, the legal counsels of Copermittees will be unable to make the certification required by Section C.2 unless there is a clear delineation of the source of the mandates in the Permit.

III. WATER CODE SECTION 13360

Water Code section 13360(a) states in relevant part that "[n]o waste discharge requirement issued under Division 7 [Porter-Cologne Act] shall specify design, location, type of construction, or *particular manner in which compliance may be had* with that requirement . . . . and persons so ordered shall be permitted to comply with the order in any lawful manner." A waste discharge requirement is the equivalent of a waste discharge permit issued in accordance with the Porter-Cologne Act. *City of Burbank v. State Water Resources Control Board*, 35 Cal. 4th 613, 631 (2005); *see also, Building Industry Association of San Diego County v. State Water Resources Control Board*, 124 Cal. App. 4th at 875. "Section 13360 is a shield against unwarranted interference with the ingenuity of the party subject to a waste discharge requirement." *Tahoe-Sierra Preservation Council v. State Water Resources Control Board*, 210 Cal. App. 3d 1421, 1438 (1989). It was intended to preserve the freedom of those subject to the requirements to elect between available strategies that comply with a requirement. *Id. Contra, Pacific Water Conditioning Association, Inc. v. City Council of the City of Riverside*, 73 Cal. App. 3d 546 (1977) (upheld a Cease and Desist Order that simply ordered compliance with a portion of state mandate; it did not order the *manner* in which compliance should be had).

Recently, the court in *City of Rancho Cucamonga v. Regional Water Quality Control Board—Santa Ana Region*, 135 Cal. App. 4th 1377 (2006), discussed the Board's authority to impose permit conditions that require management practices, control techniques and system, design and engineering methods, and other appropriate measures for the control of pollutants. This more explicit authority is derived from federal law under the Clean Water Act. *Id.* at 1389. However, even under federal law, the court recognized that "[i]t is the permittees who design programs for compliance, implementing best management practices *selected by the permitees* in the [Drain Area Management Program] report and approved by the Regional Board." *Id.* (emphasis added). The permittee develops the criteria, establishes its own priorities for inspection requirements and programs for new development. The development and implementation of programs to control the discharge of pollutants is primarily the responsibility of the permittee. *Id.*

The Regional Board staff has argued that the Draft Permit must contain adequate specificity to properly enforce its terms. However, Water Code section 13360 clearly states that those subject to the requirements must have the freedom to elect how best to comply with the Permit. Moreover, the Board has stated that the iterative process—the Board and the Copermittee working together to identify violations of water quality standards—is the centerpiece to achieving water quality standards. *Building Industry Association of San Diego County v. State Water Resources Control Board*, 124 Cal. App. 4th at 890. Thus, enforcement must first occur through the iterative process, not through overly prescriptive permit conditions.

IV. THE SCOPE OF THE MS4 AND RECEIVING WATERS

The Permit defines the MS4 and receiving waters too broadly and in a manner that appears to exceed both federal and state law. Finding D.3.c. of the Permit states:

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> Historic and current development makes use of natural drainage patterns and features as conveyances for urban runoff. Urban streams used in this manner are part of the municipalities MS4 regardless of whether they are natural, man-made, or partially modified features. In these cases, the urban stream is both an MS4 and a receiving water.

This finding is not legally supportable under federal law. The basic premise of the Clean Water Act is that the addition of pollutants from point sources into waters of the U.S. is prohibited. *See* 33 U.S.C. §§ 1342, 1362(12). In the case of MS4s, federal regulations build on this basic premise, defining the outfall of the MS4 as the "point source" and expressly excluding from the definition of "outfall" – and therefore from the definition of point source – "open conveyances connecting two or more MS4s or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the United States **and** are used to convey waters of the United States." 40 C.F.R. § 122.26(b)(9). Thus, under federal law, the MS4 ends at the outfall; the MS4 does not and cannot convey waters of the United States because such conveyances have been excluded by definition. Therefore, Finding D.3.c. is inconsistent with federal law since it states that receiving waters are both part of the point source and the outfall.

Finding D.3.c fares no better under state law. Under the Porter-Cologne Act, requirements apply with relation to the conditions existing "in the . . . receiving waters upon, or into which, the discharge is made or proposed." Water Code § 13263(a). Hence, a substance cannot be both the discharge and the receiving waters into which that waste is discharged.

The problems with Finding D.3.c also occur in two of the discharge prohibitions in the Permit. These two prohibitions are discussed below.

A. The First Discharge Prohibition

The Permit's first discharge prohibition states:

> Discharges into and from municipal separate storm sewer systems (MS4s) in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in CWC section 13050), in waters of the state are prohibited.

An identical prohibition was challenged by the Copermittees when the 2001 permit was issued. The State Water Resources Control Board, cognizant of the legal issues associated with regulating discharges **into** the MS4, took the novel approach of interpreting the permit to apply only to discharges **from** the MS4. *See* Order No. WQ 2001-15.

The State Board interpretation ostensibly relieves the Copermittees of the requirement that they regulate discharges into the MS4, it ignores the long-standing legal maxim that a document cannot be interpreted in a manner that renders language superfluous. Moreover, it ignores the equally well-accepted principle that words will be given their plain meaning absent a particular definition.

While the State Board *may* abide by its interpretation nothing prevents an non-governmental organization or person, under either the citizen suit provisions of the federal Clean Water Act or California's private attorney general doctrine, from bringing suit claiming that the Copermittee is not

complying with the express provision of the Permit. Thus, Copermittees may be forced to litigate the matter in one of two ways: (a) litigate the matter against the State Board seeking a judicial order that the State Board's interpretation is legal, and thus creating a judicial order binding on other courts as to that issue; or (b) litigating the matter in a citizen suit.

The expedient means of alleviating this problem is to simply re-write the "discharge into" provision so it unambiguously expresses the interpretation articulated by the State Board in Order No. WQ 2001-15.

B. The Second Discharge Prohibition

The second discharge prohibition states:

> Discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited.

This prohibition is overbroad to the extent that it appears to apply to all discharges, regardless of their potential to affect waters of the U.S. or waters of the state. In that regard, this condition could be misconstrued to prohibit dry weather diversions, which divert dry weather urban runoff into sanitary sewers, to the benefit of the receiving waters. This condition should be modified to make clear that it prohibits discharges to receiving waters that have pollutants that have not been reduced to the MEP.

V. OVERREACHING AND VAGUE PERMIT TERMS

A. Overreaching

1. The Permit Terms Exceed 40 C.F.R. § 122.26 (d)(2) Authorization

Section C.2 of the Permit (page 15) requires a "statement certified by its chief legal counsel that the Copermittee *has taken the necessary steps to obtain and maintain full legal authority to implement and enforce* each of the requirements contained in 40 C.F.R. 122.26(d)(2)(i)(A-F) and this Order." (Emphasis added). In particular, the statement shall include a "finding of adequacy of enforcement tools to ensure compliance with this Order." Section C.2 of the Draft Permit (page 15).

A reading of 40 C.F.R. § 122.26(d) does not impose the type of certification required in the Permit. In fact, 40 C.F.R. § 122.26(d)(i) simply states that the permittee must demonstrate that it "can operate pursuant to legal authority established by statute, ordinance or series of contracts. . . ." 40 C.F.R. § 123.25, which imposes the requirements on all state programs, provides no greater authority than that contained in 40 C.F.R. § 122.26(d). Therefore, Section C.2 should be amended to require a certification by the Copermittees' chief legal counsel that the Copermittee has the legal authority to implement and enforce the requirements under 40 C.F.R. § 122.26(d)(i) and the Permit.

2. The Permit Terms Exceed 33 U.S.C. § 1342(k) Authorization

Section A.3.C. of the Permit allows the Board to take action to enforce any provisions of the Permit while the Copermittees prepare and implement the reports required by the iterative process in Section A.3.9. Please explain how this section relates to 33 U.S.C. § 1342(k).

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B. Infringement Upon the Attorney-Client Relationship

As drafted, Section C.2 of the Permit infringes upon the attorney-client relationship. California Rules of Professional Conduct, Rule 3-100(A), provides that "[a] member shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule." It is also the duty of an attorney to counsel or maintain only those actions or proceedings as appear to him or her legal or just. Bus. & Prof. Code § 6068(c). An attorney must employ, for the purpose of maintaining the causes confided to him or her, only those means as are consistent with truth, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law. Bus. & Prof. Code § 6068(d).

Given these rules and statutes, the requirement of the Permit that chief legal counsel state that his or her client has taken the "necessary steps to obtain and maintain full legal authority to implement and enforce each of the requirements contained in 40 C.F.R. 122.26(d)(2)(i)(A-F) and the Order", potentially places the Copermittees' counsels at odds with their clients. It is the duty of counsel to provide advice to their clients and to provide legal support for the actions and proposed actions of their clients. It is not the obligation of counsel to determine the necessary steps or actions a Copermittee must take to implement and enforce the requirements under the Permit. Nor can counsel determine the allocation of resources and the funding sources for implementation. Those decisions are within the exclusive jurisdiction of the legislative body of each Copermittee. Therefore, any opinions held or advice given by counsel regarding the level of adequacy of those decisions remain the work product of the attorney and is the type of communication that, by law, stays between the attorney and the client.

As such, Section C.2 should be amended to state that "[e]ach Permittee shall include as a part of its JURMP a statement certified by its chief legal counsel that the Copermittee has the legal authority to implement and enforce each of the requirements contained in 40 C.F.R. 122.26(d)(i) and this Order." Subsection (d) should also be deleted for the same reasons.

C. Vague and Ambiguous Permit Terms

The Permit contains many provisions that are vague or ambiguous. Consequently, the Copermittees cannot discern how to comply with the Permit's terms, nor can the Board enforce its vague provisions. In certain circumstances, the Copermittees will not know whether their conduct is necessarily proscribed. In other instances, the terms of the Permit fail to provide an ascertainable standard of conduct. Given the vagueness of certain provisions, Copermittees could be subject to arbitrary enforcement for failing to comply with provisions that lack sufficient specificity to permit reasonable compliance.

For example, Sections A and B set forth the general prohibitions under state or federal law pertaining to discharges. However, subsequent sections, such as Sections D (page 15), D.1 (page 15-16), D.2 (page 26), D.3 (page 29), D.4 (page 38), E.2 (page 43) and F (page 46) contain paraphrases of the prohibitions in various forms. Given the inconsistencies between the prohibitions in Sections A and B and the differing versions throughout the Permit, the Copermittees cannot determine if the terms in Sections D through F were intended to prohibit the same conduct as in Sections A and B or expand on those prohibitions. If intended to prohibit the same conduct, there is no reason or benefit in restating the prohibitions. More importantly, restating the prohibitions using different language creates ambiguity. On the other hand, if Sections D through F are intended to prohibit different conduct, no state or federal authorization has been specified. See discussion in Section II above.

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Additionally, Section B.1 (page 12) of the Permit states that "[e]ach Copermittee shall *effectively* prohibit all types of non-storm water discharges . . ." The intended import or meaning of using the term *effectively*, to modify prohibit, is unclear. A strict interpretation would require that Copermittees insure there are never non-storm water discharges. Nevertheless, the language suggests that if a Copermittee prohibited all types of non-storm water discharges, such a prohibition would still not meet the permit requirements because even a single violator would negate the effectiveness of the prohibition. Moreover, the second portion of the sentence, "or not prohibit in accordance with sections B.2 and B.3 below" does not include the term *effectively*, suggesting the drafters intended to distinguish between the two. It defies logic to suggest that someone could be ineffectively prohibited from discharging. The Copermittees are left guessing what conduct is proscribed.

Similarly, Section E.1 (page 43) of the Draft Permit states that "[e]ach Copermittee shall *fully* implement all requirements of section E of this Order no later than July 1, 2007 . . . ." The Section goes on to state that ". . . . each Copermittee shall collaborate with the other Compermittees within its watershed(s) to *at a minimum fully* implement its Watershed URMP . . . ." *Implement* means to put into effect. Oxford American Dictionary, 1986. The term *fully* is superfluous and is not an ascertainable standard of conduct. A Copermittee either does or does not implement the requirements of the section. *Fully* adds nothing to the requirement to put into effect all the requirements of section E of the Order". Moreover, the use of the term *fully* in conjunction with *at a minimum* conveys contradictory requirements.

In addition to these two examples, the following examples also lack an ascertainable interpretation:

- Section B.2 (page 13): ". . . . identifies the discharge category as a *significant source of pollutants* to waters of the United States . . . ." This phrase is not defined and is therefore susceptible to different interpretations.

- Section D.3.a(1) (page 30): "The inventory shall include the name, address (if applicable), and a description of the area/activity, which pollutants are *potentially* generated by the area/activity. . . ." The use of the term potentially is speculative and subjective and can lead to arbitrary enforcement.

- Section E.2.h (page 44): "Annually evaluate the pollutant reduction effectiveness of the *potential* . . . . activities . . . " How does a Copermittee ascertain whether it has properly evaluated the effectiveness of a *potential* activity?

- Section F (page 46): use of the phrase *fully implement* in the first paragraph and implement in the second paragraph, all pertaining to the requirements under Section F creates ambiguity. See above discussion.

The vagueness of the Permit, in many respects, makes it difficult to determine the legal underpinnings of these requirements. The implications of this vagueness are twofold. First, the lack of federal authority raises questions regarding whether the Copermittees are subject to unfunded state mandates. Second, if the Copermittees are subject to requirements outside the scope of Water Code Section 13889, the California Environmental Quality Act applies. For the reasons set forth in this letter,

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we respectfully request that the Regional Board clarify the authority for the requirements found in the Tentative Order prior to its adoption.

VI. LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT THE PERMIT

Issuance of the Permit is a quasi-judicial function. *City of Rancho Cucamonga,* 135 Cal. App. 4th at 1385. As such, substantial evidence must support the findings of the Board. *Id.* at 1386. Substantial evidence is defined as "relevant evidence that a reasonable mind might accept as adequate support for a conclusion". *Bhatt v. Department of Health Services*, 133 Cal. App. 4th 923, 928 (2005). Other courts have defined substantial evidence as evidence of ponderable legal significance in nature, credible, and of solid value. *Ofsevit v. Trustees of California State University of Colleges*, 21 Cal. 3d 763, 773 n.9 (1978).

The opinion of staff has been recognized as constituting substantial evidence. *Coastal Southwest Development Corporation v. California Coastal Zone Conservation Commission*, 55 Cal. App. 3d 525, 535-536 (1976). However, the opinion must still be substantiated and based on factual foundation. *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego*, 2006 DJDAR 5600, 5609 (2006).

Many of the findings contained within section X of the Fact Sheet contain no factual foundation to support the opinions of Board staff. Examples include Sections D.1.f, D.1.g, D.3.a(3), D.3.a(5), D.3.b(3), D.4.a, D.4.b, D.4.d, E.2.

VII. CONCLUSION

This letter addresses some of the legal issues raised by Tentative Order No. R9-2006-0011 ("Permit"). It has been submitted by the legal counsels for the San Diego Copermittees to assist the Regional Board in understanding the serious problems faced by the Copermittees who must raise the funds and implement the Programs required by this Permit. Because the Copermittees understand the importance of implementing the Permit, and are mindful of the long term beneficial environmental and quality of life impact that compliance will engender for the region and its residents, we want to ensure that Permit serves the best interests of the Board and the Copermittees. With this goal in mind, we respectfully request that the Regional Board consider the fiscal and legal issues raised in this letter prior to adoption of the Permit. Without amendments and/or clarifications addressing these issues, we believe the Permit contains flaws and will prevent proper implementation under State law and the Clean Water Act. Thank you for your careful consideration of these issues.

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OF COUNSEL:
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December 12, 2005

TO: Honorable Members of the Regional Water Quality Control Board (San Diego Region)

FROM: James P. Lough

SUBJECT: Funding Issues Under RWQCB – SD Permit No. 2001-01 (December 14, 2005, Item 14)

The purpose of this memo is to provide written comments regarding the Board's workshop discussion on funding alternatives for municipal regional water quality stormwater permits under the National Pollution Discharge Elimination System (NPDES).

While the staff report submitted at the November 9, 2005 meeting indicates that there are no legal issues considered in this workshop, the co-permittees uniformly believe that there are significant legal issues related to continued funding of the San Diego County MS4 Permit. The intent of this memo is to detail some of the funding issues that local governments face in the current permit and potential future amendments.

CURRENT FEE ISSUES

When implementing Permit No. 2001-01, local governments face many challenges. First of all, all local jurisdictions must use general fund revenues to fund this program. These general fund revenues are coming under increasing financial pressure as state and federal funds marked for local government continue to shrink. Law enforcement, fire prevention and many other programs must be funded nearly exclusively by general fund revenues. As an example, the City of Lemon Grove cut law enforcement services by approximately $150,000 for the 2005-2006 fiscal year. At the same time, the City added approximately $150,000 in general fund revenues to the stormwater program. Other cities have had to make similar choices in order to meet the mandates of this program.

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One of the main funding impediments is constitutional. Under Proposition 218, there is no authority for property-related fees for stormwater programs without some sort of vote of the people (*Howard Jarvis Taxpayer Association v. City of Salinas* (2002) 98 Cal.App.4th 1351). In the *Salinas* case, the court held that Proposition 218 did not make an exception to the voter approval requirements for stormwater programs. This requires that all property-related fees dealing with stormwater either be approved by a two-thirds vote as a special tax or through an assessment district process with majority support and special findings of benefit to the ratepayers. (*Knox v. City of Orland* (1992) 4 Cal. 4th 132).

Some cities have resorted to pollution control fees that are non-property related and considered to be solid waste fees. These fees have been approved without an assessment district or a vote of the people. Many cities throughout Southern California, including many of the co-permittees in San Diego have chosen this method.

In choosing this type of fee, the local jurisdiction may not charge more than the reasonable cost for providing the service for which the fee is charged. Any fee that exceeds the cost of service provided to the ratepayer is considered to be an illegal special tax (*Carlsbad Municipal Water District v. QLC Corp.* (1992) 2 Cal.App. 4th 479, 485; Government Code § 50076). The fees must also be reasonable and representative of the proportional costs incurred by the local government (*Associated Homebuilders of the Greater East Bay v. Livermore* (1961) 56 Cal.2nd 847).

The programs in question only charge for services related to pollution cleanup programs related to the pollution caused by the activities of the ratepayers within the boundaries of the co-permittees. To date, the solid waste fee method has not been challenged in San Diego County.

Overall, the co-permittees have used a variety of methods to fund their NPDES programs. General fund revenues, clean water grant funds, developer fees, non-218 solid waste fees and assessments based on special benefit have all been utilized. The fee and assessment based funding methods have only been used to pay for projects that directly benefit the ratepayer or benefit a city-wide program tied to pollution attributable to the ratepayer.

FUTURE PERMIT ISSUES

The Regional Board is currently undergoing an overall review in anticipation of updating the current permit for the San Diego County co-permittees. One of the main issues of concern to co-permittees will be the extent to which the watershed management program requirements will be extended.

Currently, the Permit, under Part J, establishes a watershed urban runoff management program. This program under Items J.2(a)-(i) require coordination, collaboration, education, and implementation of certain cooperative measures. However, the permit does not require any specific programs to clean up watershed problems outside of the jurisdiction of any co-permittee.

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The extension of the watershed management program to a project-based effort will raise serious questions regarding the legal ability of local governments to fund these extra territorial programs. Many of the funding devices used for the current jurisdiction-based programs will not be legally feasible for extra territorial projects.

Currently, developer fees are a significant source of revenue to local governments to pay for the stormwater program. These fees require a reasonable nexus between the development project and the clean up requirements. (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 866-867). The link between a specific development project and a watershed clean up program outside of the jurisdictional boundary of a particular co-permittee will be difficult, if not impossible, to make. The developer's project must have an impact on the pollution caused outside of the City limits, but located in the watershed. Most extra territorial watershed projects will not be cleaning up problems caused by a new development regulated by the co-permittee. It is highly unlikely that these watershed management projects can use developer fees as a source of funding.

The same problems will apply to general fees and assessments currently used to pay for local stormwater programs. A general non-218, non-property-based fee must be based on a connection between the pollution and the ratepayer's activities. Finding this connection for an extra territorial project cannot be made merely because it improves regional water quality. The reasonableness of a link between a city-wide fee and a watershed project outside of the city boundaries will be tenuous at best. For cities that use an assessment method, the primary benefit will not be a special benefit allowing imposition of an assessment. In one jurisdiction, Imperial Beach, this problem extends beyond the borders of the United States. No fee can be assessed on a city-wide basis to treat pollution problems generated in another country.

The lack of a direct connection between a city ratepayer's actions and the general watershed cleanup could open up each co-permittee to legal liability. Since, there are no cases, statutes, or Attorney General's opinions that assists cities in making the direct benefit between a watershed management program and the activities of local ratepayers, any defense would be extremely difficult.

This problem also exceeds the responsibility of co-permittees under federal law. Federal stormwater management requirements are limited to the boundaries of local stormwater systems. Federal regulations place this regulatory limitation on the NPDES program as follows:

> *"Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which there are operators."* (40 Code of Federal Regulations §122.26(a)(vi)).

Watershed management, in most instances, relates to pollution that is not generated and directly discharged into the local MS4. While the permit was imposed on local co-permittees under authority granted by the federal government, costs that exceed those mandated by the federal requirements are considered a state-mandated cost. (Government Code § 17556). Under

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Proposition 1A and its implementing procedure known as the S.B.90 process, local co-permittees may seek state reimbursement for the costs that exceed federal requirements. Costs outside of the boundaries of a jurisdiction that cannot be funded through local fees would be subject to reimbursement. (*Id.*.).

Prior to implementation in the next round of the iterative process, these funding restrictions must be taken into consideration. The inability of cities to fund regional watershed management projects outside of their boundaries must be considered when the permit is amended.

RECOMMENDATIONS

It is recommended that prior to amending permit 2001-01, the funding issues raised in this memo should be addressed. It is recommended the following specific steps be taken by the Regional Board as follows:

1. Assist the co-permittees in seeking legislative help in amending Proposition 218 to include stormwater fees as a property-related service in which fees can be raised without a vote of the people or an assessment district process. Support for Assembly Constitutional Amendment 10 is necessary if the Regional Board desires to protect the funding sources used by local governments.
2. Seek an Attorney General's opinion on the validity of stormwater fees for extra territorial projects. At present there is no authority that could be used by local co-permittees to justify extra territorial expenditures using existing stormwater fee programs. Without the legal support of the Attorney General, it is highly unlikely that any city would impose fees for these purposes.
3. Cooperate with the co-permittees to develop a regional fee program to pay for Phase 2 of the Permit, including watershed management. Working with the local co-permittees will assist both the co-permittees and the Regional Board in understanding and implementing workable pollution protection programs in a non-confrontational manner.

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CC: San Diego County City Managers
San Diego County City Attorneys
John Robertus, Executive Director, Regional Water Quality Control Board, San Diego Region

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INTRODUCTION

This attachment provides Copermittee technical comments on Tentative Order No. R9-2006-011 (Tentative Order). It is augmented by the following appendices, which in most cases provide "track changes" versions of Tentative Order sections or other alternative text:

- Compliance Timelines (Appendix B.1)
- D.1.e.(2)(c), Treatment Control BMP Maintenance Tracking, and D.1.g, Hydromodification (Appendix B.2)
- D.2 Construction Component (Appendix B.3)
- D.3.a Municipal (Appendix B.4)
- D.3.b Industrial and Commercial (Appendix B.5)
- E. Alternative Watershed Urban Runoff Management Program (Appendix B.6)
- Program Effectiveness Assessment (Appendix B.7)
- J. Reporting (Appendix B.8)
- N. (and Attachment) Receiving Waters Monitoring and Reporting Program (Appendix B.9)
- M. Proposed Reorganization of Receiving Waters Monitoring and Reporting Program (Appendix B.10)

For a full accounting of Copermittee comments, each of these documents should be consulted together with the remainder of the Copermittees' submittal. Some minor edits and comments not requiring explanation are also included in the "track changes" appendices, but not described elsewhere. It should be emphasized that in providing "track changes" versions of specific text, the Copermittees are not making proposals or attempting to define what they consider to be practicable or acceptable for any program element or requirement. Rather, these versions are intended to assist in crafting solutions to their concerns about the Tentative Order.

In several cases, requirements of the Tentative Order are compared to those of other adopted Phase I Municipal Stormwater Permits throughout California. These comparisons are based on a review of 24 permits listed on the State Water Resources Control Board Phase I Municipal Program page (http://www.swrcb.ca.gov/stormwtr/phase_i_municipal.html). They are necessary because many sections of the Tentative Order are derived or modified from other adopted permits. While useful for comparison, it is, however, important to emphasize that these permits do not necessarily represent a precedent upon which requirements for the San Diego region can or should be based. Neither the adequacy of the administrative record or factual basis of these adopted permits, nor their applicability to the San Diego region, has been established as part of this review.

Several other sources of information were used to develop the Copermittees' comments:

- Fact Sheet / Technical Report for Tentative Order No. R9-2006-0011
- April 26, 2006 RWQCB Public Workshop (Workshop 1)
- May 15, 2006 RWQCB written responses to Copermittee and Building Industry Association input from Workshop 1

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- May 24, 2006 RWQCB Public Workshop (Workshop 2)
- Additional Copermittee workgroup meetings and consultation
- Consultant review of selected program elements
- Review of California Stormwater Quality Association (CASQA) BMP handbooks and other documents

The Copermittees have attempted to conduct a comprehensive and fair review of all issues and facts associated with the specific provisions of the Tentative Order under review. Particular emphasis has been placed on evaluating the adequacy of, and factual basis for, specific Tentative Order provisions as documented in the Fact Sheet / Technical Report and through subsequent dialogue and correspondence with RWQCB staff.

GENERAL ISSUES

1. First and second year compliance timelines

In evaluating the requirements of the Tentative Order, an issue of particular concern to the Copermittees has been to accurately define the workload increases associated with the implementation of new and revised programs. The Tentative Order contains a considerable number of requirements that must be implemented concurrently, especially over the first and second years of the permit cycle. Appendix B.1 illustrates many of the major task and deliverable deadlines required under the Tentative Order. As shown, a disproportionate amount of the total required work occurs in the first year, and to a lesser degree in the second year.

This illustrates the critical need to identify specific modifications to spread out the workload where possible. A second reason for projecting this workload is to examine each individual timeframe to ensure its sufficiency for completing the required work. Taken together, these considerations have formed an important focus in the Copermittees' review. A small number of needed timeline extensions are identified and discussed further by the Copermittees in this submittal. These include:

- Development and implementation of a Hydromodification Management Plan (HMP),
- Required notifications of industrial and commercial businesses,
- Two-year phased implementation of industrial and commercial business inspection requirements, and
- Development and implementation of standardized fiscal analyses

2. Specifying compliance timelines as time from adoption

Compliance timelines for one-time deliverables should generally be specified as the time elapsed from adoption of the Order rather than as firm dates. This will prevent the need to modify them if the scheduled adoption date is not met.

3. Increases in compliance costs

In numerous instances, the Tentative Order requires new or modified programs that will impose significant additional costs on Copermittees. These include, but are not limited to, the development and implementation of the following programs and activities:

- Hydromodification Management Plan
- Post-construction Treatment BMP Inspections
- Regional Residential Education Plan
- Business Notifications and Inspections
- MS4 Inspection and Cleaning
- Street Sweeping
- Monitoring Programs
- Reporting and Assessment Programs
- Standardized Fiscal Analyses

The Copermittees are continuing to work together to complete a comprehensive evaluation of these costs, and intend to submit updated information on fiscal impacts under separate cover.

4. Restatement of Prohibitions and Receiving Water Limitations

Sections A and B of the Tentative Order establish prohibitions and receiving water limitations that serve as enforceable performance standards for the implementation and assessment of Copermittee programs. In some instances, these directives are re-stated in other sections of the Tentative Order. This includes the following:

Sections D. (intro), D.1, D.1.c, D.1.d, D.2, D.2.a.(2)(a), D.3.a, D.3.b, D.3.b.(4)(a), D.3.c, E.2, and F (intro)

Since anything other than a literal restatement of these standards is likely to create an ambiguity, the presence of these statements in the Tentative Order is problematic for both compliance and enforcement purposes. For example:

Section A.2. states:

> "Discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited."

Whereas, section D.1(1) states:

> Copermittees must implement a program that "reduces the discharge of pollutants from Development Projects to the MEP."

These statements have very different meanings, and may therefore create confusing or conflicting standards for Copermittee compliance.

Similarly, section A.3. states:

> "Discharges from MS4s that cause or contribute to the violation of water quality standards (designated beneficial uses and water quality objectives developed to protect beneficial uses) are prohibited."

Whereas, section D.1(2) states:

> Copermittees must implement a program that "ensures urban runoff discharges from Development Projects do not cause or contribute to a violation of water quality standards."

As above, this restatement actually modifies the meaning of Discharge Prohibition A.3 to make Copermittees responsible for ensuring that discharges from Development Projects do not cause or contribute to a violation of water quality standards rather than simply prohibiting such discharges from the Copermittee MS4.

The Copermittees recommend that each of the sections cited above, as well as the remainder of the entire Tentative Order, be thoroughly reviewed for potential inconsistencies with the language in Sections A and B. To avoid ambiguity and potential internal conflicts, we recommend that they be removed from any sections other than A or B of the Tentative Order.

5. Requirements for "effective" BMPs or other controls

Each of the following sections contain language specifically requiring that BMPs or other controls implemented or required by Copermittees be effective:

Sections D.1.c.(1), D.1.h, D.2.c.(1), D.2.e., D.3.a.(2)(a), D.3.a.(2)(b), D.3.b.(2)(a), D.3.b.(2)(b), D.3.b.(5), D.3.c.(2)(a), D.3.c.(2)(b), and E.2.i.(1)

While the Copermittees agree that BMP selection should focus on the most efficient BMPs wherever possible, we recommend that the term "effective" be removed as a condition of BMP selection from the sections listed. Effectiveness is only one of several factors to be considered in meeting a MEP standard. While the definition of MEP provided in Attachment C of the Tentative Order (which relies primarily on a February 11, 1993 memo from Senior SWRCB Staff Counsel Elizabeth Jennings entitled "Definition of Maximum Extent Practicable") emphasizes technical feasibility, and even the need to choose effective BMPs in achieving a MEP standard, it does not establish an "effectiveness" requirement for each BMP within Copermittees' "minimum sets of BMPs and other measures." Moreover, the MEP definition clearly states that BMP selection should consider effectiveness, regulatory compliance, public acceptance, cost, and technical feasibility. The addition of "effective" to the above sections, absent these other factors, implies that the adequacy of BMPs can be judged solely on their effectiveness.

This requirement is also potentially in conflict with the process for iterative program improvement established in section A.3.a of the Tentative Order, which requires only that BMPs be implemented and modified, augmented, or replaced in response to demonstrated violations of

water quality standards. This is a crucial distinction since the provision establishes a context for evaluating BMP or program effectiveness rather than establishing a stand-a-lone and potentially arbitrary standard for the BMP itself. Similarly, the Tentative Order requires an extensive process for assessing effectiveness. The establishment of BMP ineffectiveness as a violation of the Tentative Order outside of that context appears to present an inconsistency, as well as a potentially significant bias for Copermittees in evaluating BMP effectiveness.

6. Use of the term "fully implement" -- Under the Tentative Order, existing directives to "implement" activities and programs are modified to "fully implement" in the introductory portions of Sections D, E, and F, and Monitoring & Reporting Program section D.7 (Interim Reporting Requirements). These modifications represent a significant change from the existing phrasing of Order No. 2001-01. However, no justification or rationale is provided in the Technical Report.

At the April 24 RWQCB Workshop, the Copermittees requested clarification on what RWQCB staff considers "fully implement" to mean. RWQCB staff agreed that it could be reasonably interpreted to mean "program development or modification is being completed within specified dates, and implementation activities progressing in accordance with specifications or schedules". While this helps to understand staff's thinking on this issue, the modification of this term in the Final Order would still present a vagueness and ambiguity in interpreting the Copermittees' compliance obligations. "Implementation" of Copermittee programs is an ongoing and iterative process over the course of the permit cycle, and as such cannot be "set in stone" upon submittal of a deliverable or the passing of a compliance deadline. To avoid further confusion, and to provide an achievable and enforceable standard for program implementation, the Copermittees recommend replacing each occurrence of "fully implement" with "commence implementation of." See comment IV.B in Part A of this submittal for additional discussion of vague provisions.

7. Use of the term "ensure"

The Tentative uses the word "ensure" inappropriately in at least 38 locations throughout section D. For example, the section D., page 15, states that "Each Copermittee shall ensure that urban runoff discharges do not cause or contribute to a violation of water quality standards." As discussed above, this phrasing would make Copermittees responsible for ensuring that discharges do not cause or contribute to a violation of water quality standards, rather than simply prohibiting such discharges from the their MS4.

In the context of the Copermittees role in implementing oversight programs for industries, such as commercial and industrial businesses, it is not reasonable, nor within an MEP standard, to expect that a Copermittee can ensure that private entities will not discharge pollutants that cause or contribute to a violation of water quality standards.

Each of the sections using the term "ensure" in the Tentative Order should be thoroughly reviewed for potential inconsistencies with the language in Sections A and B. To avoid ambiguity and potential internal conflicts, they should be removed from any sections other than A or B of the Tentative Order.

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PERMIT PROVISIONS

D.1 Development Planning Component

Hydromodification Management Plan (HMP) Requirements

See Appendix B.2, lines 44-200 for a "track changes" version of the Hydromodification section of the Tentative Order.

8. Use of the term "-project" rather than "-development" (Appendix B.2; lines 58, 59, 68, and 125)

Tentative Order sections D.1.g.(1)(a), (c), and (d) use the terms "pre-development" and "post-development." These terms should be replaced with "pre-project" and "post-project" for consistency with the introductory paragraph to section D.1.g, and to clarify that the intent of the hydromodification management plan requirements are to maintain channel characteristics based upon pre-project conditions, not on pre-development or pre-urban conditions.

9. Clarification of language on runoff rates and duration (Appendix B.2; lines 57-62)

The second sentence of the introductory paragraph of Tentative Order section D.1.g states that:

> "The HMP, once approved by the Regional Board, shall be incorporated into the local SUSMP and implemented by each Copermittee so that post-project runoff discharge rates and durations shall not exceed estimated pre-project discharge rates and durations where the increased discharge rates and durations will result in increased potential for erosion or other significant adverse impacts to beneficial uses, attributable to changes in the amount and timing of runoff."

This sentence should be modified as follows:

> "The HMP, once approved by the Regional Board, shall be incorporated into the local SUSMP and implemented by each Copermittee so that post-project runoff discharge rates and durations shall not exceed estimated pre-project discharge rates and durations where the increased discharge rates and durations will result in increased potential for erosion or other significant adverse impacts to beneficial uses, attributable to changes in the discharge rates and durations."

The term "amount and timing" may be interpreted to have a different meaning than "discharge rates and durations," which provides a clearer statement of the intent of the HMP.

10. Removal of requirements to address Erosion Potential (Ep) and Critical Channel Flow (Qc) standards (Appendix B.2; lines 57)

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Tentative Order sections D.1.g.(1)(a) and (b) require that the HMP incorporate an Ep standard, and that an Ep value close to 1 be maintained for channel segments receiving runoff from Priority Development Projects.

The Copermittees recommend deletion of these sections. Since the intent of this section is to require the development of the range of rainfall events to be controlled so as not to cause increased channel erosion, the Copermittees should not be directed to a specific approach, but instead should be required to evaluate and select the most suitable method for identifying the range of events needed to accomplish the goals of the HMP. The Copermittees have consulted with municipalities at Contra Costa County who participated in the development of their HMP, as well as those retained by the Copermittees, who have both recommended that instead of requiring the use of an Ep standard and creek-specific critical channel flow or Qc (this would be an exhaustive undertaking given the number and variability in our region's streams), the Copermittees should instead be required to utilize a literature review, Technical Advisory Committee (TAC), and other applicable input to develop standards and methodologies that are most suitable for the watersheds, climate, and channel systems within the region. Contra Costa County officials, for example, stated via a conference call that they determined that the exhaustive level of analysis to determine an Ep standard in the Santa Clara Valley HMP process simply was not necessary because they were able to utilize a more efficient approach in developing their own HMP. While the Copermittees have not excluded the possibility of using an Ep standard in the methodology, a pre-determined standard may limit the use of other appropriate standards. It is also important to note that none of the previous HMP efforts that have relied to varying degrees on an Ep approach have been implemented, so it is premature to conclude that it would be successful, let alone the best approach for the San Diego region.

The development of the Hydromodification Plan (HMP) will involve an analysis of the numerous watercourses in the permitted area to determine existing channel conditions and stability. Factors such as soil characteristics, channel bed material, cross-sectional dimension, and slope make each watercourse unique. These factors along with the watershed features and hydrology play an important role in the morphology and stability of the watercourses. A significant factor that affects channel erosion is the amount and duration of flows. It is helpful to note, that erosion in a watercourse is most likely to follow hydromodification where:

- Small increases in flow lead to large increases in shear stress (shear stress sensitivity)
- Small increases in shear stress lead to large increases in erosion (low channel resistance).

There are several approaches, ranging in complexity, that can be utilized to determine pre- and post-project channel stability: (1) by looking at the entrenchment ratio, which is the flood prone area cross-sectional width divided by the bankfull width. The ratio of these factors is a primary indicator of stability; (2) evaluation of the ratio of shear stress, or; (3) analysis of fluvial processes, including sediment loading and concentrations as well as other physical characteristics. Channel history, hydraulic and hydrologic conditions are other factors that warrant consideration. To result in a fully implementable plan, the HMP development must also consider the variability in the regions watercourses.

A thorough analysis of the various hydromodification approaches is needed before selecting a recommend course of action. Specifying the inclusion of or method by which the Ep and Qc standards are developed does not allow the Copermittees to conduct the assessment using all of the potential methods, variables and factors that need to be considered.

11. Use of the term "highly developed" rather than "highly impervious" (Appendix B.2; lines 106-107)

The term "highly impervious (e.g., > 70%)" should be replaced with "highly developed (e.g., <30% of the watershed is susceptible to new development). This better the intent of the Tentative Order. Dedicated permanent open space should not be counted towards a less impervious watershed area if there is no possibility of development of the land. Potential runoff characteristic changes that are likely to cause downstream erosion will occur only when undeveloped land is converted to developed land, therefore, the dedicated open space land should not be considered when determining applicability of HMP requirements in any particular watershed.

12. Interim standard requirements (Appendix B.2; lines 122-150)

The interim standards requirements under Tentative Order section D.1.g.(6) should be revised to require project applicants to identify the range of rainfall events to control from their project site to prevent downstream erosion (hydromodification). These changes also include criteria that would relieve a project of the HMP requirements. It is necessary to explicitly describe the conditions where a project should not be required to meet the Interim HMP standards. Several of the criteria are derived from the HMP exclusions already contained in the Tentative Order.

13. Modification of schedule for developing and implementing the HMP (See Reporting Section)

Section J.4. of the Tentative Order prescribes a schedule for completing development and implementation of the HMP. Needed modifications to that schedule are described below. Because some deliverables dates depend on a review and approval process outside the control of Copermittees, they are expressed in the amount of time needed for completion rather than as firm dates.

a. 180 days after permit adoption: Submit a detailed workplan and schedule for completion of the literature review, development of a limiting range of rainfall events, development of guidance materials, and other required information.

   This timeline is in sync with the Tentative Order if the permit adoption maintains its current schedule. During this time, the Copermittees anticipate the formation of a TAC, the formation of an implementation workgroup, and the development of a budget identifying funds to be appropriated from individual Copermittees. The TAC is anticipated to convene, review available literature and methods, and, based on this experience, select a method to develop the range of rainfall events to control for the HMP.

b. 545 days after permit adoption: Submit a progress report on completion of requirements of the HMP.

   Assuming that adoption occurs on the currently projected schedule, this timeline is approximately 6 months behind the schedule contained in the Tentative Order. This additional time is required in order for the Copermittees to solicit proposals, scope and negotiate a contract with a consultant team to develop the HMP, and obtain Board approval for the contract. The current process for developing, bidding, and awarding a contract for this level of work can take up to 6 months. At approximately 18 months after the permit is adopted, the Copermittees will have substantial progress to report – including the progress by the consultant team.

c. Two years after permit adoption: Submit a draft of the analysis that identifies the appropriate limiting storm and the identified limiting storm event(s) or event range(s).

   This timeline is approximately 6 months behind the proposed Tentative Order schedule. As described above, this reflects the additional time needed to award a consultant contract.

d. 180 days after receiving comments or approval to proceed from the Regional Board: Submit the HMP for Regional Board approval.

   It is anticipated that RWQCB staff will prepare comments or written response to the draft of the analysis that identifies the appropriate limiting storm and the identified limiting storm events or event ranges. The Copermittees will need time to address these comments and incorporate appropriate comments and recommendations into the HMP.

e. 180 days after adoption of the HMP by the Regional Board: Incorporate into local SUSMPs and fully implement the HMP for all applicable Priority Development Projects.

   Unless the previous step results in significant delays, the overall schedule for completing this process will be approximately six months more than that proposed under the Tentative Order.

Treatment BMP Maintenance Tracking Requirements

See Appendix B.2, lines 1-39 for a "track changes" version of the Treatment Control BMP Maintenance Tracking section of the Tentative Order.

Tentative Order section D.1.e.(2) requires that Copermittees implement a program to ensure that approved treatment control BMPs are operating effectively and have been adequately maintained. The Copermittees fully support the need to ensure ongoing maintenance of structural controls, but have identified several modifications that should be made to this section. These modifications address three primary issues: (1) setting inspection frequencies that are reasonable and appropriate for a spot inspection program of this type; (2) allowing inspections to be conducted over the entire

year; and (3) providing a reasonable upper limit to total number of annual inspections to be conducted.

14. Inspection requirements proposed under Tentative Order (Appendix B.2; lines 23-30)

Tentative Order Section D.1.e.(2)(c) would require inspections according to the following schedules:

- High Priority Projects -- annual
- Medium Priority Projects -- every other year
- Low Priority Projects -- once during the permit cycle

On average, this would require annual inspections of 100%, 50% and 20% of high, medium and low priority sites, respectively. A review of the Fact Sheet / Technical Report and the RWQCB's May 15, 2006 letter (SWU:10-5000.02phammer) shows that a technical and factual basis for the adoption of these specific frequencies in the Final Order has not been sufficiently demonstrated.

The Fact Sheet / Technical Report discusses the need for a minimum inspection frequency of once per Permit cycle for all BMPs, and from this an additional requirement to inspect 20% (or one fifth) of the total BMP inventory annually is derived. The basis provided for this additional requirement is that "treatment control BMPs are typically recommended to be maintained semi-annually or annually." This justification lacks specific detail or technical support for a minimum inspection frequency. In particular, the use of "typical" recommended maintenance frequencies as a basis for applying a minimum frequency for all treatment BMPs is simplistic and over-reaching. It should be noted that this prescriptive minimum would likely force Copermittees to inspect certain treatment BMPs at a frequency that is excessive for their low maintenance requirements. For example, "natural" treatment BMPs, such as infiltration trenches, vegetated swales and vegetated buffer strips, require low to moderate maintenance, and most maintenance is typically associated with regular landscaping work. These are not "out of sight, out of mind" BMPs with a high risk of neglect, nor of failure due to improper maintenance. While an overall minimum inspection rate per year may be appropriate to define a minimum level of effort for Copermittee programs, Copermittees should determine specific inspection schedules for each type of treatment BMP.

The Fact Sheet / Technical Report also fails to provide any factual basis for the establishment of the specific inspection frequencies proposed for Medium and High Priority BMPs. With regard to drainage inserts only, it states:

> "... projects with drainage insert treatment control BMPs must be categorized as at least a medium priority. This will ensure that such projects will be inspected every other year. Tracking of these projects in this manner is necessary because of the frequent maintenance that drainage inserts require, as well as the sensitivity of drainage insert performance to adequate maintenance. Drainage inserts fill relatively rapidly, causing plugging and bypass, rendering them ineffective."

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Assuming that other concurrently required controls are insufficient to ensure compliance, this may provide a reasonable justification for a once every second year inspection of drainage inserts. It does not, however, provide specific support for a broader requirement to inspect all Medium Priority controls every second year. Moreover, since no additional explanation of the proposed inspection rates for Medium or High Priority controls is provided, the Fact Sheet / Technical Report fails to provide support for their adoption. Similarly, the Regional Board's May 15, 2006 letter (SWU:10-5000.02phammer) responding to issues discussed at the April 25, 2006 public workshop only states that "the Tentative Order's inspection requirements... are based on the frequency with which treatment control BMP maintenance should occur." Again, while the Copermittees agree that a relationship should be established between maintenance frequencies and inspection rates, RWQCB staff has failed to provide any justification for the Medium and High Priority frequencies required in the Tentative Order.

While not a justification in itself, comparison to other existing programs can help to provide perspective, and to establish precedent. For instance, a review of the 26 adopted municipal permits available on the SWRCB's web site shows that 21 do not contain treatment BMP inspection requirements. Of the five Region II Municipal Permits that do have requirements[1], all have identical language requiring Copermittees only to inspect a subset (i.e., high priority treatment BMPs) on an annual basis. None of these require inspection of minimum percentages of inventories or define how treatment BMPs must be prioritized. The Copermittees have also found that the proposed inspection requirements are in excess of similar Regional Board-regulated spot inspection programs. For instance, the City of San Diego's Industrial Pretreatment Program, requires inspection of all high priority facilities annually, but the high priority facilities comprise only 4% of that total inventory.

In conclusion, the Regional Board has not provided specific justification or technical support for the high or medium priority inspection frequencies proposed in the Tentative Order, and the justification provided for requiring inspection of all BMPs once every five years lacks any technical support. It may be reasonable however, that the Permit define a minimum level of inspections to occur annually, provided that Copermittees retain the discretion to determine which BMPs will be inspected each year (i.e., it would not be mandatory to inspect all BMPs on a minimum once per five year cycle). This would allow Copermittees to achieve greater water quality protection by targeting, for example, sites with noted maintenance deficiencies in previous years or sites lacking annual verification.

15. Copermittee alternative to proposed inspection requirements (Appendix B.2; lines 23-30)

The Tentative Order should be modified to incorporate the following Treatment BMP Maintenance Tracking Program requirements:

[1] **Fairfield-Suisun Sewer District in Solano County (Order No. R2-2003-0034), San Mateo Countywide Storm Water Pollution Prevention Program (Order No. R2-2003-0034), Alameda Countywide Clean Water Program (Order No. R2-2003-0021) Contra Costa Clean Water Program (Order No. 99-058), and Santa Clara Valley Nonpoint Source Pollution Control Program (Order No. 01-119 and R2-2005-0035).**

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- Inspection of all (100%) high priority sites annually (in line with other Municipal Permits);
- Inspection of no less than 20% of the total BMP inventory annually;
- Inspection of drainage insert treatment BMPs every other year;
- Eventual limit to the total number of annual inspections to 200% of the average number of BMPs approved annually (see Comment 14).

This alternative would surpass of all other Municipal Permit in the State by establishing a minimum percentage of Copermittee BMP inventories to be inspected annually, and would provide a reasonable, yet aggressive, program to ensure ongoing maintenance of structural BMPs.

Table B.2 compares the minimum numbers of inspections that would be required under the Tentative Order and this revised scenario. For comparison, the scenarios presented in Table B.2 assume an approximately equal division High, Medium and Low Priority BMPs under the Tentative Order scenario and the Copermittee alternative. In addition, 10% of all BMPs approved annually are assumed to be drainage inserts under the Copermittee alternative; however, this percentage may drop in future years with the application of hydromodification requirements. By assuming a total of 100 projects per year, inspection requirements can also be easily compared to rates of approval (i.e., as a percentage of annual approvals). Under this scenario, the Tentative Order would require inspection of 57% of the total BMP inventory in the first year, and this would increase by that amount every year reaching 283% of the annual number of BMP approvals by year five. In contrast, the Copermittee alternative would result in a first year percentage of 38%, and increase to 250% in the fifth year.

Table B.2. Annual Projections of Project Approvals and Inspection Requirements

CUMULATIVE PROJECT APPROVALS (Based on 100 projects per year)							
Total Approvals by Priority	Year 1	Year 2	Year 3	Year 4	Year 5	Yr 10	Yr 15
High Priority Approvals (30%)	30	60	90	120	150	300	450
Medium Priority Approvals (35%)	35	70	105	140	175	350	525
Low Priority Approvals (35%)	35	70	105	140	175	350	525
Cumulative approvals	100	200	300	400	500	1,000	1,500
REQUIRED INSPECTIONS UNDER TENTATIVE ORDER							
	Year 1	Year 2	Year 3	Year 4	Year 5	Yr 10	Yr 15
High Priority Inspections (100%)	33	66	99	132	**165**	330	495
Medium Priority Inspections (50%)	17	34	51	68	**85**	170	255
Low Priority Inspections (20%)	7	13	20	26	**33**	66	99
Total Annual Inspections	57	113	170	226	**283**	566	849
Minimum Inspections (20% of cumulative approvals)	20	40	60	80	**100**	200	300
REQUIRED INSPECTIONS UNDER COPERMITTEE PROPOSAL							
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15
High Priority Inspections (100%)	33	66	99	132	**165**	330	495

Drain Insert Inspections (50%)	5	10	15	20	**25**	50	75
Total Annual Inspections	38	76	114	152	**190**	380	570
Minimum Inspections (20% of cumulative approvals)	20	40	60	80	100	120	140
Maximum Inspections (200% of average annual approvals)	200	200	200	200	200	**200**	**200**

It bears emphasis that a reduction in inspection frequencies from those proposed under the Tentative Order cannot be considered a reduction in water quality protection per se since those benefits have not been demonstrated. Even with lower inspection frequencies more appropriate for a spot inspection program, the threat of inspection would continue to provide an effective tool to ensure proper maintenance by responsible parties. It is notable that, in addition to the proposed inspection frequencies, a variety of other compliance assurance mechanisms would still be required, including:

- Submittal of proof of a mechanism (i.e., maintenance agreements) prior to permit issuance which will ensure ongoing long-term maintenance of all structural post-construction BMPs,
- BMP verification inspections prior to occupancy of the site,
- Submittal of annual maintenance verification by the responsible party to the Copermittee, and
- Establishment of enforcement mechanisms to ensure compliance.

As a final consideration, the Copermittees' modifications place an appropriate emphasis on the likely cost and staffing impacts associated with the proposed levels of implementation. Although these factors are clearly a necessary consideration in determining practicability, the Fact Sheet / Technical Report provides no such analysis.

16. Limits on total numbers of annual inspections (Appendix B.2; lines 29-30)

As shown in Table B.3, the Copermittee alternative includes an upper limit on required inspections of 200% of the average annual number of treatment BMP project approvals. While total workload would not exceed this limit under the conditions assumed in Table B.3, this limit is relevant under other scenarios. Projecting the Copermittees' fifth-year inspection workload under a range of conditions, additional analysis shows that the Tentative Order requirements would result in a lower limit of 256 inspections if only 25% of the projects are High Priority, and as much as a 419 for an inventory consisting of 75% High Priority Projects. By comparison, the Copermittee alternative ranges from 190-400. Clearly, without an upper limit both scenarios could result in levels of inspection that are unacceptable to the Copermittees.

200% of the average annual number of treatment BMP project approvals is roughly equivalent to a 40% per year maximum over five years except that, by expressing it as a percentage of annual approvals, the higher value is essentially fixed during the first year of implementation.

Establishing a reasonable level of budgeting certainty through an upper limit to inspections is critical since the Tentative Order would require Copermittees to inspect an increasing number of

BMPs each year in perpetuity. Copermittees must be able to anticipate and reasonably control potential workload and costs in ensuing permit years. Additionally, as their programs mature, continued effective program implementation will result in higher rates of compliance, and Copermittees and responsible parties will continue learning through an iterative maintenance and inspection process. As the program increases in its sophistication, rate of inspections should reach a static level, provided that the program effectiveness continues to be demonstrated.

It is neither reasonable nor acceptable to adopt inspection requirements that would increase each year without consideration for their fiscal impact on Copermittees, or for program improvements that will inevitably occur over the permit cycle. An upper limit on inspections is essential for the Copermittees to support any proposed scenario.

17. Year-round inspections

As Tentative Order Section D.1.e.(3) is written, only inspections conducted during the five-month dry season (May through September) could be counted toward the mandated inspection requirements. In their May 15, 2006 response to Copermittee comments (SWU:10-5000.02phammer), RWQCB staff acknowledges that it may be appropriate to inspect lower priority treatment control BMPs during the wet season. A year-round treatment BMP inspection program would increase the program's ability to ensure compliance by maintaining a constant the threat of inspection, especially during the winter when adequate BMP operation is critical. Additionally, by encouraging winter inspections, Copermittees would have greater opportunities for identifying non-compliance and learning maintenance issues.

RWQCB staff's May 15 letter also indicated that "the types of BMPs proposed to be inspected during the dry and wet season should be clearly stated" by the Copermittees. This requested detail is unnecessary in evaluating the merits of this proposed modification. It should also be noted that neither the Fact Sheet / Technical Report nor staff's May 15 letter provide a factual basis for the restriction of all BMP inspection work to the dry season.

D.2 Construction Component

See Appendix 1.2 for a "track changes" version of the Construction Component section of the Tentative Order.

18. Elimination of the term "full compliance" (Appendix B.3; line 9)

Tentative Order section D.2.a.(1) (Construction) requires:

> "Within 365 days of adoption of this Order, each Copermittee shall review and update its grading ordinances and other ordinances as necessary to achieve full compliance with this Order, including requirements for the implementation of all designated BMPs and other measures."

As described previously (see comment 6), use of the term "full" presents a vagueness and ambiguity in interpreting the Copermittees' compliance obligations. Moreover, this phrasing is inconsistent with that used in the introductory text of other parallel sections of the Tentative Order (D.1, D.3.a, D.3.b, D.3.c, D.5, etc.). It therefore appears that its inclusion in this section is an oversight. The word "full" should be removed.

19. Monthly updates of construction site inventories (Appendix B.3; line 28)

The Tentative Order requires that construction site inventories be compiled monthly instead of annually as is now required under Order No. 2001-01. The Fact Sheet / Technical Report states that the reason for this modification is to ensure the Copermittees have a more accurate inventory of construction sites within their jurisdictions, and to assist them in ensuring that all sites are inspected per Order requirements. This appears to confuse the "snapshot" inventories that are produced to comply with the Order and the databases that are used to produce those "snapshots." For example, the County Department of Planning and Land Use (DLPU) maintains a database of active permits for private development. The November 2005 "snapshot" inventory produced for the County's FY 04-05 JURMP Annual contained 4,434 individual permits. Producing "snapshots" of this or other large databases on a monthly rather than annual basis would be excessive since that "snapshot" plays little, if any, role in the assigning or managing inspection workload. Rather, that is a function of the database itself and other reports that are generated from it. So long as Copermittees regularly update their databases, and this information is used to accurately schedule and track stormwater inspections, the Copermittees are meeting their compliance obligations. It should be no concern of RWQCB staff how often the "snapshots" are produced. The fact that Copermittees will not be required to submit to the RWQCB them further underscores their limited value.

Neither of the stated objectives of this program modification (ensuring that Copermittees have a more accurate inventory of construction sites within their jurisdictions, and assisting them in ensuring that all sites are inspected per Order requirements) provides a sufficient factual basis for the specific requirement of monthly rather than annual inventory updates. The annual frequency required under Order No. 2001-01 should continue.

20. Organization of BMP requirements (Appendix B.3; lines 38-71)

BMP implementation requirements are categorized by sub-heading for increased clarity.

21. Pollution prevention requirements (Appendix B.3; line 40)

Pollution prevention requirements have been moved from a separate section into the BMP requirements. In doing so, the phrase "where appropriate" has been omitted. The Fact Sheet / Technical Report does not provide an explanation for this change. For consistency with other sections of the Order, "where appropriate" should be restored to this requirement. The requirement of pollution prevention practices at all construction sites, as would be required by the Tentative Order, is neither reasonable nor achievable. If the modification of this requirement is intentional, a factual basis for that change should be provided.

22. Advanced treatment methods (Appendix B.3; lines 88-95)

Advanced treatment is removed as a BMP requirement and moved to its own section to emphasize that this control should be used only under special circumstances. This will clarify the need to consider threat, appropriateness, and effectiveness.

23. Conditions on the use of erosion prevention and sediment control methods (Appendix B.3; lines 61-64)

Tentative Order section D.2.c.(1)(c) modifies existing requirements for the use of erosion prevention methods by adding a condition that they may "never be used as the single method." This parallels an existing requirement under Order No. 2001-01 that sediment control methods may never be used exclusively. The Copermittees do not object to the proposed modification for erosion prevention, but have determined that the existing language regarding sediment control should be modified to remove the restriction. This change would provide recognition that sediment controls must be used exclusively in some cases. Projects, such as roadway widening and pipeline replacement projects in paved roads, are constructed such that the disturbed soil is lower in elevation than the surrounding area. The soils extracted from these projects are hauled away or stockpiled at offsite locations. For these types of projects, only good housekeeping practices and sediment controls would be appropriate and applicable onsite in protecting downstream inlets, work perimeters and activities. The suggested modifications to the draft permit language would retain the existing emphasis on the role of sediment control as a supplement to erosion prevention.

24. 1-acre inspection thresholds (Appendix B.3; lines 107 and 122)

These requirements are modified to clarify that 1-acre inspection thresholds refer to disturbed soil only. This is consistent with the recommendations of the Copermittees' Report of Waste Discharge and the County's November 2005 draft permit language. It is important that these thresholds be tracked as disturbed acreage rather than site size because that is the threshold for coverage under the Statewide General Construction Permit. Deviations from that value would unnecessarily require the Copermittees to track two separate thresholds, one for verifying Construction Permit coverage, and one for determining their own inspection frequencies.

It does not appear that RWQCB staff intentionally drafted a standard different from that of the Construction Permit. In fact, the Fact Sheet / Technical Report erroneously describes Tentative Order requirements for high and medium priority sites as follows:

> "High priority sites are identified as all sites greater than 50 acres, or greater than 1 acre and tributary to a CWA Section 303(d) water body impaired for sediment or discharging directly to a ESA. Medium priority sites are all sites causing soil disturbance of one acre or more that are not a high priority."

If a different definition of these two thresholds is intended, a factual basis for that change should be provided.

25. Documentation of inspections (Appendix B.3; lines 139-140)

The Tentative Order requires the "creation of a written record" for each inspection conducted. Since the Fact Sheet / Technical Report has not provided a factual basis for this change, the requirement should be modified to require "documentation" rather than a written record per se. This would allow Copermittees to avoid creating unnecessary reports of inspections of compliant sites, i.e., to create the written record only where it is warranted by the inspection results. So long as the Copermittees meet their obligations to conduct site inspections and report the results of those inspections as necessary to meet the requirements of the Order, the specification of particular methods of documentation is unnecessary.

D.3.a Municipal Component

See Appendix B.4 for a "track changes" version of the Municipal Component section of the Tentative Order.

MS4 Operations & Maintenance

Tentative Order section D.3.a(3) requires that Copermittees implement a schedule of inspection and maintenance activities to ensure proper operation of all municipal structural treatment controls, and provides specific directives regarding the inspection and cleaning of catch basins, storm drain inlets, and open channels. Per the Fact Sheet / Technical Report, the stated intent of this section is to require the Copermittees (1) to inspect and remove waste from their MS4s prior to the rainy season, and (2) to aid them in determining cleaning priorities.

Revisions to this section of the Tentative Order are needed in three areas. First, all MS4 facilities do not require annual inspections. Second, it is not reasonable in all instances to clean any visible accumulated waste. Third, conducting this work only within a 5-month period from May to September presents difficulties in managing workload and may in some instances be detrimental to water quality.

Copermittee public works programs continue to apply considerable experience gained prior to and during this permit cycle in inspecting and prioritizing maintenance of their storm drain systems, streets, and parking areas. These programs have always operated under public expectation to perform these critical services in an effective and cost-efficient manner.

26. Conditions specified in any other individual, general, or regional permit (Appendix B.4; lines 56-58)

The US Army Corps of Engineers, Los Angeles District has issued Regional General Permit No. 53 for flood control maintenance activities for the County of San Diego. This general permit

allows maintenance of drainage facilities on a periodic basis to minimize flood risks in the unincorporated areas of the County. Drainage facilities maintenance involves sediment and/or vegetation removal between September 15 and February 15 of each year. Adherence to the May through September restriction for MS4 inspection currently required in the Tentative Order would allow only 15 days per year for the County to complete its O&M program for open channels. There may be other instances of local, state, or federal permits that establish conditions regarding MS4 inspection and maintenance for Copermittees either now or in the future. These should all be anticipated in the introductory language of this section. The Copermittees have added language to clarify that such conditions would take precedence.

27. Classification of catch basins, storm drain inlets, and open channels as high, medium, or low priority (Appendix B.4; lines 60-65)

The Tentative Order treats all catch basins, storm drain inlets, and open channels equally without differentiating as to the priority level. The Copermittees' modified language classifies all facilities as High, Medium, and Low Priority, adopting the same categories used elsewhere in the Tentative Order for street sweeping. This approach, already adopted in the Los Angeles County Municipal Permit[2], is needed to provide a basis for making seasonal distinctions in inspection and cleaning activities, and for the establishment of an as-needed inspection frequency where appropriate (see below).

28. Modification of inspection frequencies / seasonal restrictions (Appendix B.4; lines 66-73)

Rather than assuming that all inspection and cleaning work can and should be conducted within a five-month window, the Order should require Copermittees to distribute their efforts over the portions of the year that they determine most appropriate. It is unreasonable to require that inspection and cleaning work be completed between May and September for all facilities. Nor is it always best for water quality protection, as some portions of the storm drain system require maintenance during the winter months. Additionally, it makes sense to inspect for problems during the rainy season when problems will be most evident.

The Copermittees' modified language retains a preference for conducting work prior to the rainy season by retaining that requirement for High Priority facilities, but allows Medium and Low Priority facilities to be inspected when Copermittees determine appropriate. It additionally provides for the reduction of Low Priority facility inspections to an as-needed frequency that is less than annual, but not less than biannual. These changes are consistent with the CASQA Municipal BMP Handbook[3], which recommends only that catch basins, storm drain inlets, and other conveyance structures in high pollutant load areas be cleaned before the wet season to remove sediments and debris accumulated during the summer.

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[2] County of Los Angeles and the Incorporated Cities Therein except the City of Long Beach (Order No. 01-182)

[3] California Stormwater Quality Association (CASQA) Stormwater Best Management Handbook: Municipal. January 2003

29. Inspection and cleaning on an as-needed basis (Appendix 1.3; lines 71-73)

Tentative Order section D.3.a.(3)(b)i and ii require that all open channels, catch basins, and storm drain inlets be inspected annually. While it may be reasonable to establish an annual inspection frequency as a default, Copermittees should retain the discretion to establish other less stringent schedules that they can demonstrate to be appropriate (e.g., based on experience, observation data, or other appropriate factors). Per the Technical Report, one of the stated intents of this section is to aid Copermittees in determining cleaning priorities. However, the Copermittees already have considerable experience prior to and during this permit cycle in inspecting and prioritizing maintenance of their storm drain systems. Existing inspection schedules, which are already prioritized, reflect that knowledge. While improvements to existing programs can likely be made, Copermittee experience and expertise should not be wholly supplanted by "one size fits all" minimum frequencies, especially where that experience has shown annual inspections not to be needed. The Tentative Order, as currently worded, would in many cases force Copermittee cleaning efforts away from critical areas into those with little or no material to remove, thereby reducing the effectiveness of program efforts.

The inspection and cleaning frequencies proposed by the Copermittees follow the general approach recommended in the California Stormwater Quality Association (CASQA) Municipal BMP Handbook and numerous adopted NPDES Permits across the state by directing resources and effort to higher priority areas. The approach also allows for reduction in inspections in the lowest priority areas where data demonstrates inspection and cleaning is not necessary on an annual basis.

30. Triggers for cleaning of accumulated waste (Appendix B.4; lines 74-79)

The accumulation of any visible waste is not a reasonable criterion for triggering cleaning unless such accumulation is likely to result in discharges from those devices. Many devices are designed to function effectively with some accumulation of waste. The Copermittees' recommend that catch basins, inlets, and open channels be cleaned when at 40% of their design capacity. Although conservative, this standard is consistent with other adopted permits in southern California[4], and conforms to the standard recommended in the CASQA Municipal BMP Handbook.

31. Timeframes for cleaning accumulated waste (Appendix 1.3; lines74-79)

As worded, the Tentative Order implies that accumulated waste can be immediately cleaned in all instances. The Copermittees' modified language provides a more reasonable standard for conducting cleaning in response to inspection results by clarifying that practical considerations must be a part of scheduling this work. It requires that facilities be cleaned "in a timely manner, and as early as reasonably possible, considering all relevant factors (the need for environmental permits and clearances, traffic interruption, worker safety, availability of equipment, etc.)."

[4] **City of Long Beach (Order No. 99-060), Ventura County (Order No. 00-108), and County of Los Angeles (Order No. 01-182)**

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Sweeping Street Sweeping Prioritization and Frequencies

32. Modification of sweeping priority classifications to include only facilities with curbs and gutters (Appendix B.4; lines 104-105)

The Tentative Order section requires sweeping of all roads, streets, highways, and parking facilities, and requires specific frequencies based on volumes of trash generated. The Fact Sheet / Technical Report states that this requirement has been added to ensure that Copermittees are conducting sweeping, but does not provide a rationale for the mandated frequencies (biweekly, monthly, annual, and after special events) or explain the anticipated water quality benefits associated with them.

Street sweeping priorities should be modified to include only curbed and guttered roads, streets, highways, and parking facilities. This eliminates the need for a separate provision to decrease frequency based on average daily traffic or other factors, and brings this requirement into conformance with each of the six other permits in the state containing prescriptive sweeping requirements[5].

Research into street sweeping effectiveness indicates that accumulation of dirt and associated pollutants depends in large part on whether the street is curbed. For example, a 1992 study in Virginia found that 90 percent of the roadside dirt accumulates within the first foot of the curb, and a Federal Highway Administration study suggests that eliminating curbs allows scattering of particulates onto vegetative areas and can reduce buildup of street dirt and pollutants.[6] The Tentative Order should therefore be modified to separate unimproved streets and parking areas from the prescribed street sweeping frequencies.

33. Modification of special event definition (Appendix B.4; lines 120-121)

Tentative Order section D.3.a.(5)(d) requires that:

> "Roads, streets, highways, and parking facilities shall be swept following any special events (festivals, sporting events, etc.) at those locations."

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[5] City of Long Beach (Order No. 99-060), County of Los Angeles and the Incorporated Cities Therein except the City of Long Beach (Order No. 01-182), Ventura County Municipal NPDES Storm Water Permit (Order No. 00-108), City of Stockton and County of San Joaquin (Order No. R5-2002-0181), City of Modesto, Stanislaus County (Order No. R5-2002-0182), and County of Sacramento, and applicable cities (Order No. R5-2002-0206).

[6] Zarriello, P.J., Breault, R.F., and Weiskel, P.K. (2003). *Potential Effects of Structural Controls and Street Sweeping on Stormwater Loads to the Lower Charles River, Massachusetts* (U.S. Geological Survey Water-Resources Investigations Report 02-4220). Northborough, Massachusetts: U.S. Geological Survey, p. 13.

A review of other municipal permits in the state clearly indicates that this requirement was derived from language already existing in several other permits[7]. However, while each of them applies specific conditions to "any special event that can be reasonably expected to generate substantial quantities of trash and litter," the Tentative Order broadens that definition to all special events. A factual basis for that change has not been provided in the Fact Sheet / Technical Report. The Tentative Order should be modified to conform to the definition used in these other permits, or a factual basis should be provided for this important change.

34. Modification of requirements for special events to include a range of control options (Appendix B.4; lines 124-133)

Since the intent of this requirement is presumably to ensure that special events do not result in the discharge of pollutants to the storm drain system, it makes sense to allow a reasonable range of options for doing so. Each of the permits referenced above contains additional options for preventing pollutant discharges. These are:

- Either temporary screens placed on catch basins or catch basins cleaned out subsequent to the event and prior to any rain event (County of Los Angeles),
- Include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event (City of Stockton), and
- As part of the special use permit issued for the event, requiring the proper management of trash and litter (County of Sacramento)

Additionally, the CASQA Municipal BMP Handbook recommends only that Copermittees consider increasing sweeping frequency for streets in special problem areas such as special events, high litter or erosion zones, not that they sweep after every special event.

However, the Tentative Order requires that sweeping be conducted by Copermittees after all special events, i.e., as the only alternative for ensuring that these events do not result in the discharge of pollutants to the MS4. This Permit section should acknowledge that there are multiple methods and practices the Copermittees and the responsible parties conducting special events could employ to adequately prevent pollutant discharges. The Copermittees have included alternative language that would allow such options to be pursued.

A factual basis for the inclusion of this element or the restriction of control options has not been provided in the Fact Sheet / Technical Report. The Tentative Order should be modified to allow at least all of the options used in these other permits, or a factual basis should be provided for this important change. This justification should also address how the requirement is consistent with CWC section 13267, which prohibits the RWQCB from specifying the manner of Copermittee compliance.

[7] **County of Los Angeles and the Incorporated Cities Therein except the City of Long Beach (Order No. 01-182, City of Stockton and County of San Joaquin (Order No. R5-2002-0181), and County of Sacramento, and applicable cities (Order No. R5-2002-0206).**

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D.3.b Industrial and Commercial Component

See Appendix B.5 for a "track changes" version of the Industrial and Commercial section of the Tentative Order.

35. Reorganization of subsections (Appendix B.5; throughout)

Some reorganization of this section has occurred to accommodate other specific changes. Since the movement of text within the section did not involve specific textual edits, it is not described further. Other specific edits are shown in "track changes."

36. Division of stationary and mobile commercial sources (Appendix 1.4; lines 24-53)

The list of commercial facilities required to be included in Copermittee inventories has been divided into stationary and mobile sources. Since the Tentative Order establishes new requirements for mobile sources, this change will make it easier to determine where they apply.

37. Modification of inspection targets (Appendix B.5; lines 117-131)

Tentative Order section D.3.b.(3)(c) requires that:

> "At a minimum, 40% of the sites inventoried as required in section D.3.b.(1) above (excluding mobile businesses) shall be inspected each year."

Section D.3.b.(3)(b) additionally requires that each Copermittee annually inspect all sites determined to pose a high threat to water quality.

Per the Fact Sheet / Technical Report, a 40% value is consistent with current Copermittee levels of effort (56% in FY 2002-03 and 47% in FY 2003-04). These conclusions are based on an incomplete analysis of Copermittee inspection data. The Copermittees have conducted additional analysis to characterize current levels of Copermittee inspection effort. This analysis involves compiling the results of all industrial and commercial inspection activity for each Copermittee during the last three fiscal years (FY 2002-03, 2003-04, and 2004-05) and comparing these numbers to the most current estimate of each Copermittees' business inventories (i.e., as an inspection rate). Table B.3 provides the detailed results of this analysis. Results are also plotted in Figure B.1.

Based on these results, the Copermittees have determined that that average inspection rate for all Copermittees over the past three years is 26.5% of the total inventory, and 28.3% for FY 2004-05 only. It is important to note that these numbers are generally low since the inventories described in Copermittee JURMP Annual Reports are usually underestimated. The one adjustment that was made in calculating the regional averages was to modify the City of San Diego's totals. While they reported a figure of 9,306 for FY 2004-05, this total was adjusted upward to 21,913 based on an inventory review they recently contracted. Additionally, overall percentages are likely to be

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low because a number of Copermittees only report inventories of a subset of facilities covered under Order No. 2001-01. Finally, the Tentative Order requires the addition of two new regulated source types, building material retailers and storage, and animal facilities.

Based on all of these considerations, the Copermittees recommend that the 40% inspection requirement be revised to 25%. In reality, existing Copermittee levels may be considerably below that. The requirement to inspect 100% of High Priority Facilities would remain unchanged.

The Copermittees have reviewed their inventories and inspection statistics (including anticipated inventory increases under the revised Order), and concluded that 40% is generally above current inspection levels, and that considerable additional resources would be needed by many Copermittees to reach this level. Modifying this rate to 25% is consistent with the explanation of RWQCB staff in their May 15 letter because it represents a general average of the Copermittees inspection efforts as a whole. Since a factual basis has not been established for increasing these levels, they should remain at current levels.

Finally, it provides a workable approach to incorporating third-party inspections to meet the Copermittees inspection obligations. In doing so, a requirement to incorporate appropriate QA/QC has been added.

38. Phased implementation of inspection targets (Appendix B.5; lines 117-131)

As shown in Figure B.1, even at a 25% inspection target, almost half of the Copermittees would need to increase their inspection activities. To accommodate these Copermittees, a two-year timeline has been added to the alternative language for Copermittees currently below the required levels to ramp up their efforts. The first year requirement would be 20%, and this would increase to 25% for every year thereafter. For high priority facilities, these values would be 50% and 100%, respectively.

39. Use of third party inspections (Appendix B.5; lines 164-183)

Section 3.b.(3)(d) provides "voluntary" options for conducting compliance verification that are above and beyond the minimum inspection requirements. As currently drafted, there is little, if any, reason for Copermittees to seriously consider using any of these options. The ROWD and the draft Permit language submitted by the County both recommended the inclusion of such methods as an integral part of the Copermittees' overall compliance verification strategy.

Copermittee inspections are not always the most appropriate or cost-effective way to verify compliance, especially for municipalities with relatively large business inventories. 3rd party inspections can provide a cost-effective means of supplementing Copermittee site inspections to assess compliance at a variety of business types. While the use of such methods should include appropriate limitations (e.g., based on threat to water quality or characteristics of the business type) and quality assurance controls, Copermittees should retain the discretion to use these methods to meet their basic compliance verification mandates in an effective and cost-efficient manner.

Table X.X. Summary of Industrial and Commercial Inspection Results (FY 2002-03 through 2004-05)

Land Use	Commercial									Industrial								
	FY 02-03			FY 03-04			FY 04-05			FY 02-03			FY 03-04			FY 04-05		
	Inventory	Inspected	% Inspected	Inventory	Inspected	% Inspected	Inventory	Inspected	% Inspected	Inventory	Inspected	% Inspected	Inventory	Inspected	% Inspected	Inventory	Inspected	% Inspected
Carlsbad	864	351	**40.6%**	1108	241	**21.8%**	563	236	**41.9%**	862	377	**43.7%**	857	182	**21.2%**	510	253	**49.6%**
Chula Vista	747	104	**13.9%**	506	115	**22.7%**	624	60	**9.6%**	160	160	**100.0%**	66	43	**65.2%**	48	48	**100.0%**
Coronado	75	36	**48.0%**	73	42	**57.5%**	77	77	**100.0%**	3	3	**100.0%**	3	0	**0.0%**	0	0	**NA**
Del Mar	47	15	**31.9%**	46	3	**6.5%**	46	7	**15.2%**	2	2	**100.0%**	2	2	**100.0%**	2	1	**50.0%**
El Cajon	709	0	**0.0%**	321	152	**47.4%**	321	105	**32.7%**	79	79	**100.0%**	33	33	**100.0%**	29	29	**100.0%**
Encinitas	488	207	**42.4%**	407	85	**20.9%**	439	162	**36.9%**	3	3	**100.0%**	2	2	**100.0%**	3	3	**100.0%**
Escondido	1290	1016	**78.8%**	1293	1194	**92.3%**	1410	1297	**92.0%**	385	154	**40.0%**	266	253	**95.1%**	343	343	**100.0%**
Imperial Beach	80	0	**0.0%**	127	10	**7.9%**	105	32	**30.5%**	2	2	**100.0%**	1	1	**100.0%**	1	0	**0.0%**
La Mesa	354	189	**53.4%**	349	103	**29.5%**	265	22	**8.3%**	135	23	**17.0%**	97	83	**85.6%**	71	30	**42.3%**
Lemon Grove	223	223	**100.0%**	198	138	**69.7%**	137	88	**64.2%**	23	23	**100.0%**	29	29	**100.0%**	29	29	**100.0%**
National City	462	373	**80.7%**	471	136	**28.9%**	471	104	**22.1%**	330	41	**12.4%**	294	166	**56.5%**	330	166	**50.3%**
Oceanside	546	365	**66.8%**	570	330	**57.9%**	625	348	**55.7%**	327	214	**65.4%**	331	107	**32.3%**	381	126	**33.1%**
Poway	267	267	**100.0%**	292	9	**3.1%**	309	27	**8.7%**	228	228	**100.0%**	233	21	**9.0%**	297	61	**20.5%**
San Diego	7525	3267	**43.4%**	7525	3703	**49.2%**	5574	4469	**80.2%**	1227	80	**6.5%**	1227	382	**31.1%**	3732	382	**10.2%**
San Marcos	517	422	**81.6%**	517	0	**0.0%**	846	256	**30.3%**	23	22	**95.7%**	863	23	**2.7%**	988	63	**6.4%**
Santee	372	162	**43.5%**	372	58	**15.6%**	330	9	**2.7%**	422	67	**15.9%**	422	67	**15.9%**	370	78	**21.1%**
Solana Beach	90	26	**28.9%**	87	82	**94.3%**	88	57	**64.8%**	2	2	**100.0%**	1	1	**100.0%**	1	1	**100.0%**
Vista	603	219	**36.3%**	676	270	**39.9%**	805	257	**31.9%**	221	117	**52.9%**	224	69	**30.8%**	267	79	**29.6%**

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40. Collaborative approaches to regulating industrial and commercial sites/sources (Appendix B.5; lines 203-208)

The Tentative Order encourages collaborative approaches to regulating mobile businesses. The encouragement of collaborative approaches should be extended to stationary facilities, and further emphasized by extending deadlines for required notifications. The Copermittee alternative makes specific changes to that effect.

41. Modifications to first-year notification requirements for businesses (Appendix B.5; lines 210-218)

This section requires that all businesses in the Copermittees' inventories be notified of their BMP requirements in first year of JURMP implementation. This requirement should be modified to extend that timeline to two years generally, and three for Copermittees participating in collaborative programs. This will provide a more reasonable timeframe for Copermittees to update their inventories, establish new or modified BMP requirements, develop notification materials and strategies (which must be business-specific), and complete the notifications. For Copermittees choosing to pursue collaborative approaches to any or all business types, this extra year will be needed to develop common standards and strategies.

D.4 ICID Component

42. Numeric Action Level Criteria
Tentative Order section D.4.d.(1) specifies:

> "Each Copermittee shall develop/update and utilize numeric criteria action levels to determine when follow-up investigations will be performed."

The Copermittees recommend modification as follows:

> "Each Copermittee shall develop/update and utilize action level criteria to determine when follow-up investigations will be performed."

Numeric criteria action levels are not appropriate for all constituents monitored in the dry weather monitoring programs. The Copermittees currently have a Dry Weather Monitoring Workgroup that has developed regional action level criteria to be used to determine when follow-up investigations will be conducted. These action levels include both numeric values and best professional judgment.

Best professional judgement is reserved for pH, turbidity and temperature. These parameters can be influenced by factors not related to an ICID event. When these parameters are the result of a significant illicit connection or illegal discharge, they are usually accompanied by other signs detectable by field screening.

43. Follow-up times for dry weather field screening investigations

Tentative Order section D.4.d.(2) specifies:

> "Within 48 hours of receiving dry weather field screening or analytical laboratory results that exceed action levels, the Copermittees shall either conduct an investigation to identify the source of the discharge or provide the rationale for why the discharge does not pose a threat to water quality and does not need further investigation. Obvious illicit discharges (i.e. color, odor, or significant exceedances of action levels) shall be investigated immediately."

The Copermittees recommend modification as follows:

> "Within two business days, where applicable, of receiving dry weather field screening or analytical laboratory results that exceed action levels, the Copermittees shall either conduct an investigation to identify the source of the discharge or provide the rationale for why the discharge does not pose a threat to water quality and does not need further investigation. Obvious illicit discharges (i.e. color, odor, or significant exceedances of action levels) shall be investigated immediately."

A 48-hour turnaround time for follow-up investigations based on field results is generally achievable. However, when initial investigations are conducted on Thursdays or Fridays, Copermittees would potentially be required to conduct additional site investigations during the weekend. Modification of "48 hours" to "two business days" would eliminate this problem.

Based on Copermittee experience, strict adherence to a 48-hour turnaround time for follow-up investigations based on laboratory results would provide negligible water quality benefits. Most action level exceedances due to laboratory results are related to bacteria. Field experience with source investigations for bacteria has shown that in most cases obvious illicit connections or illegal discharges cannot be pinpointed as the sources. The main sources typically appear to be natural wildlife waste, organic material decomposition, and improper disposal of pet waste. These types of sources usually cannot be easily and quickly eliminated, and follow-up within 48 hours would be of minimal marginal benefit at best. Where discharges from sanitary sewer lines are the source of the high bacteria readings, they are also accompanied by high ammonia readings, which would be detected by the field screening for ammonia. Thus, discharges from sanitary sewer lines would still be investigated promptly.

Other laboratory analytical constituents occasionally observed to exceed their respective action levels include diazinon, heavy metals, and oil and grease. In virtually every instance in which one of these pollutants is reported to be over its action level, the source is a transient discharge, and the pollutant is well below the action level or not detected during the follow-up investigation. Generally the transient discharges leading to these exceedances do not last more than a day at most, and since laboratory results are not received until at least five days after sampling, returning within 48 hours for a follow-up investigation would not provide a significant water quality benefit.

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Addition of "where applicable" would eliminate the need to return to sites unnecessarily or prematurely. When the exceedances of action levels is due to a significant illicit connection or illegal discharge, results are usually accompanied by other signs detectable by field screening, such as an oily sheen and abnormal color or odor. Where such observations are made, discharges would still be investigated promptly.

44. Immediate elimination of detected illicit discharges, sources, and connections

Tentative Order section D.4.e requires that "Each Copermittee shall eliminate all detected illicit discharges, discharge sources, and connections immediately." While this language is unchanged from that of Order No. 2001-01, the Copermittees recommend modification in accordance with the language adopted by this RWQCB in 2004 for the Riverside Municipal Permit (R9-2004-001), which is a more reasonable, achievable, and enforceable compliance standard. This modification is as follows:

"Each Copermittee shall eliminate all illicit discharges, illicit discharge sources, and illicit connections as soon as possible after detection. Elimination measures may include an escalating series of enforcement actions for those illicit discharges that are not a serious threat to public health or the environment. Illicit discharges that pose a serious threat to the public's health or the environment must be eliminated immediately."

Watershed Urban Runoff Management Program

See Appendix B.6 for a revised version of the WURMP section of the Tentative Order. This is not a track changes version of the Tentative Order text; as indicated at Workshop 2 workshop, this version is a modification of the County's November 2005 submittal.

45. Watershed Approach

The U.S. EPA's *Draft Handbook for Developing Watershed Plans to Restore and Protect our Waters* states:

> "[A] watershed approach is a flexible framework for managing water resource quality and quantity within specified drainage areas, or watersheds. The watershed planning process works within this framework by using a series of cooperative, iterative steps to characterize existing conditions, identify and prioritize problems, define management objectives, develop protection or remediation strategies, and implement and adapt selected actions as necessary. The outcomes of this process are documented in a watershed plan. A watershed plan is a strategy that provides assessment and management information for a geographically defined watershed, including the analyses, actions, participants, and resources related to developing and implementing the plan."

The Copermittees believe that watershed-based programs should be process-driven and focused toward implementation based on water quality issues particular to the watershed. In essence the Watershed Urban Runoff Management Program (WURMP) should direct program implementation to identified watershed- specific issues. Moreover, while strategies for addressing water quality issues must be defined and adopted at a watershed level, the activities necessary to implement them should conducted be wherever it makes the most sense – jurisdictionally, at the watershed level or regionally. This comprehensive and integrated vision is central to how the Copermittees' have approached watershed management under the existing WURMP provisions.

WURMPs were required for the first time under Order 2001-01. Pursuant to the directives of that Order, the Copermittees developed and submitted WURMPs to the RWQCB in January 2003. In the three years that they have been implementing these programs, especially FY 2004-2005, they have made significant progress in implementing a variety of activities that have proven successful. More importantly, they have worked cooperatively to develop strategies that conform to the vision articulated by the U.S. EPA.

Many of the activities implemented in FY 2004-2005, and included in the Copermittees FY04-05 Watershed URMP Annual Reports, were recommended by RWQCB staff in the 13267 Directive issued to the watershed Copermittees in October 2004. In considering potential modification to the WURMP section, it is important to keep in mind that the Copermittees have made significant progress in implementing these activities in a relatively short time frame, and have worked collaboratively to establish and implement a vision for their respective watershed programs.

While Order No. 2001-01 articulated a strategy for watershed planning and implementation consistent with that of the Copermittees, proposed modifications under the Tentative Order appear to reflect a critical change in approach. Whereas Order No. 2001-01 emphasized the role of watersheds in planning and analysis, the Tentative Order contains language that is considerably more prescriptive and that seeks to mandate the types and levels of watershed implementation activity to be conducted by Copermittees. In particular, proposed language establishes "baseline" levels of activity as those already required at the jurisdictional and regional levels, and imposes requirements to go above and beyond those levels <u>without regard for whether or not activities conforming to these requirements are necessary or beneficial</u> in addressing particular water quality impacts. This is disconcerting since, in their July 2004 *San Diego County Municipal Storm Water Permit Re-issuance Analysis Summary*, RWQCB staff indicated that, if WURMP requirements increased, JURMP requirements could be slightly less stringent to compensate for the increased WURMP requirements. This Summary also indicated that:

> "...the Regional Board needs to significantly change how the Regional Board currently oversees the municipal storm water program. The Regional Board's focus should significantly shift from, but not ignore, JURMP implementation to an enhanced WURMP implementation."

However, in practice the Tentative Order would create significantly more stringent JURMP requirements and then add WURMP requirements on top of that new "baseline." The WURMP requirements have increased from Order 2001-01 which required that short-term and long-term

activities be implemented in a watershed where the short-term activities were defined as activities implemented within the life of Order 2001-01.

46. Copermittee alternative to Tentative Order Section E

The Tentative Order unnecessarily restricts watershed water quality activity selection before an overall strategy is developed as part of the WURMP. The Tentative Order does not account for the degree, magnitude, or quality of a watershed water quality activity, but instead relies solely on the number of activities. Furthermore, the language contained within Section E of the Tentative Order is confusing and difficult to interpret. Through our review, the Copermittees have found that there are numerous interpretations of the requirements.

After extensive review, the Copermittees have determined that Section E of the Tentative Order should be replaced with the alternative included as Appendix B.6 of this submittal (Copermittee Revised Language). As indicated at the second RWQCB Workshop on May 24, 2006, the Copermittees have used the suggested Permit language that the County of San Diego submitted in November 2005 as a basis for this alternate version. This language more closely conforms to the vision of watershed planning and implementation as articulated by the EPA while maintaining appropriate mechanisms for enforceability and compliance assurance.

This revised language provides a stronger emphasis on the development of a watershed strategy by providing a more detailed description of the steps the Copermittees must take in proposing and justifying individual activities and the strategy as a whole. Unlike the Tentative Order, it places no restrictions on the selection of activities except to require that two Watershed Water Quality and two Watershed Education Activities be in an active implementation phase during each permit year.

Additionally, the Copermittees have also clearly defined the information that must be provided for each activity. This includes a description of the activity detailing how it will address priority watershed quality problem(s) or source(s), time schedules, specific responsibilities, the expected benefits, and how effectiveness will be measured. Because the Copermittees proposals must include adequate justification, RWQCB review should be sufficient to determine the adequacy of the proposed strategy and the activities comprising it. As such, this alternate proposal should increase Copermittee accountability and reduce the likelihood that ineffective BMPs are activities will be selected to meet the requirement for a minimum number of activities.

The Copermittees have also removed the unnecessary distinction between short-term and long-term activities. Each Copermittee will need to identify appropriate activities to address the issues in the watershed. A selection of activities may include shorter term and longer term activities. In some cases, based upon the watershed issues, a Copermittee may need to select longer-term activities because they are the most effective at addressing the specific issue(s). This selection should not be restricted. As stated above the Copermittees will still be required to have two activities in active implementation phase each year regardless of whether long-term or short-term activities are being implemented. By developing an effective overall watershed strategy and

implementing activities that fit into it, the likelihood of water quality improvement over time quality will be increased.

In the Copermittee revised language the requirements from Tentative Order Section E.2.m have been separated. The requirement for frequent Copermittee meetings has been appropriately included in the section that discusses Copermittee collaboration. Furthermore, the land-use planning requirement has been modified and is a stand-alone requirement.

The Copermittees have provided a clearer linkage to the WURMP effectiveness assessment requirements by adding the "WURMP Review and Updates" section to the Copermittee Recommended Language.

As requested by the RWQCB in their response letter, the Copermittees alternative language ensures that an adequate number of Watershed Water Quality Activities which will have a significant impact on the priority water quality problems in the watershed will be implemented. However, the Copermittees do not feel strongly that such minimums are needed.

47. Unnecessary and ambiguous restrictions and requirements

A major problem with the WURMP section of the Tentative Order is the degree to which restrictions have been placed on the selection and application of activities. The Copermittees' suggested alternative addresses several of these.

a. The activity must be newly implemented during the cycle of the Order

The Copermittees have found that this restriction is confusing due to the possibility of multiple interpretations. It appears that any activity conducted within a watershed under Order 2001-01 could not be utilized under the Tentative Order. For instance, if inspections or BMP requirements were increased at restaurants during Order 2001-01, they could not be used again under the Tentative Order. Additionally, newly implemented could mean that any activity that is in an implementation phase during Order 2001-01 could not be carried over into the Tentative Order.

The Copermittee alternative establishes a greater emphasis on the watershed strategy and contains specific requirements for each activity. The Copermittees are required to justify activity selection and include this information in the respective WURMP. If the RWQCB does not feel this justification is adequate this can be addressed through the RWQCB review of the WURMPs. Furthermore, the Copermittees believe that this requirement is covered under the active implementation phase requirement in the Copermittee recommended language.

b. Implementation at all applicable and feasible location(s)

The Tentative Order definition states: "For jurisdictional or regionally based activities to be considered Watershed Water Quality Activities in a watershed, the Copermittee must implement the activities at all applicable and feasible location(s) throughout its portion of the watershed, and

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not just in one or a few locations." This phrasing is too vague to be reasonably interpreted or enforced.

This restriction is also no longer needed due to the increased emphasis on the development of a strategy and required justification for activity selection. There also may be certain activities that can only be implemented in one location, particularly treatment control BMPs. For example, dry weather sewer diversions implemented in the Mission Bay Watershed have helped to target bacteria levels in Mission Bay, a high priority concern for the watershed. These BMPs are not implemented throughout the watershed in all possible locations, but they have been proven to effectively reduce loads of bacteria and are considered an effective component of the overall watershed strategy. Furthermore, there may be times when it is beneficial to implement a "pilot" or test sites for BMP implementation before expending a significant amount of time and/or resources. In doing so, Copermittees would be able to evaluate the benefits and costs, and assess whether the BMP meets with the overall watershed strategy for the respective pollutant. Efforts such as this cannot be ignored as valuable water quality activities if they demonstrate load reductions, even if they do not occur at all applicable locations. The Copermittees should not be discouraged from implementing such activities if they are proven to be effective.

c. Requirement to be more protective of water quality than "baseline" requirements

Under the Tentative Order, jurisdictional or regional activities which significantly exceed and are exhibited to be more protective of water quality than the baseline jurisdictional requirements of section D may be considered Watershed Water Quality Activities. As noted above, this severely restricts the use of many valuable activities because Copermittees are concurrently being required to increase those "baseline" levels through their JURMPs. Moreover, this requirements serves as a disincentive to build comprehensive watershed strategies on a foundation of jurisdictional activities because the majority of them cannot be counted.

c. Ambiguous definitions of activities

The watershed water quality activity definition and the watershed education activity definition found on page C-11 of Attachment C should be deleted. They are ambiguous and confusing. With the Copermittees revised language they are also no longer needed, since these activities are adequately (and more simply) explained in the body of the text.

Overall the Copermittees believe that we have addressed all of the Regional Board's concerns with this revised language which provides the program requirements in a concise and straight-forward manner.

G. Fiscal Analysis

The fiscal analysis section of the Tentative Order significantly expands the responsibilities of Copermittees over those in the existing Order. As described in the ROWD, the Copermittees

support the development of improved methods of analysis and increased consistency across their programs, and have committed to taking on this task. However, several aspects of this section of the Tentative Order are problematic.

48. Timeline for the regional development of a standardized method

Tentative Order section G.2 requires that a regional standardized method be submitted on July 1, 2007 with the RURMP document. Assuming a September 2006 adoption of the Tentative Order, this would allow a maximum of 10 months for the completion and incorporation of these regional standards by Copermittees. This timeline is simply not achievable. As reported in the Copermittees' ROWD, the consensus development of a standard approach to fiscal reporting across 21 Copermittee organizations will likely be a multi-year task even with the cooperation and full participation of all Copermittees. This is supported by the findings of the SWRCB NPDES Stormwater Costs Survey.[8] In that study, the authors noted that "only 50 percent of 122 surveyed stormwater utilities said that their accounting system permitted cost tracking by operating activity (e.g. inlet cleaning). Also ... current governmental accounting standards do not require a distinction of stormwater costs."

The standardized methods should instead be submitted with the September 30, 2008 Unified JURMP Annual Report, and Copermittees should begin reporting according to these updated standards no earlier than Fiscal Year 2008-2009. This is still an aggressive schedule in light of the many other program development and modification activities occurring over the first two permit years. However, it would provide the Copermittees a more realistic timeline for evaluating current methods of tracking budgets and expenditures, developing consensus standards, making needed modifications to data tracking and management systems, and implementing these requirements.

49. Copermittee reporting on previous fiscal year expenditures

Tentative Order section G.3 requires that:

> " The fiscal analysis shall identify the expenditures incurred by the Copermittee over the Annual Report's reporting period."

The existing requirement under Order No. 2001-01 to project budget expenditures for the upcoming fiscal year provides sufficient documentation of the Copermittees' ability to carry out their implementation responsibilities. As discussed at the RWQCB December 14, 2005 Workshop on fiscal analysis requirements, the Copermittees disagree that a requirement to report on past year expenditures is reasonable or appropriate. For most Copermittees, implementation activities are embedded in dozens of individual departments and programs. Many of the costs currently projected in Copermittee fiscal analyses must be estimated as a percentage of an existing cost (e.g., BMP implementation costs are estimated as a percentage of a CIP, staff costs as a

[8] **"NPDES Stormwater Cost Survey." Prepared by the Office of Water Programs, CSUS, for the California State Water Resources Control Board (January 2005).**

percentage of existing inspections, etc.). While it is generally reasonable to use such methods for projecting costs during program planning, it would be almost impossible to track the actual expenditures associated with those estimates over the reporting period. Additionally, the value of this information in assessing Copermittee compliance is likely to be limited since expenditures are not an indicator of performance.

50. Delineation of "permit compliance" versus "other" costs

Tentative Order sections G.3a and b require Copermittees to:

> "Distinguish between expenditures attributable solely to permit compliance and expenditures that contribute to multiple programs or were in existence prior to implementation of the urban runoff management program."

and

> "Identify a metric or metrics to be used to report program component and total program expenditures."

These requirements would add an unwarranted degree of difficulty to the development of improved fiscal reporting methods. As previously noted, Copermittee implementation activities are embedded in dozens of individual departments and programs. Developing and implementing methods to extricate these program costs for the purpose of tracking expenditures is likely to be extremely difficult, yet the Fact Sheet / Technical Report offers no rationale or factual basis for why it is either necessary or desirable.

One explanation is that RWQCB staff may be concerned that Copermittees are "over-reporting" existing program costs. If so, it should be noted that Copermittee expenditures are currently estimated in accordance with required program implementation responsibilities. For example, the reason that report household waste collection and street sweeping costs are reported, even though these activities are conducted pursuant to separate mandates, is that Order No. 2001-01 also requires them. Arbitrarily requiring the separation of costs that are applicable to "multiple programs" or that were "in existence prior to implementation of the urban runoff management program" is likely to waste considerable Copermittee time and effort for little, if any, gain. These provisions should be removed from the Tentative Order, and the Copermittees instead be required to define the scope and content of this effort.

I. Program Effectiveness Assessment

See Appendix B.7 for a "track changes" version of the Program Effectiveness Assessment section of the Tentative Order.

51. Addition of "where applicable" and "may" to specific assessment requirements (Appendix B.7; Line 7)

The requirements of Tentative Order section I are prescriptive beyond a level that is necessary or reasonably achievable. To restore appropriate levels of Copermittee discretion and ensure that the directives of this section can actually be met, "where applicable" and "may" should be added to the last sentence of each of the introductory sections (I.1.a. (intro), I.2.a., I.3.(a), and I.4.(a)). "Where applicable" should also be added to sections I.1.a.(5), I.2.a.(5), and I.3.(a)(5).

In support of the approach currently contained in the Tentative Order, the Fact Sheet / Technical Report states:

> "The effectiveness assessment requirements incorporate the approaches developed by the Copermittees in their October 16, 2003 "Framework for Assessing the Effectiveness of Jurisdictional Urban Runoff Management Programs," including use of "outcome levels" and "major effectiveness assessment elements."

The Copermittees agree that the 2003 framework and subsequent iterations should be used as a basis for the requirements of this Order; however, as is clear from a careful reading of that document, and the 2005 CASQA Effectiveness Assessment paper, this framework was not intended to be translated to rigid and prescriptive requirements as has been done in the Tentative Order. While the Fact Sheet / Technical Report implies consistency with the content developed by the Copermittees, the language of the Tentative Order goes well beyond what was proposed in the ROWD and the County's November 2005 suggested language.

In support of the level of prescription contained in the Tentative Order, the Fact Sheet / Technical Report states:

> "... the Regional Board has frequently needed to request that the Copermittees improve their effectiveness assessments and utilize the various assessment methods that are available. Moreover, half of the Copermittees audited were found to have inadequate effectiveness assessments which frequently lacked use of measurable goals. For these reasons, the Order contains language requiring the Copermittees to utilize the various outcome levels "where applicable and feasible." This will help ensure that the Copermittees vigorously use outcome levels, while also providing the Copermittees with flexibility to develop techniques to use outcome levels where such techniques do not currently exist."

While this implies that Copermittees are afforded broad discretion in applying these methods, this is generally not the case. For example, "where applicable and feasible" does not apply to sections I.1.a.(1), (2), and (5), or I.1.b. In fact, this phrase is applicable only in a very limited number of instances. Instead of providing a factual basis for restricting Copermittee flexibility, the Fact Sheet / Technical Report has incorrectly asserted that it exists. The Fact Sheet / Technical Report has therefore failed to provide a sufficient factual basis for the imposition of this additional specificity.

52. Deletion of ICID and Education as required JURMP assessment elements (Appendix B.7; Line 14)

Section I.1.a(1)(b) requires that the implementation of ICID and Education elements be assessed annually. These should be removed because they are part of each of the source-specific elements already listed.

53. Annual review and modification of Copermittee programs (Appendix B.7; lines 27-35)

Tentative Order section I.1.b states:

> "Based on the results of the effectiveness assessment, each Copermittee shall modify its jurisdictional activities or BMPs to maximize Jurisdictional Urban Runoff Management Program effectiveness. Jurisdictional activities or BMPs that are ineffective or less effective than other comparable jurisdictional activities or BMPs shall be replaced or improved upon by implementation of more effective jurisdictional activities or BMPs. Where monitoring data exhibits persistent water quality problems, jurisdictional activities or BMPs applicable to the water quality problems shall to be modified and improved on at least an annual basis to correct the water quality problems."

This section should be modified as follows:

> "Based on the results of the effectiveness assessment, each Copermittee shall annually review its jurisdictional activities or BMPs to identify modifications and improvements needed to maximize Jurisdictional Urban Runoff Management Program effectiveness, and shall develop and implement a plan and schedule to address the identified modifications and improvements. Jurisdictional activities or BMPs that are ineffective shall be modified or replaced. Where monitoring data exhibits persistent water quality problems, jurisdictional activities or BMPs applicable to the water quality problems shall be modified to address the water quality problems."

Equivalent modifications should also be made to Tentative Order sections I.2.b, I.3.b, and I.4.b. As drafted, each of these sections sets an unrealistic standard for annual assessments by requiring that: (1) activities and BMPs be reviewed and modified as part of each annual review cycle; (2) that Copermittees identify and replace "BMPs that are ineffective or less effective than other comparable jurisdictional activities or BMPs," and; (3) that Copermittees "modify and improve" those activities and BMPs "on at least an annual basis" to correct water quality problems.

The Copermittees agree that annual reviews are necessary and useful, but the current phrasing of these sections would make these requirements unworkable. While retaining the overall intent of these sections, the Copermittees have identified wording changes that would make them more achievable.

First, Copermittees should instead be required to annually review their activities or BMPs to identify modifications and improvements needed to maximize program effectiveness, and to

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develop plans and schedules for addressing identified modifications and improvements. This phrasing is consistent with the November 2005 suggested language provided by the County, from which the current Tentative Order language appears to have been derived. More importantly, it describes a realistic and achievable standard for program review and modification.

Second, the requirement that "jurisdictional activities or BMPs that are ineffective or less effective than other comparable jurisdictional activities or BMPs shall be replaced or improved upon by implementation of more effective jurisdictional activities or BMPs" should be simplified to "activities or BMPs that are ineffective shall be modified or replaced." The current phrasing is too cumbersome to be either understandable or enforceable.

Finally, "where monitoring data exhibits persistent water quality problems, jurisdictional activities or BMPs applicable to the water quality problems shall to be modified and improved on at least an annual basis to correct the water quality problems" should be modified to "where monitoring data exhibits persistent water quality problems, jurisdictional activities or BMPs applicable to the water quality problems shall be modified to address the water quality problems." This change retains the directive to review and respond appropriately to monitoring data, but makes it achievable and enforceable by removing the unrealistic timeframe. Copermittees should not be expected to "modify and improve" their programs annually based on water quality assessment. While this is a laudable objective, making it an enforceable requirement is overreaching. Copermittees generally do not have sufficient information or knowledge regarding the effectiveness of activities to adjust them on an annual basis and some activities will take several years to "sink in" before they see results. This is particularly true for adjustments based on monitoring data.

54. Assessment of Individual BMPs (Appendix B.7; lines 11, 50 and 138)

Another area of concern in the Tentative Order is the requirement to assess each "significant" program or BMP, in addition to the JURMP component as a whole. In addition to the difficulty of interpreting "significant," this could result in unnecessary increases in Copermittee costs. Since the evaluation of individual controls per se is not the primary focus of JURMP evaluations, this requirement should be deleted. The Copermittees should retain the discretion to determine which BMPs they will include in the development of their assessment strategies.

55. Use of Level 5 and 6 Outcomes Annually (Appendix B.7; lines 61-64)

As drafted, the WURMP annual assessment section would require a level of analysis that is impractical on an annual basis. The Copermittees' ROWD specifically recommended that annual analysis of Level 5 and 6 outcomes be limited to a qualitative review of results from the Receiving Waters Monitoring Program, and that correlation of program implementation to changes in water quality be conducted only as part of the long-term (5-year) effectiveness assessment. Because of the complexity and expense of this analysis, it is unrealistic to expect it can be completed annually. This section should be qualified with "where applicable" as has already been done for Watershed Water Quality Activities and Water Education Activities

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(I.2.a.(1)(a) and I.2.a.(1)(b)), and the last sentence (which is appropriate for long-term assessment only) removed.

While the Fact Sheet / Technical Report does not address this requirement, it was raised by the Copermittees in Workshop 1. Based on a review of their own October 2003 Assessment Framework and the 2005 CASQA Effectiveness Assessment Guidance, the Copermittees contend that these outcome levels as written into the Tentative Order are inappropriate for annual assessments.

Copermittees, 2003 -- "... making the connection from program activity or BMP implementation to load reductions is a major focus of the overall process described here. Establishing such relationships to discharge and receiving water quality is considerably more complex in spite of the availability of analytical data to help substantiate conclusions. The primary limiting factor is the conceptual "distance" (e.g., the difference in Outcome Levels as described in section III(B)3 above) between these outcome types."

CASQA, 2005 -- "... assessment methods at the higher outcome levels (i.e., levels 4-6) may be costly and require longer timeframes." ... "statewide efforts should be initiated to develop the methods needed to correlate water quality and environmental assessment with implementation assessments."

J. Reporting

See Appendix B.8 for a "track changes" version of the Reporting section of the Tentative Order.

56. Consolidation of submittal and reporting requirements (Appendix B.8; throughout)

Detailed requirements for submittals and reports are spread throughout multiple sections of the Tentative Order. Consolidation of all reporting requirements for the JURMP, WURMP and RURMP in a consistent location would make it easier to follow and therefore understand these requirements. Appendix 1.7 incorporates these recommended changes. It also incorporates the following Tentative Order sections and Attachments:

- Section J – Reporting (pp. 53-56)
- Attachment D (Individual JURMP Contents)
- Attachment E (Individual JURMP Annual Report Contents)
- Receiving Waters Monitoring & Reporting Program, Section III, pp. 15-22 (Reporting Program)

57. Consolidation of Unified JURMP and Unified WURMP submittals under the RURMP (Appendix B.8; line 339)

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With the creation of a RURMP, there is no longer a need for stand-alone JURMP and WURMP common activities sections. These should instead be incorporated as sections of the RURMP, and deleted as separate requirements. Their inclusion in the RURMP is implicit in Section J.3.a. These suggested changes, and corresponding changes to the annual reporting requirements for these elements, have been incorporated into Appendix 1.7.

58. TMDL Reporting (Appendix B.8; lines XX-XX)

Appendix B.8 includes modifications to TMDL reporting requirements that are consistent with other changes already described. However, the Copermittees recommend that this section be deleted entirely since TMDL reporting requirements are established through a separate regulatory process. It makes more sense to model those requirements on this Order than to prescribe, and potentially "lock in," the specific content of these reports now.

59. Consolidation of monitoring elements into WURMP and RURMP annual reports (Appendix B.8; lines 851-853)

The Copermittees should be encouraged to incorporate some or all of the regional monitoring elements in the WURMP and RURMP reports rather than in a stand-alone report. This would encourage the WURMP workgroups to be more involved in the analysis of the data and foster a more efficient use of data in making management decisions. Appendix 1.7 incorporates this suggested change, but clarifies that summarized data and information would still be included in the regional monitoring report.

60. Unnecessary conditions on the development of integrated reporting (Appendix B.8; line 967)

Tentative Receiving Water Monitoring and Reporting Program section II.5.a provides that:

> "The Copermittees are encouraged to submit, for Regional Board review and approval, an annual reporting format which integrates the information submitted in the JURMP, WURMP, and RURMP Annual Reports and Monitoring Reports. This document shall be called the "Integrated Annual Report Format.""

The Copermittees appreciate that this provision has been included in the Tentative Order since they consider report streamlining to be an important priority in the next Permit cycle. However, this section goes on to state:

> "At a minimum, the Integrated Annual Report Format shall:
>
> (1) Ensure exhibition of compliance with all requirements of JURMP, WURMP, and RURMP sections D, E, and F of Order No. R9-2006-0011.
> (2) Ensure reporting of all information required in Attachment E and sections J.1-3 of Order No. R9-2006-0011.
> (3) Ensure reporting of all information required in this Monitoring and Reporting program.

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(4) Ensure consistent and comparable reporting of jurisdictional and watershed information by all Copermittees and watershed groups.
(5) Specifically identify all types of information that will be reported (e.g., amount of debris collected during street sweeping), including reporting criteria for each type of information (e.g., reported in tons)."

While it is understandable that RWQCB staff wishes to ensure that report integration improves rather than detracts from the reporting requirements, the imposition of these conditions serves as a deterrent for Copermittees in taking on this task. For instance, one perceived benefit of integration is that some prescriptive requirements in the JURMP, WURMP, or RURMP sections could be reduced or eliminated. However, while this is implicit in the concept of streamlining, it is prohibited by this section. These conditions should either be restated as goals, or removed from the Tentative Order. The requirement of section II.5.b that the Integrated Annual Report Format be approved by the RWQCB should be sufficient to ensure that the final product is acceptable to all parties. Without this change, it is unlikely that the Copermittees will elect to develop an Integrated Annual Report.

61. Unnecessary detail on trend analysis in Monitoring Reporting (Appendix B.8; Line 895)

The Copermittees should have the option to select the appropriate methods of statistical analyses.

62. Monitoring Data Requests (Appendix B.8; Line 947)

At the Regional Board's request, the Copermittees will submit data prior to the report due date of January 31st if the data has been through the quality assurance/quality control program. Draft interpretations will only be available with the approval of all of the Copermittees in the watershed, as drafts are preliminary and are for internal review only. It is inappropriate to require internal drafts to be released as a Permit condition.

Receiving Water Monitoring and Reporting Program No. R9-2006-0011

See Appendix 1.9 for a "track changes" version of the Tentative Receiving Water Monitoring and Reporting Program.

63. Ambient Bay & Lagoon Program (Appendix B.9; Line 45)

The Copermittees recommend the implementation of the updated Ambient Bay and Lagoon Program to begin in Year 1 of this order. The proposed Tentative order followed the recommendation of the Report of Waste Discharge recommended that an evaluation be conducted after 3 years of data collection. The Copermittees found this to be misstated. The Ambient Bay and Lagoon Program is being assessed in Year 5 of the Order No. 2001-01 instead of Year 1 of the new Order, since data were collected in 2003, 2004 and 2005.

64. Monitoring station rotation (Appendix B.9; Line 50)

Section II.a.1.b of the tentative order specified that mass loading stations for one dry weather flow event be conducted if Copermittees participate in Bight' 08. The Copermittees request this be changed to agree with the Proposed Monitoring Rotation & Number of Stations by Watershed presented in the Report of Waste Discharge which recommended one wet weather mass loading event at all mass loading stations to preserve long-term trends if the Copermittees participate in Bight'08.

65. Dry weather mass loading stations (Appendix B.9; Lines 56-58)

Due to the unpredictable nature of storm events, an increased window of opportunity is needed for collection of the dry weather sample events at mass loading and upstream temporary mass loading stations. The dry weather sampling period preceding the rainy season should include September as well as October, since October 1 is the beginning of the rainy season. The dry weather sampling period following the rainy season should include May and June due to the possibility of late season storms in May. Moreover, an increased window of time will increase the likelihood that bioassessment sampling can occur in conjunction with the sampling.

66. Monitoring persistent organic pesticides in Chollas Creek (Appendix B.9; Line 100)

The Southern California Coastal Water Research Project collected samples for analysis of these parameters during the 2005-2006, and does not anticipate needing additional data to fulfill their study design. As this monitoring is in response to the TMDL being developed at the mouth of Chollas Creek, insertion of this requirement into the Permit is premature. The current study design is completed and the addition of parameters should wait until full development of the TMDL.

67. Follow up investigations of storm drains (Appendix B.9; Line 275)

Copermittees should not be required to commit resources to investigations of storm drains exceeding AB411 or Basin Plan standards. Upstream tracking of bacteria within the MS4 is nearly impossible when the concentrations of bacteria are relatively low. The current program uses the 95th percentile observation based on bacterial results over the previous year. This allows Copermittees to prioritize efforts.

Similar to the Dry Weather program comment, mandatory investigations within 24 hours do not consider weather conditions, staff availability, laboratory staffing, or associated costs.

68. Follow-up Times for Coastal Storm Drain Monitoring (appendix B.9; Line 271)

As with dry weather monitoring, re-sampling under the Coastal Storm Drain Monitoring Program cannot always be conducted within a strict time frame (in this case 24-hours). The following changes would provide the needed flexibility to take into consideration factors normally outside

of Copermittee control (weather conditions, rain and/or wet periods when sampling cannot occur, laboratory staffing/hours, staff availability, or potential weekend/holiday work):

- Addition of "Where applicable"
- Modification of "24-hours" to "one business day"
- Addition of sub-section II.6.b.(4) as shown (remaining text would need to be renumbered accordingly)

69. Toxic Hot Spots Program - Toxic Hot Spot Monitoring (Appendix B.9; Line 284)

The Copermittees request the removal of the Toxic Hot Spot Monitoring Program. The following findings support the fact that the Toxic Hot Spots sites are being remediated through other existing regulatory programs:

1. The monitoring and assessment of the Toxic Hot Spots has been replaced by TMDL studies that are ongoing at each of the THS sites. Phase I and Phase II TMDL studies were conducted in the sediments of the THS areas during the last Permit cycle and were handled predominantly by the RWQCB and their consultants. Assessments of each site, including the identification of the potential pollutants causing toxicity, were also handled by RWQCB and their consultants.

2. The Permit fact sheet states that the need to include the THS in Order 2006-0011 is necessary to ensure consistency with the 1999 Consolidated Toxic Hotspot Cleanup Plan (THS Plan). As stated in the THS Plan, "In the process of developing and implementing strategies to remediate toxic hot spots related to both sediment and water, the RWQCBs shall focus on approaches that rely on existing State and federal programs to address identified toxic hot spots". The 1999 Plan also requires that the RWQCB, "...Consider use of any established prevention tools such as... total maximum daily load development...." to address the THS (SWRCB THS Plan, p9). As such, the Copermittees believe that the developing TMDLs and Cleanup and Abatement Order are sufficient strategies to remediate the THS and satisfactorily meet this requirement.

3. Copermittees involved in the THS program (Port, Cities of San Diego, Lemon Grove, and La Mesa) met with RWQCB staff from both the TMDL and Stormwater Units on July 1, 2004. It was determined at that meeting that the studies being conducted (or proposed to be conducted) for the TMDLs would sufficiently address the concerns regarding upstream inputs into the THS. As such, it was stated at that meeting, that all Copermittee efforts to work with the RWQCB TMDL Unit would suffice for meeting the Permit requirement for THS.

70. Pyrethroid monitoring (Appendix B.9; Line 285)

The Copermittees ask add pyrethroids to the Analyte list in Table 2 to eliminate the need to develop a separate monitoring program, to ensure consistency with current program and to streamline reporting. The Copermittees recognize that Synthetic pyrethroids are a substitute for

some banned pesticides and are willing to analyze for Pyrethroids at the mass loading stations and the temporary watershed assessment stations according to the rotation presented in Table 1 of the Receiving Waters Monitoring and Reporting Program beginning in 2007-2008 monitoring year.

71. Assessment of Beneficial Uses (Appendix B.9; Lines 285 and 289)

The pyrethroids and trash sections would require that Copermittees assess the impacts on beneficial uses from pyrethroids and trash in discharges from their MS4s. This is above and beyond what is stated as the purpose (goals) of the overall Receiving Waters Monitoring Program, Sections I.A & I.B.

Since the Region 9 Basin Plan does not contain numerical water quality objectives for either of these two constituents, and the most closely applicable narrative objectives are too vague to facilitate such assessment, this requirement would unreasonably burden the Copermittees with the development of applicable objectives.

The assessment of beneficial uses, and the development of water quality standards to protect them, are conducted by the RWQCB as part of the existing regulatory process (Basin Plan Amendments, Identification of 303(d) Impaired Waterbodies, TMDLs, SWAMP).

In the absence of clearly defined standards for assessing the impacts on beneficial uses from pyrethroids and trash, Copermittee responsibilities should be limited to 1) monitoring and assessing these constituents in urban runoff and receiving waters, 2) developing methods to reduce them, and 3) assessing the effectiveness of their programs in reducing them.

The Copermittee responsibilities identified above are consistent with the overall purpose of the Monitoring Program (Section I.A.1-8). Additionally, the above-mentioned responsibilities could identify whether conditions in receiving waters are protective or likely to be protective of beneficial uses, consistent with Section I.B.1.

72. Trash Assessments (Appendix B.9; Line 288)

As requested by RWQCB staff at the April 26th Workshop, The Copermittees have reviewed protocols to assess trash including the quantitative assessment used in Region IV that was required as a Special Study to develop baseline data for Trash TMDLs in two watersheds. Currently, Region 4 spends $300,000 per year for a contractor to sort and weigh trash from 5 catch basins after 8 storms and from 4 additional catch basins after 4 storms. Additionally, photo documentation is required at the mass emission stations during sampling. As trash was identified as a medium priority pollutant in the LTEA of the San Diego Region, this level of quantitative assessment is not warranted. The Copermittees propose a visual, qualitative assessment for trash at selected stations in the MS4s and receiving waters similar to the evaluations conducted for Chollas Creek and Forrester Creek. We anticipate integrating this program with selected stations identified in the Dry Weather and the newly required MS4 Outfall Monitoring programs. Moreover, visual observations for trash will be included at mass loading stations and temporary watershed assessment stations. Data from the trash assessments will provide feedback to the

municipalities and will aid in prioritizing MS4 maintenance cleaning. In addition, the Copermittees anticipate that this information will be combined with the quantity of waste removed from the MS4s as part of the record keeping for the maintenance and cleaning activities required in Section D.3.a.(3)(b).iv.

73. MS4 Discharge Monitoring (Appendix B.9; Line 295)

See Appendix B.9 for the revised changes to this monitoring program. The Copermittees have reviewed the Permit language and find the following:

1. The standard set in the current language is too high and is not consistent with the intent expressed in the Fact Sheet on Page 98 to allow Copermittees flexibility in designing a program. As currently written, the Permit requires a statistically validated approach in each of the nine watersheds to characterize MS4 discharges for an annual estimated cost of 1.4 million dollars.
2. The proposed changes would allow Copermittees the flexibility expressed in the Fact Sheet to develop a program over the next year or to thread this program into our existing coastal, dry weather, and flow-weighted composite sampling programs. The integration of this new program into existing programs will be more cost-effective and increase the efficiency of integrating all data into a comprehensive watershed-based assessment.
3. Copermittees have safety concerns in sampling MS4 oufalls during rain storms or within 72 hours of a rain event. Copermittees request additional flexibility in designing a program to address wet weather discharges.

On page 16 (Section 4.3.1) of the Southern California Model Monitoring Coalition Model Storm Water Monitoring Program, Question 3, What is the relative urban runoff contribution to the receiving water problem(s)?, is used to evaluate if urban runoff contributes significantly to a receiving water problem, and if so, then it is appropriate for the Copermittees to take a lead on conducting further source characterization studies. The spirit of the SMC document is not to characterize MS4 outfall discharges, but to conduct focused studies to address problems identified in receiving waters through the data collected in other parts of our monitoring program (mass loading stations, temporary watershed assessment stations, etc). In Section 4.3.1 of the SMC document an estimate of 5 to 10 % of the monitoring budget was estimated to be appropriate for combine MS4 oufall monitoring and subsequent Source Identification work.

74. Source Identification Studies (Appendix B.9; Line 305)

See Appendix B.9 for the revised changes to this monitoring program.

With the proper design and placement of stations from MS4 monitoring and Dry Weather Monitoring program components coupled with the addition receiving water stations (TWAS) the amount of data collected and the extent of coverage within the watersheds will be increased and better integrated for reporting. As such, it is anticipated that the new programs will improve the overall identification of areas of concern. Once coupled with source inventory information from

the LTEA, Copermittees should be able to determine sources and identify activities to address those sources.

In those instances when data and inventory information does not clearly identify sources, Copermittees will conduct additional monitoring to better identify sources. This program is to be an as-needed approach, designed to supplement the base information that is provided by the Urban Runoff Discharge Monitoring Program.

As indicated in the comment on the MS4 outfall monitoring, the spirit of the SMC document is not to characterize MS4 outfall discharges, but to conduct focused studies to address problems identified in receiving waters through the data collected in other parts of our monitoring program (mass loading stations, temporary watershed assessment stations, etc). In Section 4.3.1 of the SMC document an estimate of 5 to 10 % of the monitoring budget was estimated to be appropriate for combine MS4 oufall monitoring and subsequent Source Identification work.

75. Dry Weather Sample Grid (Appendix B.9; Line 379)

The Copermittees request the text to be changed to reflect their knowledge of their MS4s and watersheds and allow them to select dry weather stations using the approach used in developing the Dry Weather Programs developed under the 2001-01 Order. The Copermittees find this consistent with the discussion on pages 99-100 of the Fact Sheet.

76. Field Screening Monitoring (Appendix B.9; Line 413-414)

Use of field test kits for field screening monitoring may not be approved by 40 CFR part 136. Modify the text such that it is clear that only analytical monitoring shall be consistent with 40 CFR part 136. Additionally, in the April 26, 2006 Workshop, RWQCB staff indicated that the Dry Weather Program was not subject to California's Surface Water Ambient Monitoring Program requirements. For clarity, please include in footnote 9.

77. Dry Weather Monitoring of Metals (Appendix B.9; Lines 439-441)

Copper (Dissolved) was requested in the ROWD to be either an analytical parameter or a field test parameter in Copermittees' comment on Section 2.D.3.d. Because field test kits are continually improving, if field test kits can meet the action levels set for metals by the Dry Weather Workgroup, then Copermittees request to be able to use them instead of analytical procedures. The advantage of field test kits is that an immediate follow up can occur whereas a two week turnaround time is typical to wait for the receipt of analytical results.

78. Bacteria analyses (Appendix B.9; Lines 443-445)

In the ROWD Copermittees requested the option to analyze indicator bacteria using Colilert and Enterolert. On page 101 of the fact sheet, RWQCB granted the request. However, the footnote was not inserted on page 12 of the Tentative Permit. Please insert footnote 10 provided.

If the type and source of pollutants can be identified based on the data alone and an analysis of potential sources in the drainage area, a TIE is not necessary.

The insertion of footnote 7 provides clarity that a TIE is not necessary if the source of the toxicity can be identified another way, such as using chemistry data. This is the intent of the Permit and the wording is taken from page 95 of the Fact Sheet.

79. Dry Weather Monitoring of Metals (Appendix B.9; Lines 458-461)

In the ROWD (Recommendation D.8.1) Copermittees requested to test dissolved copper as a field screening parameter or to submit a sample to an analytical laboratory (previous Permit required analytical laboratory analysis of dissolved copper). The Copermittees request the same for the other metals (cadmium, lead and zinc). If field test kits can not meet the action levels set by the Dry Weather Workgroup, then the Copermittees will use appropriate laboratory analytical methods.

80. Application of SWAMP Guidelines (Appendix B.9; Line 509)

This confirms the discussion between RWQCB staff (Dave Gibson) and Jo Ann Weber of the County of San Diego that it was not the intention of the RWQCB to require SWAMP guidelines to be applied to mass emission monitoring.

Proposed Reorganization of Monitoring Requirements

Appendix 1.9 provides a proposed reorganization of the Tentative Receiving Water Monitoring and Reporting Program in "track changes." At the May ??, 2006 Workshop, the Copermittees proposed, and RWQCB staff indicated conceptual agreement with, a reorganization of this section. Based on that direction, the Copermittees have taken the initiative to develop a draft Receiving Water Monitoring and Reporting Program incorporating these changes. Since this draft is for illustration, it does not incorporate other specific changes proposed for the monitoring program. These changes are provided in Appendix 1.8.

81. Renaming of Monitoring Program (Appendix B.10; Title and Lines 27, 37, 305, 499 and 536)

- Change "Tentative Receiving Waters Monitoring...." to "Tentative Receiving Waters and Urban Runoff Discharge Monitoring..."

- Modify the main monitoring program names to become: II. Watershed Based Monitoring Program; II.A the Receiving Waters Monitoring Program; II.B the Urban Runoff Discharge Monitoring Program; II.C the Regional Monitoring Program; and II.D the Special Studies.

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The monitoring program requires programs that monitor receiving waters and programs that monitor urban runoff discharges. Re-naming this part of the Draft Tentative Order will provide clarity to what is required.

Separating the core programs into a Receiving Waters Monitoring component and an Urban Runoff Discharge Monitoring component is an appropriate way to structure the new Permit, given that several new monitoring requirements have been added. There are inherent differences to what each core program should be designed to accomplish. Receiving water monitoring should be focused on assessing large-scale pollutant loading, ambient conditions, trends, water quality improvements/degradations, impacts to beneficial uses, and identifying high priority areas/pollutants to guide urban runoff monitoring. Urban runoff monitoring is better focused on sources of pollutants, characterizations of watershed areas/land-uses, drainage basin specific conditions, and providing a more focused assessment of watershed pollutants based upon what is identified in the receiving waters.

Additionally, separating the program components allows for better correlation with the goals and core management questions identified in Section I.A and I.B. Many of the core questions are strictly specific to either Receiving Waters (I.A.3, I.A.8, I.B.1, I.B.2, I.B.5) or Urban Runoff (I.A.4, I.A.5, I.A.7, I.B.3, I.B.4). Dividing the Draft Permit into these core programs will facilitate the development and assessment of the program's effectiveness. It will also make it easier to determine on what scale (regional, watershed, jurisdictional) the programs should be designed and implemented.

82. Add Pyrethroids to List of Monitoring Constituents (Appendix B.10; Line 100)

Adding pyrethroids to the list of monitoring constituents required for MLS and Temporary Watershed Assessment Stations (Table 2) would be the most effective way to assess the presence of pyrethroids in the watershed. In doing so, pyrethroids would be monitored in both wet and dry weather and the data would be consistent with, and comparable to, other constituent data that is generated for each watershed. The RWQCB fact sheet (p97) states that pyrethroids are the leading household pesticide (replacing diazinon) and monitoring is required because its use is "...likely to increase as diazinon use decreases." Because the MLS program was effectively used to evaluate diazinon during the previous Permit, it is anticipated that the same approach, coupled with the additional Copermittee improvements to the monitoring program (use of wet and dry events and addition of TWAS) would be acceptable.

83. Add Trash Assessment to MLS and TWAS Monitoring (Appendix B.10; Line 119 and 158)

- Remove the requirement, II.A.9 as a stand-alone program. The wording has changed slightly from the original Draft Permit text. The modification supports the Copermittee rationale presented at the workshop and is consistent with other Copermittee comments on trash. Please note that other program elements will also incorporate trash monitoring as identified below.

Incorporating trash assessment tools similar to those used in Forester Creek and/or Chollas Creek will address the RWQCB requirement. These currently accepted methods have been used within the San Diego region as part of elevated regulatory compliance for areas with known trash problems (Forester Creek and Chollas Creek).

The Copermittees believe that a more quantitative in depth assessment is not warranted. While several watersheds have identified trash as a concern, it is not a regional Tier 1 (LTEA) pollutant.

Conducting an assessment similar to that described herein adequately meets the RWQCB intent, provides adequate spatial and temporal coverage of the region, will provide a good baseline of trash throughout the watersheds, and will enable watersheds to prioritize and develop activities to address areas of greatest importance.

84. Add Text to Clarify Involvement of Watersheds (Appendix B.10; Line 308 and 329)

Propose to add sentences (**bold** text) to these two sections to clarify the involvement of watersheds and require their participation in developing and/or implementing the monitoring program.

- II.B: Add, "The monitoring shall be reviewed annually and modified as needed to include pollutants of concern identified through the Receiving Waters Monitoring Program, Section II.A."

- II.B.2.a: Add, "The monitoring program design, implementation, analysis, assessment, and reporting shall be designed with a watershed focus for each of the hydrologic units".

The need for watershed participation in monitoring program design is essential to develop programs that can meet all the goals identified in the watershed and monitoring sections of this Permit. It should be required with an understanding that the Copermittees would be allowed to determine the mechanism to achieve this.

An annual review of monitoring data, particularly from MS4s would allow Copermittees to modify or adjust their programs to best meet the watershed needs, while not sacrificing the prescriptiveness of the Permit requirement.

Adding the sentences as proposed would assist in proper program development and facilitate Copermittee compliance while creating a program best designed to show changes in water quality conditions.

85. Add Section Titled "Urban Runoff Discharge Monitoring" (Appendix B.10; Line 305)

This monitoring program and the individual components within it should be driven by, and used in conjunction with, the Receiving Waters Monitoring information. Monitoring within the Urban Runoff Discharge Monitoring program is best designed to be adaptive, responding to conditions

in the receiving waters and high priority sources and/or pollutants. To provide the most effective overall watershed assessments, these program components must react to new sources and changes in receiving water conditions, while still being able to easily feed into and supplement the receiving water data in a manner that produces comprehensive watershed water quality assessments. It is anticipated that the design and implementation of the Urban Runoff Discharge Monitoring program will differ from the Receiving Waters program. This is primarily because the programs will need to be reviewed and updated to reflect the Receiving Water program findings. It is also understood that the urban runoff components will address different goals and core management questions, such as I.A.4, I.A.5, I.A.7, I.B.3, and I.B.4.

Please note that much of the language within this section has been moved from its placement in the original draft Permit without any modifications. Any language that has been modified or added has been identified as red text.

86. Move Source Identification Monitoring to Urban Runoff Discharge Monitoring Program and Clarify Text (Appendix B.10; Line 366)

- Move the requirement for Source Identification Monitoring to the Urban Runoff Monitoring Program.
- Remove Section II.A.11 as a stand-alone program.
- Added or modified slightly two sentences from what was in the original draft Permit: "The Copermittees shall identify areas within the watershed where additional source identification monitoring is required. The monitoring shall include focused monitoring on those specific pollutants that have been identified through MLS/TWAS, TIEs, MS4, and other existing programs."

With the proper design and placement of stations from all of the Urban Runoff Discharge Monitoring program components (II.B.3a, b, & II.B.3) coupled with the addition receiving water stations (TWAS) the amount of data collected and the extent of coverage within the watersheds will be greatly expanded. As such, it is anticipated that the new programs will improve the overall identification of areas of concern. Once coupled with source inventory information from the LTEA, Copermittees may be able to determine sources and identify activities to address those sources.

The intent of the modification is to clarify that source ID monitoring will occur in response to previously identified watershed problems where source have not been determined.

In those instances when data and inventory information does not clearly identify sources, Copermittees will be required to conduct additional monitoring to better identify sources. This program will be an as-needed approach and will be designed to supplement the base information that is provided by the Urban Runoff Discharge Monitoring Program.

87. Move MS4 Map to Urban Runoff Discharge Monitoring Program (Appendix B.10; Line 313)

- Place the requirement previously identified as II.D.2, "Complete MS4 Map", into the new Urban Runoff Discharge Monitoring Program section. Move this requirement from the original placement within the dry weather program.

It makes sense to have all urban runoff discharge monitoring locations mapped, not just the dry weather stations. It will assist in evaluating monitoring information from a spatial perspective.

The text changes identified in this section (red text) simply clarify this request. They do not alter the intent of the initial requirement.

88. Move MS4 Discharge Monitoring to Urban Runoff Discharge Monitoring Program and Clarify Text (Appendix B.10; Line 323)

- Move the requirement for MS4 Discharge Monitoring to the new Urban Runoff Discharge Monitoring Program section.

- Remove the requirement, II.A.10, as a stand-alone program. Clarify that this new section (previously II.A.10) only pertains to MS4 outfalls, not the entire MS4 system.

Using a similar logic as applied to the Receiving Waters Program design, this component of the Urban Runoff Discharge Monitoring Program would be the basis for identifying watershed problems attributable to urban runoff. By adding the component for MS4 outfall monitoring along with the previous requirement to conduct dry weather laboratory monitoring, the characterization of urban runoff becomes much more complete. The additional monitoring within section II.C.2.b and II.C.2.c would be designed appropriately to enhance the findings of this program, resulting in a comprehensive approach to evaluating urban runoff discharges and identifying sources of priority pollutants.

Through much regional discussion, it is unclear whether the existing Draft Permit requirement (II.A.10) pertains only to MS4 outfalls or the entire MS4 system. As such it is recommended that the program name be changed to clearly identify that it is for outfalls only.

The Permit allows one year to develop this program. As this is a new Permit requirement, it is anticipated that Copermittees will need time to fully develop the appropriate design, sample locations and sample frequencies.

89. Move the 2001-01 Dry Weather Monitoring Program Laboratory Analytical Requirements to Urban Runoff Discharge Monitoring Program (Appendix B.10; Line 350)

- Move the 2001-01 Dry Weather Monitoring Program Laboratory Analytical Requirements to Urban Runoff Discharge Monitoring Program

As stated during earlier Copermittee comments, follow-up investigations for analytical constituents rarely result in the elimination of an illegal discharge. Usually laboratory results take from 1-2 weeks to obtain, making it difficult to track the problem upstream. Typically the pollutants evaluated through laboratory analysis are widespread pollutants, rarely associated with random illegal discharges. They are more pointed to ongoing pollution problems with facilities or homeowner practices (improper storage, misuse of pesticides, improper cleaning methods, etc). However, they are important in determining areas that may be of elevated concern within the watershed. The importance of this monitoring is better situated toward finding areas/sources of concern and developing activities (both watershed and jurisdictional) such as BMP implementation to reduce loads of the problem pollutant(s).

The text within this section has been modified from the original draft Permit text. However, the intent of the requirement, the frequency, and the number of sites required remain the same.

90. Move the 2001-01 Dry Weather Monitoring Program Laboratory Field Screening Requirements to Urban Runoff Discharge Monitoring Program (Appendix B.10; Line 380)

- Move the 2001-01 Dry Weather Monitoring Program Field Screening requirements to this section.
- Rename the program "Illegal Discharge / Illicit Connection Field Screening". Modify all text within this section to replace the term "Dry Weather Monitoring Program" with Illegal Discharge / Illicit Connection Field Screening".
- Modify text slightly to allow for either the use of a random grid system or station placement based upon prior knowledge of watershed and/or jurisdictional considerations.

The placement of this program in the context of the entire Urban Runoff Discharge Monitoring Program provides a logical means to keep the old Permit's prescriptiveness (prompt attention to follow-ups) while restructuring all programs in a manner that will provide the most effective assessment of watershed water quality.

This program would be designed to detect IC/IDs throughout the watershed. The program is intended to be identical to the field screening required in the previous Permit, with the addition of MBAS to the field screening analyte list. It is expected that the same requirement for prompt follow-ups (two business days) will still apply.

91. Add New Requirement to Coordinate Dry Weather Field Screening and Analytical Assessment (Appendix B.10; Line 464)

- Added the following text as a new requirement: "When possible, Copermittees shall coordinate with the requirements in Sections II.C.2.a and II.C.2.b above, to provide a complete field screening and analytical assessment during dry weather."

The suggested modification provides the Copermittees a mechanism to simultaneously meet multiple programs requirements with a single field effort. Conducting several analyses at a given location and time, provides a better understanding of water quality conditions and potential sources. In addition it is a cost effective way to comply with new Permit requirements. It is not anticipated that this will be able to occur for every sampling location and Copermittees understand that a reduction in sampling sites is not anticipated.

While there is implicit understanding that this can occur within the existing Permit language, its addition to the Permit memorializes that both RWQCB and Copermittee staff agree with this approach.

92. Add Requirement to Assess Trash During IC/ID Field Screening (Appendix B.10; Line 467)

- Add a requirement to assess trash during IC/ID Field Screening.
- Remove the requirement, II.A.9 as a stand-alone program. See item 83, above.

Currently the existing dry weather IC/ID program provides a general assessment of the presence of trash near the MS4 monitoring locations and when applicable, in the nearby receiving waters (for MS4s with direct discharges). With some modifications and improvements to the current visual assessments, a portion of the trash monitoring requirement could be incorporated into the existing programs.

The dry weather IC/ID monitoring locations provide an adequate assessment of the Copermittees' MS4 and to some extent receiving waters (for those MS4 sites directly discharging to a receiving water. Sites are visited and visual observations recorded even when there is no presence of flow. It is anticipated that the trash assessment conducted within this program will utilize a similar approach to the recommendation from Item 83 above.

93. Move TMDL Monitoring into Special Studies (Appendix B.10; Line 358)

- Move "TMDL Monitoring" into the Special Studies Section from its previous placement as II.A.12 in the Receiving Waters Monitoring Program.

TMDL monitoring requires a somewhat unique and more focused monitoring approach than typical receiving waters or urban runoff programs. TMDLs are also unique because they may have both receiving water and urban runoff monitoring requirements. Additionally, TMDL monitoring focuses specifically on addressing the pollutant(s) associated with the impairment and ensuring load reductions are being met. As such, it may not follow the same design rationale required for receiving waters or urban runoff programs. Finally, it is anticipated that TMDLs will increase through the life of this Permit. As such, the concept of identifying TMDLs separate from the other core programs will make it easier to assess information and incorporate future TMDL requirements into the Permit.

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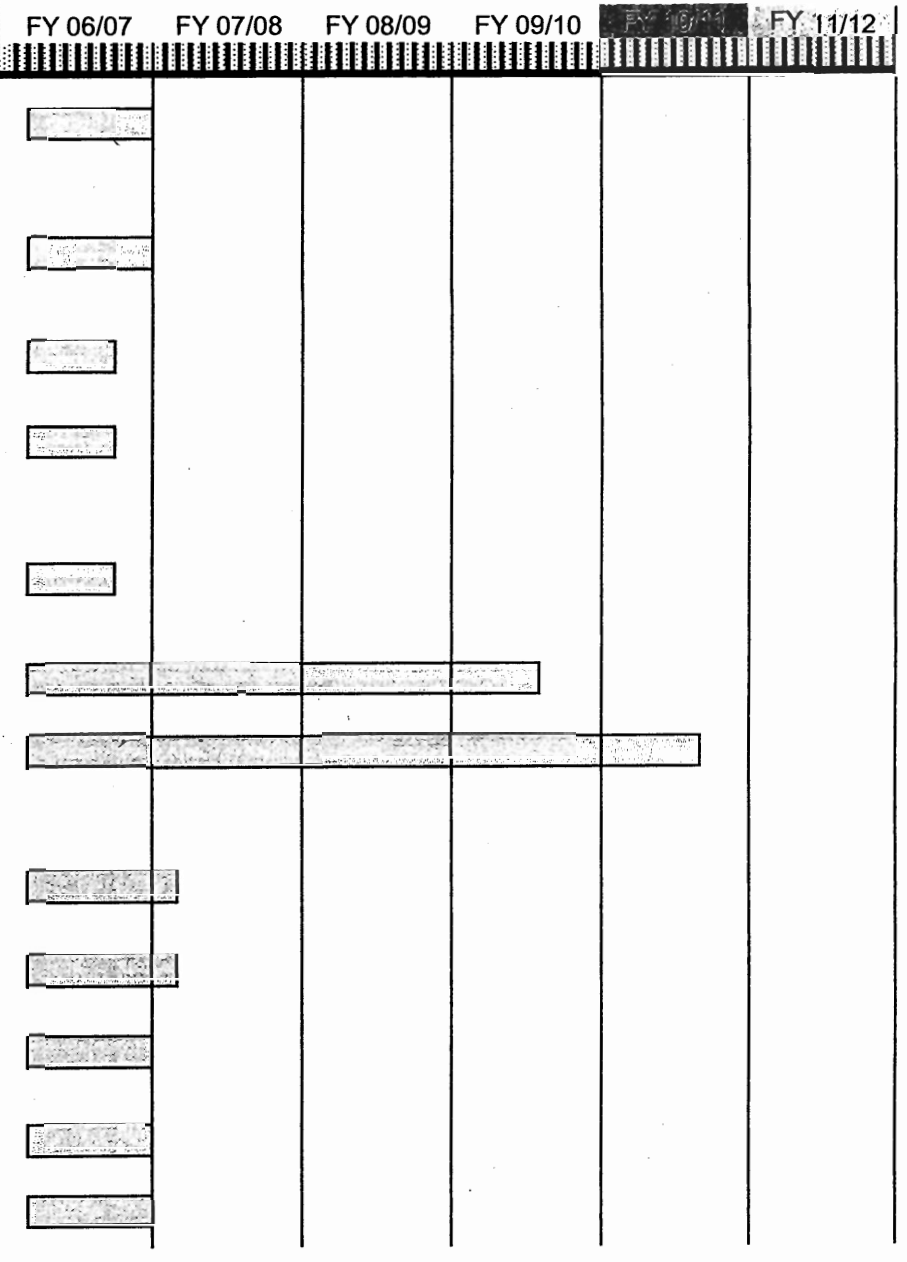
Permit Section	Task	Duration (Days)	Start	Finish
B.3.	Submit identification of discharges not to be prohibited and BMPs required for treatment of discharges not prohibited	208	09/14/06	07/01/07
C.2	Submit Certified Statement of Adequate Legal Authority	208	09/14/06	07/01/07
M	**Principal Permittee**			
M	Principal Permittee submits Notification of Principal Permittee	180.375	09/13/06	03/12/07
M.5 and L	Principal Permittee submits formal agreement between Copermittees which provides management structure for meeting Order	180.375	09/13/06	03/12/07
M.6	Principal Permittee(s) shall submit standardized formats for all reports required under this Order	180.375	09/13/06	03/12/07
J.5	Long-Term Effectiveness Assessment	1236.375	09/13/06	01/31/10
J.6	Principal Permittee submits Report of Waste Discharge	1610.375	09/13/06	02/09/11
D	**Jurisdictional Urban Runoff Program**			
D.2.a	Update Construction Ordinance and Approval Process	365.375	09/13/06	09/13/07
D.3.b.(2).(c)	Notify all Commercial and Industrial inventory of BMP updates	364.66667	09/13/06	09/13/07
J.1	Juridicational Urban Runoff Management Plans	290	09/14/06	07/01/07
J.1.a	Submit to Principal Permittee(s) individual JURMPs	290	09/14/06	07/01/07
J.1.b	Principal Permittee submits to Regional Board unified JURMP	290	09/14/06	07/01/07



San Diego Municipal Stormwater [illegible]

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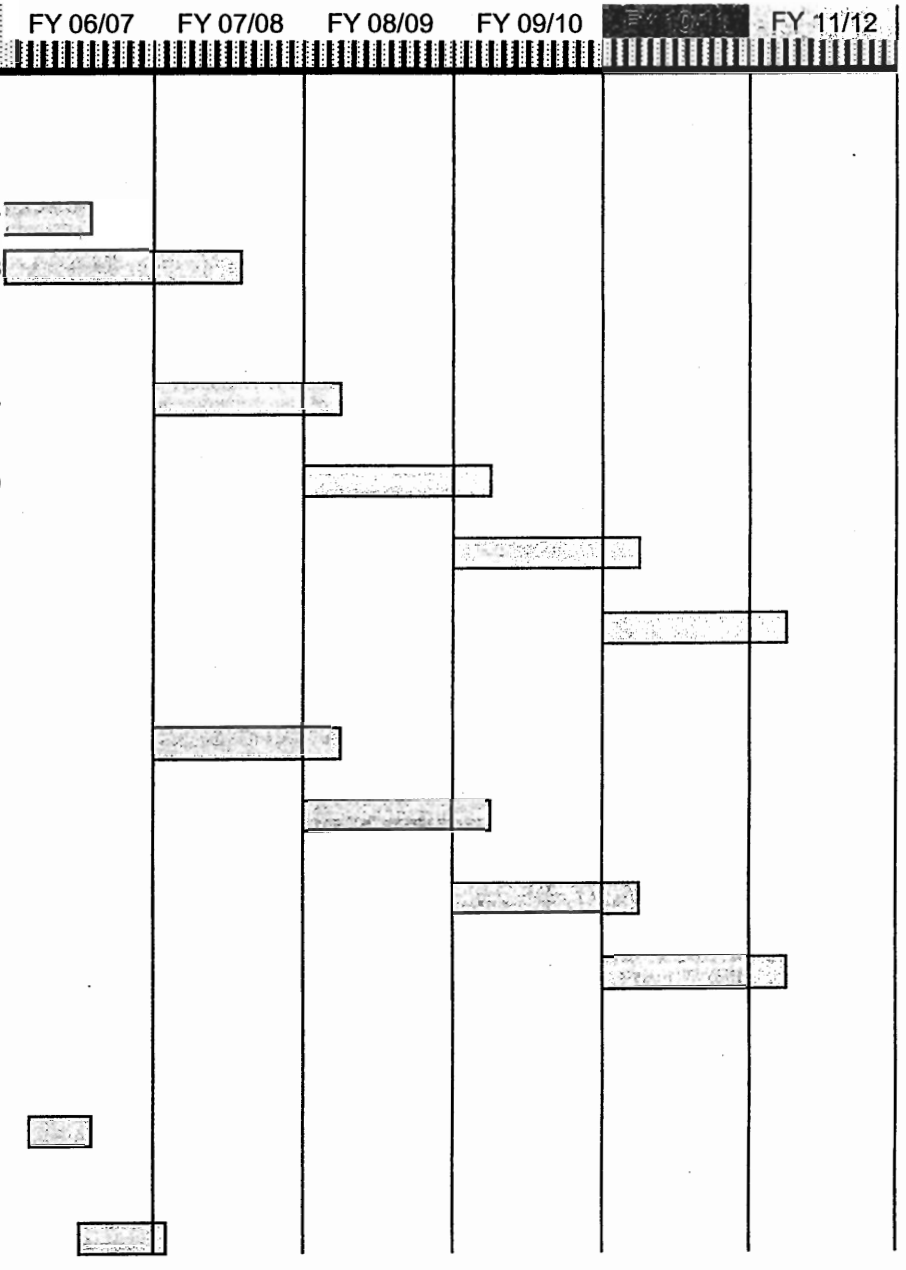
Permit Section	Task	Duration (Days)	Start	Finish
MRP III.1	**JURMP Annual Reports Principal Permittee submits**			
MRP III.7	**Unified interim Jurisdictional URMP**			
	Interium JURMP Annual Report 1	579	07/01/05	01/31/07
	Interium JURMP Annual Report 2	579	07/01/06	01/31/08
MRP III.1.a	**Submit JURMP Annual Report to Principle Permittee**			
	Submit JURMP Annual Report to Principle Permittee 1	457.375	07/01/07	09/30/08
	Submit JURMP Annual Report to Principle Permittee 2	456	07/01/08	09/30/09
	Submit JURMP Annual Report to Principle Permittee 3	456	07/01/09	09/30/10
	Submit JURMP Annual Report to Principle Permittee 4	456.375	07/01/10	09/30/11
MRP III.1.b	**Submit Unified JURMP Annual**			
	Submit JURMP Annual Report to Regional Board 1	457.66667	07/01/07	09/30/08
	Submit JURMP Annual Report to Regional Board 2	456	07/01/08	09/30/09
	Submit JURMP Annual Report to Regional Board 3	456	07/01/09	09/30/10
	Submit JURMP Annual Report to Regional Board 4	457	06/30/10	09/30/11
J.4	**Hydromodification Management Plan**			
J.4.b(1)	Principal Permittee submits Hydromodification Management Plan workplan	124.375	09/13/06	01/15/07
J.4.b(2)	Principal Permittee submits Hydromodification Management Plan	180.33333	01/16/07	07/15/07



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Permit Section	Task	Duration (Days)	Start	Finish
	progress report			
J.4.b(3)	Principal Permittee submits draft Hydromodification Management Plan	183.375	07/16/07	01/15/08
J.4.b(4)	Principal Permittee submits final Hydromodification Management Plan workplan	183	01/14/08	07/15/08
E	**Watershed Urban Runoff Management Program**			
E.2.f	Develop Watershed Water Quality Activities	291.375	09/13/06	07/01/07
E.2.g	Develop Implementation Strategies	291.375	09/13/06	07/01/07
E.2.j	Develop Watershed Educational Activities	291.375	09/13/06	07/01/07
J.2	**Watershed Urban Runoff Management Plan**			
J.2.b	Lead Watershed Permittees submit WURMPs to Principal Permittee	291.375	09/13/06	07/01/07
J.2.c	Principal Permittee submits to Regional Board unified WURMP	291	09/13/06	07/01/07
MRP III.2	**WURMP Annual Reports Principal Permittee submits**			
MRP III.7	**Unified interim Watershed URMP Annual Report**			
	Interium WURMP Annual Report 1	579	07/01/05	01/31/07
	Interium WURMP Annual Report 2	579	07/01/06	01/31/08
MRP III.2.c	**Submit WURMP Annual Report to Principal Permittee**			
	Submit WURMP Annual Report to Principal Permittee 1	580	07/01/07	01/31/09
	Submit WURMP Annual Report to Principal Permittee 2	579	07/01/08	01/31/10

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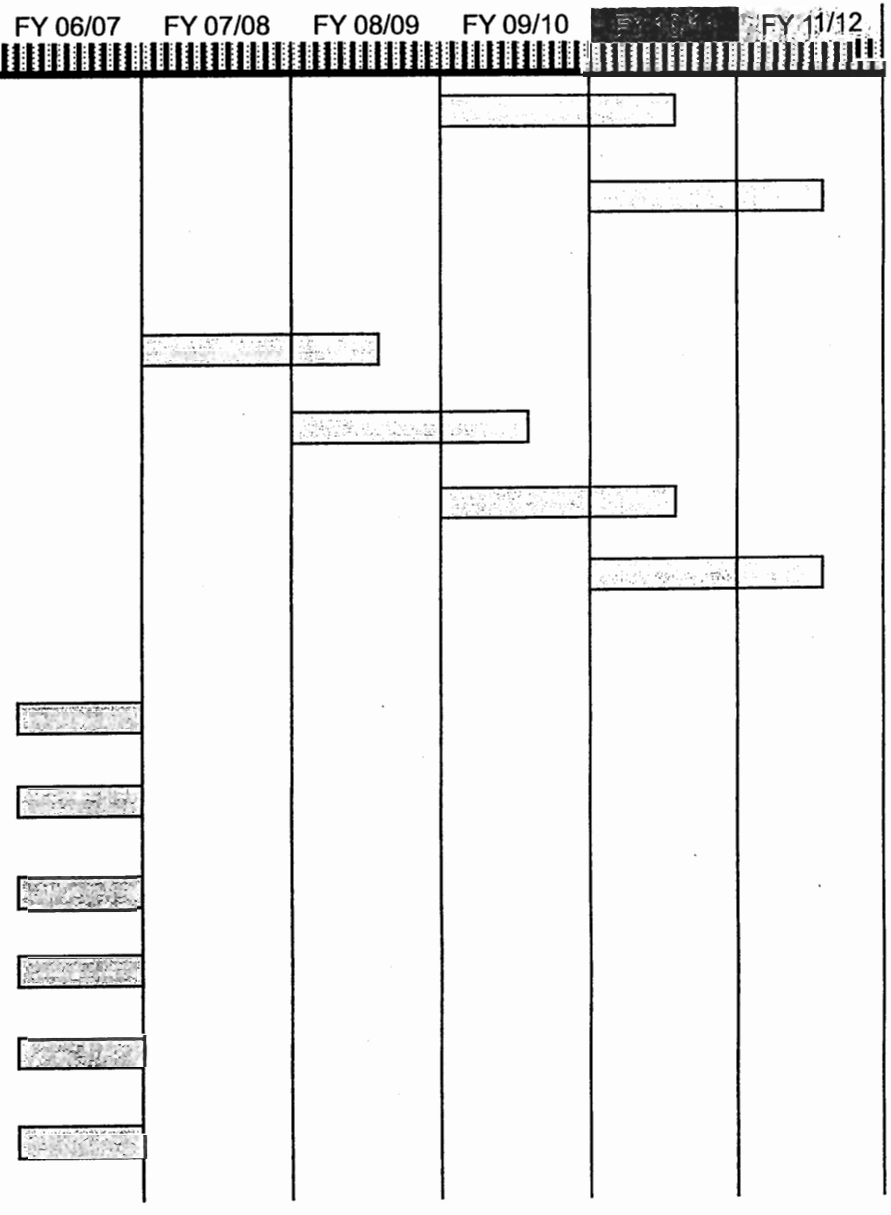
Permit Section	Task	Duration (Days)	Start	Finish
	Submit WURMP Annual Report to Principal Permittee 3	579.375	07/01/09	01/31/11
	Submit WURMP Annual Report to Principal Permittee 4	579	07/01/10	01/31/12
MRP II.2.3	**Submit Unified WURMP Annual Report to Regional Board**			
	Submit Unified WURMP Annual Report to Regional Board 1	580.66667	07/01/07	01/31/09
	Submit Unified WURMP Annual Report to Regional Board 2	579.66667	07/01/08	01/31/10
	Submit Unified WURMP Annual Report to Regional Board 3	579.66667	07/01/09	01/31/11
	Submit Unified WURMP Annual Report to Regional Board 4	579	07/01/10	01/31/12
F	**Regional Urban Runoff Management Program**			
F.1	Develop Regional Activities	291.375	09/13/06	07/01/07
F.2	Develop Minimum Program Standards for JURMP, WURMP and RURMP	291.375	09/13/06	07/01/07
F.3	Develop Report Integration	291.375	09/13/06	07/01/07
F.7	Develop Regional Residential Education Program	291.375	09/13/06	07/01/07
F.8	Develop Standardized Fiscal Analysis Methods	291.375	09/13/06	07/01/07
J.3	**Regional Urban Runoff Plan**			
J.3.b	Principal Permittee submits RURMP to Regional Board	291.375	09/13/06	07/01/07



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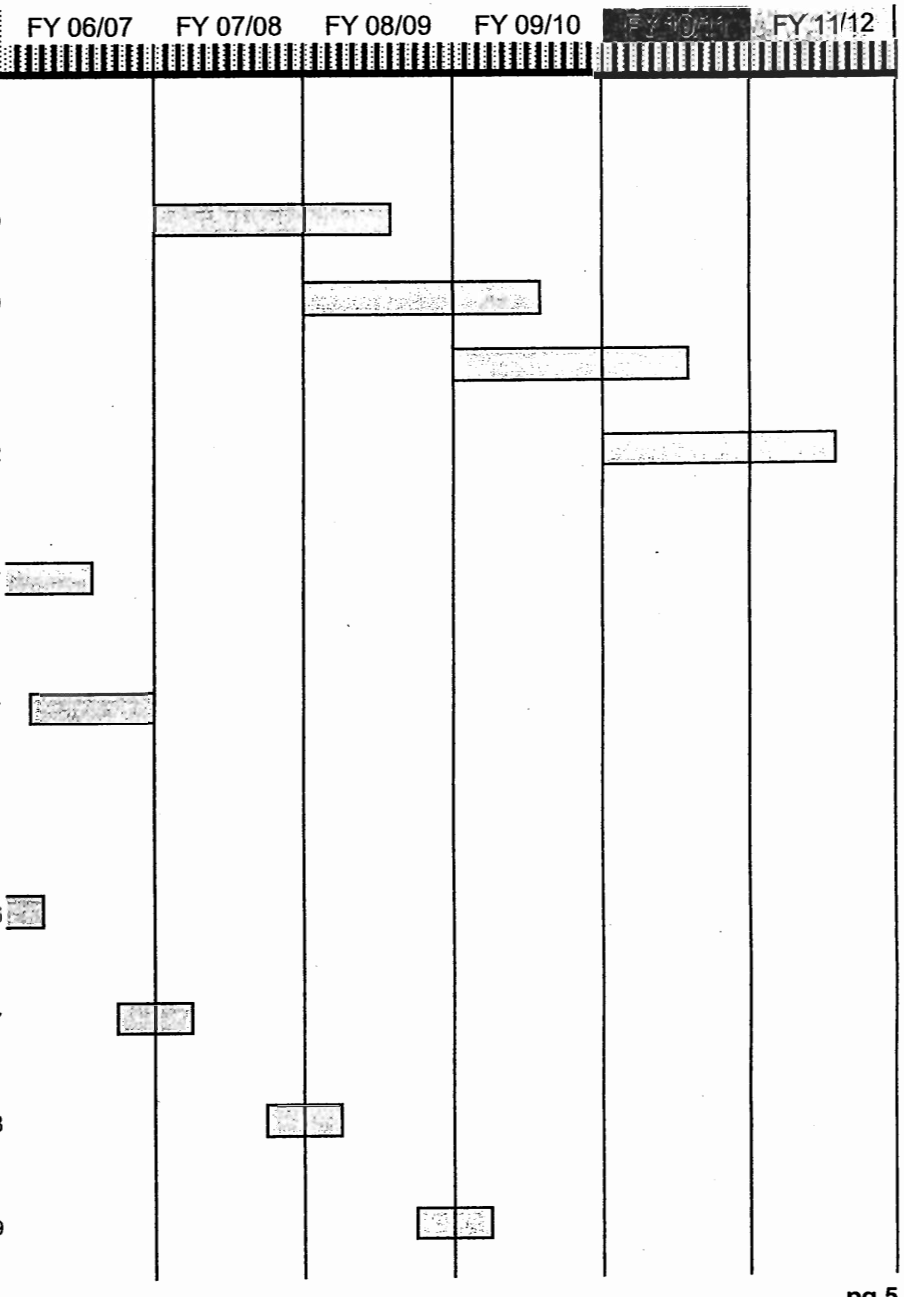
Permit Section	Task	Duration (Days)	Start	Finish
MRP III.3	**RURMP Annual Reports**			
	Submit RURMP Annual Report to Regional Board			
	Submit RURMP Annual Report to Regional Board 1	580	07/01/07	01/31/09
	Submit RURMP Annual Report to Regional Board 2	579	07/01/08	01/31/10
	Submit RURMP Annual Report to Regional Board 3	579	07/01/09	01/31/11
	Submit RURMP Annual Report to Regional Board 4	579	07/01/10	01/31/12
MRP III.4	**Monitoring Reports**			
MRP III.7	**Principal Permittee submits interim Receiving Waters Monitoring Program Annual Report**	580	06/30/05	01/31/07
MRP III.4.c	**Principal Permittee submits description of various monitoring program components**	291	09/13/06	07/01/07
MRP III.4.a	**Submit Annual Description of Receiving Waters Monitoring Program to Regional Board**			
	Submit Annual Description of Receiving Waters Monitoring Program 1	183	04/01/06	10/01/06
	Submit Annual Description of Receiving Waters Monitoring Program 2	183	04/01/07	10/01/07
	Submit Annual Description of Receiving Waters Monitoring Program 3	183	04/01/08	10/01/08
	Submit Annual Description of Receiving Waters Monitoring Program 4	183	04/01/09	10/01/09



Appendix B.1

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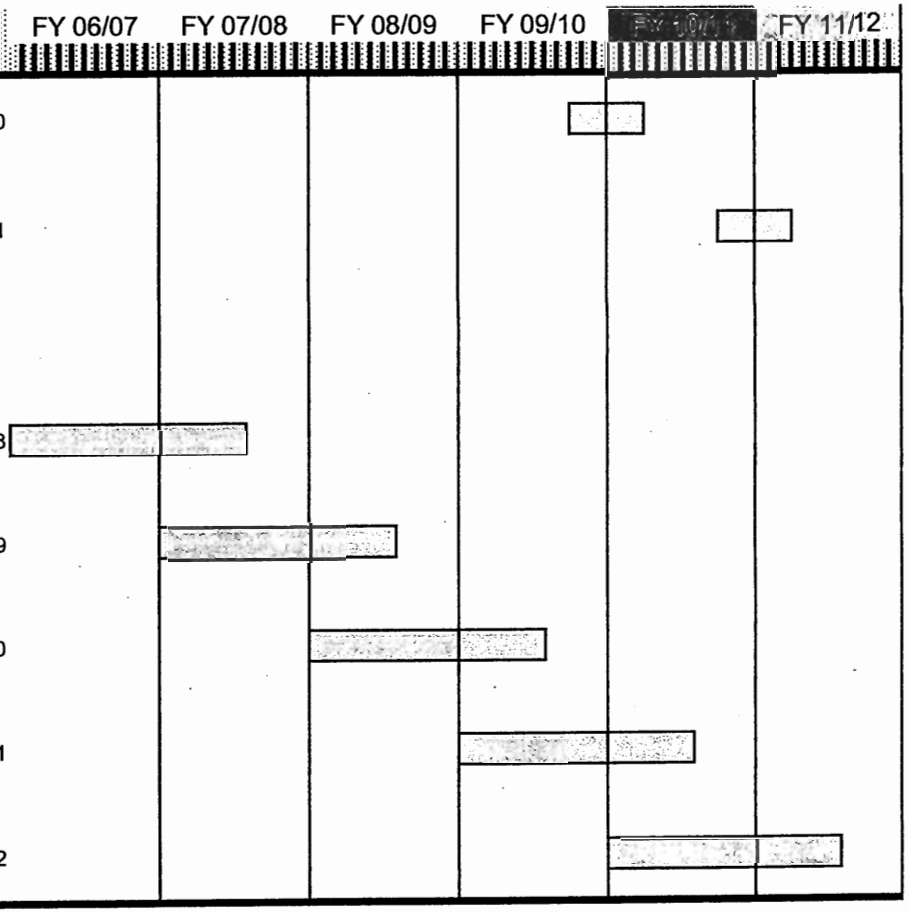
Permit Section	Task	Duration (Days)	Start	Finish
	Submit Annual Description of Receiving Waters Monitoring Program 5	183	04/01/10	10/01/10
	Submit Annual Description of Receiving Waters Monitoring Program 6	183	04/01/11	10/01/11
MRP III.4.b	**Submit Receiving Waters Monitoring Annual Report to Regional Board**			
	Submit Receiving Waters Monitoring Annual Report to Regional Board 1	579	07/01/06	01/31/08
	Submit Receiving Waters Monitoring Annual Report to Regional Board 2	580	07/01/07	01/31/09
	Submit Receiving Waters Monitoring Annual Report to Regional Board 3	579	07/01/08	01/31/10
	Submit Receiving Waters Monitoring Annual Report to Regional Board 4	579	07/01/09	01/31/11
	Submit Receiving Waters Monitoring Annual Report to Regional Board 5	579	07/01/10	01/31/12



e. TREATMENT CONTROL BMP MAINTENANCE TRACKING

(1) Each Copermittee shall develop and utilize a watershed-based database to track and inventory approved treatment control BMPs and treatment control BMP maintenance within its jurisdiction. At a minimum, the database shall include information on treatment control BMP type, location, watershed, date of construction, party responsible for maintenance, maintenance certifications or verifications, inspections, inspection findings, and corrective actions.

(2) Each Copermittee shall develop and implement a program to ensure that approved treatment control BMPs are operating effectively and have been adequately maintained. At a minimum, the program shall include the following:

(a) An annual inventory of all approved treatment control BMPs within the Copermittee's jurisdiction. The inventory shall also include all treatment control BMPs approved during the previous permit cycle.

(b) The prioritization of all projects with approved treatment control BMPs into high, medium, and low priority categories. At a minimum, projects with drainage insert treatment control BMPs shall be designated as at least a medium priority. Prioritization of other projects with treatment control BMPs shall include consideration of treatment control BMP size, recommended maintenance frequency, likelihood of operational and maintenance issues, location, receiving water quality, and other pertinent factors.

(c) 100% of projects with treatment control BMPs that are high priority shall be inspected by the Copermittee annually. 50% of projects with drain insert treatment control BMPs shall be inspected by the Copermittee annually. Treatment control BMPs that are low priority shall be inspected as needed. All inspections shall ensure effective operation and maintenance of the treatment control BMPs, as well as compliance with all ordinances, permits, and this Order. A minimum of 20% of the total projects with approved treatment BMPs, and a maximum of 200% of the average number of projects approved per year, shall be inspected annually.

(d) Requirement of annual verification of effective operation and maintenance of each approved treatment control BMP by the party responsible for the treatment control BMP maintenance.

(3) Operation and maintenance verifications shall be required prior to each rainy season.

(4) Inspections of high priority treatment control BMPs shall be conducted prior to each rainy season.

g. HYDROMODIFICATION - LIMITATIONS ON INCREASES OF RUNOFF DISCHARGE RATES AND DURATIONS

Each Copermittee shall collaborate with the other Copermittees to develop and implement a Hydromodification Management Plan (HMP) to manage increases in peak runoff discharge rates and durations from all Priority Development Projects, where such increased rates and durations are likely to cause increased erosion of channel beds and banks, sediment pollutant generation, or other impacts to beneficial uses due to increased erosive force. The HMP, once approved by the Regional Board, shall be incorporated into the local SUSMP and implemented by each Copermittee so that post-project runoff discharge rates and durations shall not exceed estimated pre-project discharge rates and durations where the increased discharge rates and

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Comment [c1]: Recommend deleting "stream habitat" – *Habitats can be affected by other factors such as dry weather flows which are not addressed in this section of the permit (Hydromodification).*

durations will result in increased potential for erosion or other significant adverse impacts to beneficial uses, attributable to changes in the discharge rates and durations.

(1) The HMP shall:

(a) bUtilize continuous simulation of the entire rainfall record to identify a range of rainfall events for which Priority Development Project post-project runoff rates and durations shall not exceed pre-project runoff rates and durations where the increased discharge rates and durations will result in increased potential for erosion or other significant adverse impacts to beneficial uses, attributable to changes in the discharge rates and durations. The lower boundary of the range of rainfall events identified shall correspond with the critical channel flow (Qc) that produces the critical shear stress that initiates channel bed movement or that erodes the toe of channel banks. The identified range of rainfall events may be different for specific watersheds, channels, or channel reaches.

(c) Require Priority Development Projects to implement hydrologic control measures to ensure that Priority Development Projects manage increases in pre-project runoff rates and durations for the range of rainfall events identified under section D.1.g.(1)(b), where the increased discharge rates and durations will result in increased potential for erosion or other significant adverse impacts to beneficial uses, attributable to changes in the discharge rates and durations.

(d) Include other performance criteria (numeric or otherwise) for Priority Development Projects as necessary to prevent urban runoff from the projects from increasing erosion of channel beds and banks, silt pollutant generation, or other impacts to beneficial uses and stream habitat due to increased erosive force.

(e) Include a review of pertinent literature.

(f) Include a protocol to evaluate potential hydrograph change impacts to downstream watercourses from Priority Development Projects.

(g) Include a description of how the Copermittees will incorporate the HMP requirements into their local approval processes.

(h) Include criteria on selection and design of management practices and measures (such as detention, retention, and infiltration) to control flow rates and durations and address potential hydromodification impacts.

(i) Include technical information supporting any standards and criteria proposed.

(j) Include a description of inspections and maintenance to be conducted for management practices and measures to control flow rates and durations and address potential hydromodification impacts.

(k) Include a description of pre- and post-project monitoring and other program evaluations to be conducted to assess the effectiveness of implementation of the HMP.

(l) Include information on evaluation of channel form and condition, including slope, discharge, vegetation, underlying geology, and other information, as appropriate.

(2) The HMP may include implementation of planning measures (e.g., buffers and restoration activities, including revegetation, use of less-impacting facilities at the point(s) of discharge, etc.) to allow expected changes in stream channel cross sections, vegetation, and discharge rates, velocities, and/or durations without adverse impacts to channel beneficial uses. Such measures shall not include utilization of non-natural hardscape materials such as concrete, etc.

Comment [c2]: Change "amount and timing of runoff" to "discharge rates and durations" – *This change is recommended to be consistent with other locations of the permit language. The terms amount and timing could be perceived to have different meaning than rates and durations.*

Deleted: amount and timing of runoff

Comment [c3]: Delete requirement to identify Ep standard – *The Copermittees believe that the intent of the section is in the establishment of the range of rainfall events required to be controlled to prevent the "potential for erosion or other significant adverse impacts to beneficial uses attributable to changes in the discharge rates and durations." In order to develop the range of rainfall events to control, the Copermittees (utilizing the literature review, TAC and other input) will have to identify/develop standards and methodologies that are suitable for the watersheds, climate, and channel systems within the region. Therefore, a pre-determined stand* ... [1]

Deleted: Identify an Erosion Potential (Ep) standard for channel segments which receive urban runoff discharges fro ... [2]

Deleted:)

Deleted: development

Deleted: development

Comment [c4]: Overall addition of "where the increased discharge rates and durations will result in increased p ... [3]

Deleted: in order to achieve the channel Ep standard.

Comment [c5]: Alterations to sub-section (c) – (1) eliminating the discussion of the Ep; (2) requiring ... [4]

Deleted: '

Deleted: urban runoff discharge rates and durations do not exceed

Deleted: development

Deleted: and (2) do not result in a channel Ep which exceeds the channel Ep standard developed under sections ... [5]

Comment [c6]: HMP are intended to address cumulative impacts. Therefore, no need for the requirement.

Comment [c7]: 1.Deleted the requirement to "include mechanisms for addressing cumulative impacts wit ... [6]

Deleted: (m) Include mechanisms for addressing cumulative impacts within a watershed on channel morphology.¶

Comment [c8]: Deleted the terms rip-rap and gabions – *These are natural materials that allow for plant grow* ... [7]

Deleted: riprap, gabions,

(3) The HMP requirements do not apply to projects where the project discharges stormwater runoff into creeks or storm drains where the potential for erosion or other impacts to beneficial uses is minimal. Such situations may include discharges into channels that are concrete-lined or significantly hardened (e.g., with rip-rap, sackrete, etc.) downstream to their outfall in bays or the ocean, underground storm drains discharging to bays or the ocean, and construction of projects in highly developed (e.g., < 30% of the watershed is susceptible to new development) watersheds, where the potential for single-project and/or cumulative impacts is minimal. Specific criteria for identification of such situations shall be included as a part of the HMP. However, plans to restore a channel reach may reintroduce the applicability of HMP controls, and would need to be addressed in the HMP.

(4) HMP Reporting

The Copermittees shall collaborate to report on the implementation of the HMP development as required in section J.4 of this Order.

(5) HMP Implementation

The Copermittees shall collaborate to develop and implement the HMP in accordance with the schedules established in section J.4 of this Order.

(6) Interim Hydromodification Management Measures

Starting July 1, 2007, Copermittees shall identify a range of rainfall events for which Priority Development Project post-project runoff rates and durations shall not exceed pre-project runoff rates and durations (Interim Hydromodification Management Measures, or "IHMM"), where the increased discharge rates and durations will result in increased potential for erosion or other significant adverse impacts to beneficial uses, attributable to changes in discharge rates and durations. Starting July 1, 2007 and until the final Hydromodification Management Plan standards are implemented, Copermittees shall require implementation of the IHMM on all projects disturbing over 50 acres, unless a project meets one of the criteria below.

a. The project would discharge into channels that are concrete-lined or significantly hardened (e.g., with rip-rap, sackrete, etc.) downstream to their outfall in bays or the ocean;
b. The project would discharge into underground storm drains discharging directly to bays or the ocean;
c. The project would be constructed in highly developed (< 30% of the watershed is susceptible to new development) watersheds, where the potential for single-project and/or cumulative impacts is minimal;
d. The project discharges to conveyance systems that are part of master planned storm drain facilities that were approved following environmental review under the California Environmental Quality Act, and where the project is consistent with the assumptions made for the development site in the adopted master planned storm drain system;
e. The project completes an independent Hydromodification Analysis Study acceptable to the Copermittee, which demonstrates an alternative range of rainfall events from the Copermittee's IHMM standards for which the project's post-project runoff rates and durations shall not exceed pre-project runoff rates and durations, would not result in increased potential for erosion or other significant adverse impacts to beneficial uses attributable to changes in discharge rates and durations.

Comment [c9]: 2.Removed "Priority Development Projects" and replaced with "projects" – *it is more generic to state that the HMP doesn't apply to ANY project if the conditions are met*

Deleted: Priority Development P

Comment [c10]: Replaced "channels" with "creeks" – *This is a more appropriate term for the receiving waters*

Deleted: channels

Comment [c11]: Revised the sub-section to refer to the implementation schedule in section J.4 for consistency

Comment [c12]: Revised the sub-section to refer to the implementation schedule in section J.4 for consistency

Comment [c13]: Revised the sub-section to refer to the implementation schedule in section J.4 for consistency

Comment [c14]: Revised the interim standards requirements to specifically require project applicants to identify the range of rainfall events to control from their project site to prevent downstream erosion (hydromodification). – *Allowing the Copermittees to include this specific requirement in lieu of a project-specific HAS would add more certainty to the requirements and help ensure that projects are implementing appropriate controls. The recommended section changes also include some criteria that relieves certain smaller or vested projects of the HMP requirements. The Copermittees see it as a necessity to explicitly describe the conditions where a project should and should not be required to meet the Interim HMP standards to minimize confusion and clearly describe which projects should appropriately be subject to the requirements. To provide for consistency between the interim and permanent standards, several of the interim "exclusion" criteria are the same as the permanent HMP exclusions described in the unrevised Tentative Order.*

Deleted: (4) HMP Reporting and Implementation¶
¶
The Copermittees shall collaborate ... [8]

Deleted: Interim Standards for Projects Disturbing 50 Acres or More

Deleted: implement as part of its local SUSMP an updated review process which requires proponents of Priority Development Projects in this size ... [9]

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Deleted: changes in the amount and timing of runoff. The Copermittees shall require that the HAS must demonstrate that the selected hydrologic contr ... [10]

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h. ENFORCEMENT OF DEVELOPMENT SITES

Each Copermittee shall enforce its storm water ordinance for all Development Projects and at all development sites as necessary to maintain compliance with this Order. Copermittee ordinances or other regulatory mechanisms shall include appropriate and effective sanctions to ensure compliance. Sanctions shall include the following or their equivalent: Non-monetary penalties, fines, and/or permit or occupancy denials for non-compliance.

Deleted: bonding requirements,

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See Attachment B of the Copermittees full comments for additional explanation of changes

2. Construction Component

Each Copermittee shall implement a construction program which meets the requirements of this section.

a. ORDINANCE UPDATE AND APPROVAL PROCESS

(1) Within 365 days of adoption of this Order, each Copermittee shall review and update its grading ordinances and other ordinances as necessary to comply with this Order, including requirements for the implementation of all designated BMPs and other measures.

(2) Prior to approval and issuance of local construction and grading permits, each Copermittee shall:

(a) Require all individual proposed construction sites to implement designated BMPs and other measures;
(b) Prior to permit issuance, require and review the project proponent's storm water management plan to ensure compliance with their grading ordinance, other ordinances, and this Order.
(c) Verify that project proponents subject to California's statewide General NPDES Permit for Storm Water Discharges Associated With Construction Activities, (hereinafter General Construction Permit), have existing coverage under the General Construction Permit.

b. SOURCE IDENTIFICATION

Each Copermittee shall maintain, annually update a watershed based inventory of all construction sites within its jurisdiction. The use of an automated database system, such as Geographical Information System (GIS) is highly recommended.

c. BMP IMPLEMENTATION

(1) Each Copermittee shall designate a minimum set of BMPs and other measures to be implemented at construction sites. This shall include the following requirements or their equivalent:

a. General Site Management

(i) Pollution prevention methods, where appropriate.
(ii) Development and implementation of a storm water management plan to manage stormwater and non-stormwater discharges from the site at all times.
(iii) Minimization of areas that are cleared and graded to only the portion of the site that is necessary for construction;
(iv) Minimization of exposure time of disturbed soil areas;

Comment [j1]: See Copermittee Comment 4.
Deleted: , reduces the discharge of pollutants from construction sites to the MEP, and ensures that urban runoff discharges from construction sites do not cause or contribute to a violation of water quality standards
Deleted: achieve full compliance
Comment [j2]: See Copermittee Comment 4.
Deleted: to ensure that pollutants discharged from the site will be reduced to the maximum extent practicable and will not cause or contribute to a violation of water quality standards.
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Deleted: monthly
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Deleted: The designated minimum set of BMPs to be considered
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Comment [j3]: See Copermittee Comment 4.
Deleted: ensure pollutants in runoff are reduced to the MEP and will not cause or contribute to a violation of water quality standards

(v) Minimization of grading during the wet season and correlation of grading with seasonal dry weather periods to the extent feasible.

(vi) Limitation of grading to a maximum disturbed area as determined by each Copermittee. The Copermittee has the option of temporarily increasing the size of disturbed soil areas by a set amount beyond the maximum, if the individual site is in compliance with applicable storm water regulations and the site has adequate control practices implemented to prevent storm water pollution.

(vii) Temporary stabilization and reseeding of disturbed soil areas as rapidly as feasible;

(viii) Preservation of natural hydrologic features where feasible;

(ix) Preservation of riparian buffers and corridors where feasible; and

(x) Retention, reduction, and proper management of all pollutant discharges on site.

b. Erosion and Sediment Controls

(i) Erosion prevention, to be used as the most important measure for keeping sediment on site during construction, but never as the single method;

(ii) Sediment controls, to be used as a supplement to erosion prevention for keeping sediment on-site during construction;

(iii) Slope stabilization on all inactive slopes during the rainy season and during rain events in the dry season.

(iv) Slope stabilization or sediment control measures to address active slopes during rain events regardless of the season, unless advanced treatment is being implemented downstream of the slope.

(v) Permanent revegetation or landscaping as early as feasible; and

(vi) Maintenance of all BMPs, until removed.

(2) Each Copermittee shall implement, or require the implementation of, the designated minimum BMPs and any additional measures necessary to comply with this Order at each construction site within its jurisdiction year round. However, BMP implementation requirements can vary based on wet and dry seasons. Dry season BMP implementation must plan for and address rain events that may occur during the dry season.

(3) Each Copermittee shall implement, or require implementation of, additional controls for construction sites tributary to CWA section 303(d) water bodies impaired for sediment as necessary to comply with this Order. Each Copermittee shall implement, or require implementation of, additional controls for construction sites within or adjacent to or discharging directly to coastal lagoons or other receiving waters within environmentally sensitive areas (as defined in section Attachment C of this Order) as necessary to comply with this Order.

(4) Each Copermittee shall implement, or require implementation of advanced treatment for sediment at construction sites that are determined by the Copermittee to be a significant threat to water quality and for which advanced treatment is determined to

Deleted: (k) Implementation of advanced treatment for sediment at construction sites that are determined by the Copermittee to be a significant threat to water quality. In evaluating the threat to water quality, the following factors shall be considered by the Copermittee: (1) soil erosion potential; (2) the site's slopes; (3) project size and type; (4) sensitivity of receiving water bodies; (5) proximity to receiving water bodies; (6) non-storm water discharges; (7) ineffectiveness of other BMPs; and (8) any other relevant factors.¶

Comment [j4]: See Copermittee Comment 4.

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be appropriate and feasible. In evaluating the use of advanced treatment methods, the following factors shall be considered: (1) soil erosion potential; (2) the site's slopes; (3) project size and type; (4) sensitivity of receiving water bodies; (5) proximity to receiving water bodies; (6) non-storm water discharges; (7) ineffectiveness of other BMPs; and (8) any other relevant factors.

d. INSPECTION OF CONSTRUCTION SITES

Each Copermittee shall conduct construction site inspections for compliance with its local ordinances (grading, storm water, etc.), permits (construction, grading, etc.), and this Order.

(1) During the wet season, each Copermittee shall inspect at least biweekly (every two weeks), all construction sites within its jurisdiction meeting the following criteria:

(a) All sites 50 acres or more in size and grading will occur during the wet season;
(b) All sites disturbing 1 acre or more of soil, and tributary to a CWA section 303(d) water body impaired for sediment or within or directly adjacent to or discharging directly to a receiving water within ESA; and
(c) Other sites determined by the Copermittees or the Regional Board as a significant threat to water quality. In evaluating threat to water quality, the following factors shall be considered: (1) soil erosion potential; (2) site slope; (3) project size and type; (4) sensitivity of receiving water bodies; (5) proximity to receiving water bodies; (6) non-storm water discharges; (7) past record of non-compliance by the operators of the construction site; and (8) any other relevant factors.

(2) During the wet season, each Copermittee shall inspect at least monthly, all construction sites with one acre or more of soil disturbance not meeting the criteria specified above in section D.2.d.(1).

(3) During the wet season, each Copermittee shall inspect as needed, construction sites with less than one acre of soil disturbance.

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(4) Each Copermittee shall inspect all construction sites as needed during the dry season.

(5) Based upon site inspection findings, each Copermittee shall implement all follow-up actions (i.e., reinspection, enforcement) necessary to comply with this Order.

(6) Inspections of construction sites shall include, but not be limited to:
(a) Check for coverage under the General Construction Permit (Notice of Intent (NOI) and/or Waste Discharge Identification No.) during initial inspections;
(b) Assessment of compliance with Copermittee ordinances and permits related to urban runoff, including the implementation and maintenance of designated minimum BMPs;

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(c) Assessment of BMP effectiveness;

(d) Visual observations for non-storm water discharges, potential illicit connections, and potential discharge of pollutants in storm water runoff;
(e) Education and outreach on storm water pollution prevention, as needed; and
(f) Documentation of the inspection, including violations observed, actions required, and enforcement mechanisms utilized.

Deleted: Creation of a written record

(7) The Copermittees shall track the number of inspections for the inventoried construction sites throughout the reporting period to ensure that the sites are inspected at the minimum frequencies required.

e. ENFORCEMENT OF CONSTRUCTION SITES

Each Copermittee shall develop and implement an escalating enforcement process that achieves prompt and effective corrective actions at construction sites for violations of the Copermittee's water quality protection permit requirements and ordinances. This enforcement process shall include authorizing the Copermittee's construction site inspectors to take prompt enforcement actions when appropriate and necessary. The enforcement process shall include appropriate and effective sanctions such as stop work orders, non-monetary penalties, fines, bonding requirements, and/or permit denials for non-compliance.

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f. REPORTING OF NON-COMPLIANT SITES

In addition to the notification requirements in section 5(e) of Attachment B, each Copermittee shall notify the Regional Board when the Copermittee issues a stop work order or other high level enforcement to a non-compliant construction site in their jurisdiction.

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See Attachment B of the Copermittees full comments for additional explanation of changes

Existing Development Component

a. MUNICIPAL

Each Copermittee shall implement a municipal program which meets the requirements of this section.

Comment [j1]: See Copermittee Comment 4.

Deleted: , reduces the discharge of pollutants from municipal areas and activities to the MEP, and ensures that urban runoff discharges from municipal areas and activities do not cause or contribute to a violation of water quality standards

(1) Source Identification

Each Copermittee shall annually update a watershed based inventory of municipal areas and activities. The inventory shall include the name, address (if applicable), and a description of the area/activity, which pollutants are potentially generated by the area/activity, and identification of whether the area/activity is tributary to a CWA section 303(d) water body and generates pollutants for which the water body is impaired. The use of an automated database system, such as Geographical Information System (GIS) is highly recommended when applicable, but not required.

(2) BMP Implementation

(a) Each Copermittee shall implement pollution prevention methods in its municipal program and shall require their use by appropriate municipal departments and personnel, where appropriate.

Comment [j2]: See Copermittee Comment 5.

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(b) Each Copermittee shall designate a minimum set of BMPs for all municipal areas and activities. The designated minimum BMPs for municipal areas and activities shall be area or activity specific as appropriate.

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(c) Each Copermittee shall implement, or require the implementation of, the designated minimum BMPs and any additional measures necessary to comply with this Order for each municipal area or activity within its jurisdiction.

(d) Each Copermittee shall evaluate the feasibility of retrofitting existing structural flood control devices and retrofit where needed.

(e) Each Copermittee shall implement, or require implementation of, any additional controls for municipal areas and activities tributary to CWA section 303(d) impaired water bodies (where an area or activity generates pollutants for which the water body is impaired) as necessary to comply with this Order. Each Copermittee shall implement, or require implementation of, additional controls for municipal areas and activities within or directly adjacent to or discharging directly to coastal lagoons or other receiving waters within environmentally sensitive areas (as defined in Attachment C of this Order) as necessary to comply with this Order.

(3) Operation and Maintenance of Municipal Separate Storm Sewer System and Structural Controls

See Attachment B of the Copermittees full comments for additional explanation of changes

(a) Each Copermittee shall implement a schedule of inspection and maintenance activities to ensure proper operation of all municipal structural treatment controls designed to reduce pollutant discharges to or from its MS4s and related drainage structures.

(b) Each Copermittee shall implement a schedule of maintenance activities for the MS4. For structures not inspected and maintained according to the conditions specified in any other individual, general, or regional permit (RGP-53, etc.), the maintenance activities shall, at a minimum, include:

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i. Copermittees shall classify all catch basins, storm drain inlets, and open channels as high, medium, or low priority. High Priority Facilities shall be those facilities generating the highest volumes of trash and/or debris. Medium Priority Facilities shall be those generating moderate volumes of trash and/or debris. Low Priority Facilities shall be those generating low volumes of trash and/or debris.

ii. High Priority Facilities shall be inspected at least once per year between May 1 and September 30. Medium and Low Priority Facilities shall be inspected annually on a year-round schedule determined appropriate by the Copermittee. If after two (2) consecutive years of inspections (which may include record of previous inspections during the two years prior to adoption of this Order), any Low Priority Facilities can be demonstrated to require inspection and cleaning on less than an annual basis, they may be inspected on an as-needed basis, but not less than every other year.

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Deleted: Copermittee catch basins and storm drain inlets at least once a year

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iii. Any High, Medium, or Low, Priority Facility for which the accumulation of trash and/or debris has reached 40% of design capacity shall be cleaned in a timely manner, and as early as reasonably possible, considering all relevant factors (the need for environmental permits and clearances, traffic interruption, worker safety, availability of equipment, etc.). Additional cleaning shall be conducted as necessary.

Deleted: If accumulated waste (e.g. sediment, trash, debris and other pollutants) is visible, the accumulated waste in the catch basin or storm drain shall be cleaned out. Additional cleaning shall be conducted as necessary.

iv. Record keeping of the maintenance and cleaning activities including the overall quantity of waste removed.

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v. Proper disposal of waste removed pursuant to applicable laws.

vi. Measures to eliminate waste discharges during MS4 maintenance and cleaning activities.

Deleted: <#>Inspection of all Copermittee open channels and removal of any observed anthropogenic litter from the open channels at least once a year between May 1 and September 30, with additional inspection and removal as necessary.¶
<#>Inspection, maintenance, and cleaning of other portions of the MS4 according to an established prioritized schedule. ¶
environmental permits and clearances,

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(4) Management of Pesticides, Herbicides, and Fertilizers

The Copermittees shall implement BMPs to reduce the contribution of pollutants associated with the application, storage, and disposal of pesticides, herbicides and fertilizers from municipal areas and activities to MS4s. Important municipal areas and activities include municipal facilities, public rights-of-way, parks, recreational facilities, golf courses, cemeteries, botanical or zoological gardens and exhibits, landscaped areas, etc.

Such BMPs shall include, at a minimum: (1) educational activities, permits, licensing or certifications and other measures for municipal handlers, applicators, and transporters; (2) integrated pest management measures that rely on non-chemical solutions; (3) the use of native vegetation; (4) schedules for irrigation

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and chemical application; and (5) the collection and proper disposal of unused pesticides, herbicides, and fertilizers.

(5) Sweeping of Municipal Areas

Each Copermittee shall implement a program to sweep improved (possessing a curb and gutter) municipal roads, streets, highways, and parking facilities. The program shall include the following measures:

(a) Roads, streets, highways, and parking facilities identified as consistently generating the highest volumes of trash and/or debris shall be swept at least two times per month.

(b) Roads, streets, highways, and parking facilities identified as consistently generating moderate volumes of trash and/or debris shall be swept at least monthly.

(c) Roads, streets, highways, and parking facilities identified as generating low volumes of trash and/or debris shall be swept as necessary, but no less than once per year.

(d) For special events (festivals, sporting events, etc.) that can reasonably be expected to generate substantial quantities of trash and litter, Copermittees shall take or require that adequate precautions be taken to prevent or mitigate the accumulation of trash and litter on roads, streets, highways, and parking facilities. These may include any or all of the following as appropriate:

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i. Placement of temporary screens on catch basins
ii. Requirement of proper management of trash and litter as a condition of the special use permit issued for the event
iii. Cleaning out of catch basins subsequent to the event and prior to any rain event
iv. Sweeping of facilities following the special event, or
v. Any other method or practice that will provide equivalent protection of water quality.

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(6) Limit Infiltration From Sanitary Sewer to MS4/Provide Preventive Maintenance of Both

Each Copermittee shall implement controls and measures to limit infiltration of seepage from municipal sanitary sewers to MS4s through thorough, routine preventive maintenance of the MS4. Each Copermittee that operates both a municipal sanitary sewer system and a MS4 shall implement controls and measures to limit infiltration of seepage from the municipal sanitary sewers to the MS4s that shall include overall sanitary sewer and MS4 surveys and thorough, routine preventive maintenance of both.

(7) Inspection of Municipal Areas and Activities

See Attachment B of the Copermittees full comments for additional explanation of changes

(a) At a minimum, each Copermittee shall inspect the following high priority municipal areas and activities annually:

i. Roads, Streets, Highways, and Parking Facilities.
ii. Flood Management Projects and Flood Control Devices.
iii. Areas and activities tributary to a C WA section 303(d) impaired water body, where an area or activity generates pollutants for which the water body is impaired. Areas and activities within or adjacent to or discharging directly to coastal lagoons or other receiving waters within environmentally sensitive areas (as defined in Attachment C of this Order).
iv. Municipal Facilities.
[1] Active or closed municipal landfills;
[2] Publicly owned treatment works (including water and wastewater treatment plants) and sanitary sewage collection systems;
[3] Municipal separate storm sewer systems;
[4] Solid waste transfer facilities;
[5] Land application sites;
[6] Corporate yards including maintenance and storage yards for materials, waste, equipment and vehicles; and
[7] Household hazardous waste collection facilities.
v. Municipal airfields.
vi. Parks and recreation facilities.
vii. Special event venues following special events (festivals, sporting events, etc.)
viii. Power washing.
ix. Other municipal areas and activities that the Copermittee determines may contribute a significant pollutant load to the MS4.

(b) Other municipal areas and activities shall be inspected as needed.

(c) Based upon site inspection findings, each Copermittee shall implement all follow-up actions necessary to comply with this Order

(8) Enforcement of Municipal Areas and Activities

Each Copermittee shall enforce its storm water ordinance for all municipal areas and activities as necessary to maintain compliance with this Order.

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See Attachment B of the Copermittees full comments for additional explanation of changes

b. INDUSTRIAL AND COMMERCIAL

Each Copermittee shall implement an industrial and commercial program which meets the requirements of this section.

Comment [J1]: See Copermittee Comment 4.

Deleted: , reduces the discharge of pollutants from industrial and commercial sites/sources to the MEP, and ensures that urban runoff discharges from industrial and commercial sites/sources do not cause or contribute to a violation of water quality standards

(1) Source Identification

Each Copermittee shall annually update a watershed-based inventory of all industrial and commercial sites/sources within its jurisdiction (regardless of ownership) that could contribute a significant pollutant load to the MS4. The inventory shall include the following minimum information for each industrial and commercial site/source: name; address; pollutants potentially generated by the site/source (and identification of whether the site/source is tributary to a Clean Water Act section 303(d) water body and generates pollutants for which the water body is impaired); and a narrative description including SIC codes which best reflects the principal products or services provided by each facility. The use of an automated database system, such as Geographical Information System (GIS) is highly recommended.

At a minimum, the following sites/sources shall be included in the inventory:

(a) Commercial Sites/Sources:

Stationary Sources

i. Automobile repair, maintenance, fueling, or cleaning;
ii. Airplane repair, maintenance, fueling, or cleaning;
iii. Boat repair, maintenance, fueling, or cleaning;
iv. Equipment repair, maintenance, fueling, or cleaning;
v. Automobile and other vehicle body repair or painting;
vi. Automobile (or other vehicle) parking lots and storage facilities;
vii. Retail or wholesale fueling;
viii. Eating or drinking establishments, including food markets;
ix. Botanical or zoological gardens and exhibits;
x. Nurseries and greenhouses;
xi. Golf courses, parks and other recreational areas/facilities;
xii. Cemeteries;
xiii. Marinas;
xiv. Building material retailers and storage;
xv. Animal facilities

Mobile Sources

xvi. Mobile automobile or other vehicle washing;
xvii. Mobile carpet, drape or furniture cleaning;
xviii. Pest control services;
xix. Cement mixing or cutting;
xx. Masonry;
xxi. Painting and coating;

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xxii. Landscaping;
xxiii. Pool and fountain cleaning;
xxiv. Portable Sanitary Toilet Services; and
xxv. Power washing services.

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(b) Industrial Sites/Sources:

i. Industrial Facilities, as defined at 40 CFR § 122.26(b)(14), including those subject to the General Industrial Permit or other individual NPDES permit;
ii. Operating and closed landfills;
iii. Facilities subject to SARA Title III; and
iv. Hazardous waste treatment, disposal, storage and recovery facilities.

(c) All other commercial or industrial sites/sources tributary to a CWA Section 303(d) impaired water body, where the site/source generates pollutants for which the water body is impaired. All other commercial or industrial sites/sources within or directly adjacent to or discharging directly to coastal lagoons or other receiving waters within environmentally sensitive areas (as defined in Attachment C of this Order).

(d) All other commercial or industrial sites/sources that the Copermittee determines may contribute a significant pollutant load to the MS4.

(2) BMP Implementation

(a) Each Copermittee shall require the use of pollution prevention methods at industrial and commercial sites/sources, where appropriate.

Comment [j2]: See Copermittee Comment 5.
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(b) Each Copermittee shall designate a minimum set of BMPs for all industrial and commercial sites/sources. The designated minimum BMPs shall be specific to facility types and pollutant generating activities, as appropriate.

(c) Each Copermittee shall require the implementation of, the designated minimum BMPs and any additional measures necessary to comply with this Order at each industrial and commercial site/source within its jurisdiction.

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Each Copermittee shall require implementation of additional controls for industrial and commercial sites/sources tributary to CWA section 303(d) impaired water bodies (where a site/source generates pollutants for which the water body is impaired) as necessary to comply with this Order. Each Copermittee shall require implementation of additional controls for industrial and commercial sites/sources within or directly adjacent to or discharging directly to coastal lagoons or other receiving waters within environmentally sensitive areas (as defined in Attachment C of this Order) as necessary to comply with this Order.

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(3) Copermittee Inspection of Industrial and Commercial Sites/Sources

See Attachment B of the Copermittees full comments for additional explanation of changes

(a) Each Copermittee shall conduct industrial and commercial site inspections for compliance with its ordinances, permits, and this Order. Inspections shall include but not be limited to:

i. Review of BMP implementation plans, if the site uses or is required to use such a plan;
ii. Review of facility monitoring data, if the site monitors its runoff;
iii. Check for coverage under the General Industrial Permit (Notice of Intent (NOI) and/or Waste Discharge Identification No.), if applicable;
iv. Assessment of compliance with Copermittee ordinances and permits related to urban runoff;
v. Assessment of BMP implementation, maintenance and effectiveness;
vi. Visual observations for non-storm water discharges, potential illicit connections, and potential discharge of pollutants in storm water runoff; and
vii. Education and training on storm water pollution prevention.

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(b) At a minimum, 20% of the sites inventoried as required in section D.3.b.(1) above (excluding mobile businesses) shall be inspected in the first year of implementation of the updated Jurisdictional Urban Runoff Management Program. This requirement shall increase to 25% of the sites in the second year, and 25% annually thereafter.

(c) At a minimum, 50% of all sites (excluding mobile businesses) determined to pose a high threat to water quality shall be inspected in the first year of implementation of the updated Jurisdictional Urban Runoff Management Program regardless of whether this exceeds the number of inspections required in section D.3.b(4)(b) above. This requirement shall increase to 100% of the sites in the second year, and 100% annually thereafter. In any year that the total number of required inspections per section D.3.b(4)(b) above exceeds the number of high threat to water quality sources, all high threat to water quality sources shall be inspected. In evaluating threat to water quality, each Copermittee shall address, at a minimum, the following:

Deleted: Each Copermittee shall annually inspect all sites determined to pose a high threat to water quality.

i. Type of activity (SIC code);
ii. Materials used at the facility;
iii. Wastes generated;
iv. Pollutant discharge potential;
v. Non-storm water discharges;
vi. Size of facility;
vii. Proximity to receiving water bodies;
viii. Sensitivity of receiving water bodies;
ix. Whether the facility is subject to the General Industrial Permit or an individual NPDES permit;
x. Whether the facility has filed a No Exposure Certification/Notice of Non-Applicability;
xi. Facility design;

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xii. Total area of the site, area of the site where industrial or commercial activities occur, and area of the site exposed to rainfall and runoff;
xiii. The facility's compliance history; and
xiv. Any other relevant factors.

(d) Based upon site inspection findings, each Copermittee shall implement all follow-up actions necessary to comply with this Order.

(e) To the extent that the Regional Board has conducted an inspection of an industrial site during a particular year, the requirement for the responsible Copermittee to inspect this facility during the same year will be satisfied.

(f) The Copermittees shall track the number of inspections for the inventoried industrial and commercial sites/sources throughout the reporting period to ensure that the sites/sources are inspected at the minimum frequencies listed in sections D.3.b.(3)(b) and D.3.b.(3)(c).

(4) Third Party Inspections

(a) Copermittees may develop and implement programs to utilize third party inspections to partially or wholly satisfy the inspection requirements of sections D.3.b(3)(a) and (b) above. "Third party" means any entity not employed by or under contract to the Copermittee to which the inspection requirement applies (e.g., industry or professional organizations, consulting firms, etc.).

(b) Third party inspections satisfying the requirements of this Order may be substituted for Copermittee inspections at a ratio of 11:10 (i.e., for every 10 inspections substituted, one additional inspection is required).

(c) Third party inspection programs shall be subject to the development and use of appropriate quality assurance / quality control protocols.

(d) Copermittees utilizing third party programs shall require that inspection results and violations are reported in a timely manner to ensure that follow up and enforcement are conducted in accordance with the requirements of section D.3.b (3)(d) above.

(5) Regulation of Mobile Businesses

(a) Each Copermittee shall develop and implement a program to reduce the discharge of pollutants from mobile businesses. Each Copermittee shall keep as part of their inventory (section D.3.b.(1) above), a listing of mobile businesses known to operate within its jurisdiction. The program shall include:

i. Development and implementation of minimum standards and BMPs to be required for each of the various types of mobile businesses.

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At a minimum, 40% of the sites inventoried as required in section D.3.b.(1) above (excluding mobile businesses) shall be inspected each year. ¶
¶
In addition to conducting inspections, each Copermittee shall develop and implement a program for verifying industrial and commercial site/source compliance with its ordinances, permits, and this Order, if determined to be necessary by the Copermittee. In developing the program, each Copermittee shall consider use of:
¶
Compliance certifications (including submitting monitoring results, if applicable);¶
Third party inspections; ¶
Facility or industry specific surveys; and¶
Other relevant factors.
¶
<#>Based upon site inspection findings, each Copermittee shall implement all follow-up actions necessary to comply with this Order.
¶
<#>To the extent that the Regional Board has conducted an inspection of an industrial site during a particular year, the requirement for the responsible Copermittee to inspect this facility during the same year will be satisfied.
¶
<#>The Copermittees shall track the number of inspections for the inventoried industrial and commercial sites/sources throughout the reporting period to ensure that the sites/sources are inspected at the minimum frequencies listed in sections D.3.b.(3)(b) and D.3.b.(3)(c).
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ii. Development and implementation of an enforcement strategy which specifically addresses the unique characteristics of mobile businesses.

iii. Notification to mobile businesses known to operate within the Copermittee's jurisdiction of the minimum standards and BMP requirements and local ordinances.

iv. Development and implementation of an outreach and education strategy.

v. Inspection of mobile businesses as needed.

(6) Collaborative Approaches to Regulating Industrial and Commercial Sites/Sources

If they choose to, the Copermittees may cooperate in developing and implementing their programs for stationary and mobile businesses, including sharing of business inventories, BMP requirements, and education.

(7) Notification of Industrial and Commercial Sites/Sources

Within two years of implementation of the updated Jurisdictional Urban Runoff Management Program, each Copermittee shall notify the owner/operator of each inventoried industrial and commercial site/source of applicable BMP requirements. Where Copermittees choose to develop collaborative approaches to the regulation of businesses per section D.3.b.(6) above, this requirement shall be extended to three years for those businesses or business types addressed through the collaborative program.

(8) Enforcement of Industrial and Commercial Sites/Sources

Each Copermittee shall enforce its storm water ordinance for all industrial and commercial sites/sources as necessary to maintain compliance with this Order. Copermittee ordinances or other regulatory mechanisms shall include appropriate and effective sanctions to ensure compliance. Sanctions shall include the following or their equivalent: Non-monetary penalties, fines, bonding requirements, and/or permit denials for non-compliance.

(9) Reporting of Industrial Non-Filers

As part of each Annual Report, each Copermittee shall report a list of industrial sites, including the name, address, and SIC code, that may require coverage under the General Industrial Permit for which a NOI has not been filed.

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(i) Year 1. Notify owners/operators of all previously inspected and newly identified sites/sources

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E. Watershed Management Component

1. Each Copermittee shall implement all requirements of section E of this Order no later than July 1, 2007, unless otherwise specified in this Order. Prior to July 1, 2007, each Copermittee shall collaborate with the other Copermittees within its watershed(s) to implement its Watershed URMP, as the document was developed to comply with the requirements of Order No. 2001-01.

2. For each Watershed Management Area (WMA) listed in Table 4, Watershed Copermittees shall collaborate to develop, implement, and modify as necessary a watershed urban runoff management strategy to target sources and reduce pollutant discharges causing the identified priority problems in the watershed. Copermittee collaboration shall include regularly scheduled meetings. By July 1, 2007, the Principal (Lead) Permittee for each WMA shall submit an updated WURMP that describes any watershed, jurisdictional, or regional activities that will be used to implement this strategy. At a minimum, each WURMP shall include the elements described below.

   a. Watershed Map

      Watershed Copermittees shall develop and periodically update a map of the WMA to facilitate planning, assessment, and collaborative decision-making. As determined appropriate, the map shall include features such as receiving waters (including the Pacific Ocean); Clean Water Act section 303(d) impaired receiving waters; land uses, MS4s; major highways; jurisdictional boundaries; and inventoried commercial, industrial and municipal sites.

   b. Watershed Water Quality Assessment

      Watershed Copermittees shall annually assess the water quality of receiving waters in the WMA. This assessment shall be based upon applicable water quality data, reports, and assessments available from public and private organizations, as well as the annual watershed water quality monitoring that is conducted in accordance with the requirements of the Receiving Waters Monitoring and Reporting Program. The assessment and analysis shall annually identify and prioritize the watershed's water quality problems that are partially or fully attributable to MS4 discharges and identify the likely sources of such problems.

   c. Watershed-based Land Use Planning

      The Watershed Copermittees shall develop, implement, and modify, as necessary, a program for encouraging collaborative, watershed-based, land use planning in their jurisdictional planning departments.

   d. Watershed Activities

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(1) The Watershed Copermittees shall identify and implement Watershed Activities needed to address the water quality problems, sources, target audiences, and activities in the WMA. Watershed Activities shall include both Watershed Water Quality Activities and Watershed Education Activities. These activities may be implemented individually or collectively, and may be implemented at the regional, watershed, or jurisdictional level.

(a) Watershed Water Quality Activities are activities other than education which are needed to address priority water quality problems, sources, and activities in the WMA.

(b) Watershed Education Activities are outreach and training activities that address priority target audiences and water quality issues for the WMA.

(2) A Watershed Activities List shall be submitted with each updated WURMP and updated annually thereafter. The Watershed Activities List shall include both Watershed Water Quality Activities and Watershed Education Activities along with a description of how each activity was selected, and how all of the activities on the list will collectively target sources and reduce pollutant discharges causing the identified priority problems in the WMA. This analysis shall also take into consideration any other existing, planned, or modified watershed, regional, and jurisdictional activities being conducted by the Copermittees to address priority water quality problems in the WMA.

(3) Each activity on the Watershed Activities List shall include the following information:

(a) A description of the activity;
(b) A time schedule for implementation of the activity, including key milestones;
(c) An identification of the specific responsibilities of Watershed Copermittees in completing the activity;
(d) A description of how the activity will address specific water quality problem(s) or source(s);
(e) The expected benefits of implementing the activity;
(f) A description of how implementation effectiveness will be measured.

(4) Each Watershed Copermittee shall implement identified activities pursuant to established schedules. For each Permit year no less than two Watershed Water Quality Activities and two Watershed Education Activities shall be in an active implementation phase. A Watershed Water Quality Activity is in an active implementation phase when pollutant load reductions, source abatement, or other quantifiable benefits to discharge or receiving water quality can reasonably be established. A Watershed Education Activity is in an active

implementation phase when changes in attitudes, knowledge, awareness, or behavior can reasonably be established in target audiences.

e. WURMP Review and Updates

Each WURMP shall be reviewed annually to identify needed modifications and improvements. Pursuant to the requirements of Section I.2.b of this Order the Watershed Copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements. All updates to the WURMP shall be documented in WURMP Annual Reports as described in section III.2 of the Receiving Waters Monitoring and Reporting Program. Individual Watershed Copermittees shall also review and modify their jurisdictional activities and JURMPs as necessary to ensure consistency with the requirements of the WURMP.

Table 4 – Watershed Management Areas (WMAs) and Watershed Copermittees

Watershed Management Area (WMA)	Hydrologic Unit or Area	Watershed Copermittees
Santa Margarita	Santa Margarita HU (902.00)	1. **County of San Diego**
San Luis Rey	San Luis Rey HU (903.00)	1. City of Escondido **2. City of Oceanside** 3. City of Vista 4. County of San Diego
Carlsbad	Carlsbad HU (904.00)	1. City of Carlsbad **2. City of Encinitas** 3. City of Escondido 4. City of Oceanside 5. City of San Marcos 6. City of Solana Beach 7. City of Vista 8. County of San Diego
San Dieguito	San Dieguito HU (905.00)	1. City of Del Mar **2. City of Escondido** 3. City of Poway 4. City of San Diego 5. City of Solana Beach 6. County of San Diego
Penasquitos	Miramar Reservoir HA (906.10) Poway HA (906.20)	1. City of Del Mar **2. City of Poway** 3. City of San Diego 4. County of San Diego
Mission Bay	Scripps HA (906.30) Miramar HA(906.40) Tecolote HA (906.50)	**1. City of San Diego**

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Watershed Management Area (WMA)	Hydrologic Unit or Area	Watershed Copermittees
San Diego River	San Diego HU (907.00)	**1. City of El Cajon** 2. City of La Mesa 3. City of Poway 4. City of San Diego 5. City of Santee 6. County of San Diego
San Diego Bay	Pueblo San Diego HU (908.00) Sweetwater HU (909.00) Otay HU (910.00)	1. City of Chula Vista 2. City of Coronado 3. City of Imperial Beach 4. City of La Mesa 5. City of Lemon Grove 6. City of National City 7. City of San Diego 8. County of San Diego **9. San Diego Unified Port District** 10. San Diego County Regional Airport Authority
Tijuana	Tijuana (911.00)	1. City of Imperial Beach 2. City of San Diego **3. County of San Diego**

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I. PROGRAM EFFECTIVENESS ASSESSMENT

1. Jurisdictional

a. As part of its Jurisdictional Urban Runoff Management Program, each Copermittee shall annually assess the effectiveness of its Jurisdictional Urban Runoff Management Program implementation. Where applicable and feasible, the annual effectiveness assessment shall:

(1) Specifically assess the effectiveness of each of the following:
   (a) Each significant jurisdictional activity or BMP implemented;
   (b) Implementation of each major component of the Jurisdictional Urban Runoff Management Program (Development Planning, Construction, Municipal, Industrial/Commercial, and Residential); and
   (c) Implementation of the Jurisdictional Urban Runoff Management Program as a whole.

(2) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the items listed in section I.1.a.(1) above.

(3) Utilize outcome levels 1-6[1] to assess the effectiveness of each of the items listed in section I.1.a.(1) above, where applicable and feasible.

(4) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness each of the items listed in section I.1.a.(1) above, where applicable and feasible.

(5) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment, where applicable and feasible.[2]

b. Based on the results of the effectiveness assessment, each Copermittee shall annually review its jurisdictional activities or BMPs to identify modifications and improvements needed to maximize Jurisdictional Urban Runoff Management Program effectiveness, and shall develop and implement a plan and schedule to address the identified modifications and improvements. Jurisdictional activities or BMPs that are ineffective shall be modified or replaced. Where monitoring data exhibits persistent water quality problems, jurisdictional activities or BMPs applicable to the water quality problems shall be modified to address the water quality problems.

c. As part of its Jurisdictional Urban Runoff Management Program Annual Reports, each Copermittee shall report on its Jurisdictional Urban Runoff Management Program effectiveness assessment as implemented under each of the requirements of sections I.1.a and I.1.b above.

2. Watershed

a. As part of its Watershed Urban Runoff Management Program, each watershed group of Copermittees (as identified in Table 4) shall annually assess the effectiveness of its

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[1] Effectiveness assessment outcome levels are defined in Attachment C of this Order.
[2] Implementation Assessment, Water Quality Assessment, and Integrated Assessment are defined in Attachment C of this Order.

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Watershed Urban Runoff Management Program implementation. Where applicable and feasible, the annual effectiveness assessment shall:

(1) Specifically assess the effectiveness of each of the following:
  (a) Each Watershed Water Quality Activity implemented;
  (b) Each Watershed Education Activity implemented; and
  (c) Implementation of the Watershed Urban Runoff Management Program as a whole.
(2) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the items listed in section I.2.a.(1) above.
(3) Utilize outcome levels 1-6 to assess the effectiveness of each of the items listed in sections I.2.a.(1)(a) and I.2.a.(1)(b) above, where applicable and feasible.
(4) Utilize outcome levels 1-4 to assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, where applicable and feasible.
(5) Where applicable and feasible, utilize outcome levels 5 and 6 to assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, focusing on the high priority water quality problem(s) of the watershed.
(6) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness each of the items listed in section I.2.a.(1) above, where applicable and feasible.
(7) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment where applicable and feasible.

b. Based on the results of the effectiveness assessment, the watershed Copermittees shall annually review their Watershed Water Quality Activities, Watershed Education Activities, and other aspects of the Watershed Urban Runoff Management Program to identify modifications and improvements needed to maximize Watershed Urban Runoff Management Program effectiveness, and shall develop and implement a plan and schedule to address the identified modifications and improvements. Watershed Water Quality Activities or Watershed Education Activities that are ineffective shall be modified or replaced. Where monitoring data exhibits persistent water quality problems, Watershed Water Quality Activities and Watershed Education Activities applicable to the water quality problems shall be modified to address the water quality problems.

c. As part of its Watershed Urban Runoff Management Program Annual Reports, each watershed group of Copermittees (as identified in Table 4) shall report on its Watershed Urban Runoff Management Program effectiveness assessment as implemented under each of the requirements of section I.2.a and I.2.b above.

3. Regional

a. As part of the Regional Urban Runoff Management Program, the Copermittees shall annually assess the effectiveness of Regional Urban Runoff Management Program implementation. Where applicable and feasible, the annual effectiveness assessment shall:

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(1) Specifically assess the effectiveness of each of the following:
(a) Each regional activity or BMP implemented, including regional residential education activities; and
(b) The Regional Urban Runoff Management Program as a whole.

(2) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the items listed in section I.3.a.(1) above.

(3) Utilize outcome levels 1-6 to assess the effectiveness of each of the items listed in sections I.3.a.(1) above, where applicable and feasible.

(4) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness each of the items listed in section I.3.a.(1) above, where applicable and feasible.

(5) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment, where applicable and feasible.

(6) Include evaluation of the need for minimum standards for Jurisdictional Urban Runoff Management Program, Watershed Urban Runoff Management Program, and Regional Urban Runoff Management Program assessment, and description of progress in developing such standards.

(a)

b. Based on the results of the effectiveness assessment, the Copermittees shall annually review their regional activities and other aspects of the Regional Urban Runoff Management Program to identify modifications and improvements needed to maximize Regional Urban Runoff Management Program effectiveness. Regional activities that are ineffective shall be modified or replaced. Where monitoring data exhibits persistent water quality problems, regional activities applicable to the water quality problems shall be modified to address the water quality problems.

c. Based on the results of the Copermittees' evaluation of their effectiveness assessments, the Copermittees shall modify their effectiveness assessment methods to improve their ability to accurately assess the effectiveness of their urban runoff management programs.

d. As part of its Regional Urban Runoff Management Program Annual Reports, the Copermittees shall report on its Regional Urban Runoff Management Program effectiveness assessment as implemented under each of the requirements of sections I.3.a, I.3.b, and I.3.c above.

4. TMDL BMP Implementation Plan [Recommend Deletion First]

a. For each TMDL in a watershed, the Copermittees within the watershed shall annually assess the effectiveness of its TMDL BMP Implementation Plan or equivalent plan.[3] Where applicable and feasible, the annual effectiveness assessment shall:

(1) Specifically assess the effectiveness of each of the following:
(a) Each significant BMP implemented; and
(b) Implementation of the TMDL BMP Implementation Plan or equivalent plan as a whole.

[3] This requirement applies to those TMDLs where a TMDL BMP Implementation Plan or equivalent plan has been developed and submitted to the Regional Board.

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<#>Include evaluation of the progress in facilitating TMDL management and implementation.¶
<#>Include evaluation of the progress in developing strategies for implementation of activities on a watershed level.¶
<#>Include evaluation of whether the Copermittees' jurisdictional, watershed, and regional effectiveness assessments are meeting the following objectives:¶
<#>Assessment of watershed health and identification of water quality issues and concerns.¶
<#>Evaluation of the degree to which existing source management priorities are properly targeted to, and effective in addressing, water quality issues and concerns.¶
<#>Evaluation of the need to address additional pollutant sources not already included in Copermittee programs.¶
<#>Assessment of progress in implementing Copermittee programs and activities.¶
<#>Assessment of the effectiveness and cost-efficiency of Copermittee activities in addressing priority constituents and sources.¶
<#>Assessment of changes in discharge and receiving water quality.¶
<#>Assessment of the relationship of program implementation to changes in pollutant loading, discharge quality, and receiving water quality.¶
Identification of changes necessary to improve Copermittee programs, activities, and effectiveness assessment methods and strategies.

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(2) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the items listed in sections I.4.a.(1) above.
(3) Utilize outcome levels 1-6 to assess the effectiveness of each of the items listed in section (I.4.a.(1)(a) above, where applicable and feasible.
(4) Utilize outcome levels 1-4 to assess the effectiveness of implementation of the TMDL BMP Implementation Plan or equivalent plan as a whole, where applicable and feasible.
(5) Utilize outcome levels 5 and 6 to assess the effectiveness of the TMDL BMP Implementation Plan or equivalent plan as a whole. These assessments shall exhibit the effects of the TMDL BMP Implementation Plan or equivalent plan on the impairment that is targeted.

b. Based on the results of the effectiveness assessment, the watershed Copermittees shall modify their BMPs and other aspects of the TMDL BMP Implementation Plan or equivalent plan in order to maximize TMDL BMP Implementation Plan or equivalent plan effectiveness. BMPs that are ineffective shall be modified or replaced. Where monitoring data exhibits persistent water quality problems, BMPs applicable to the water quality problems shall be modified to address the water quality problems.

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c. As part of its Watershed Urban Runoff Management Program Annual Reports, each group of Copermittees in a watershed with a TMDL shall report on any TMDL BMP Implementation Plan or equivalent plan effectiveness assessments as implemented under each of the requirements of sections I.4.a and I.4.b above.

5. Long-term Effectiveness Assessment

a. Each Copermittee shall collaborate with the other Copermittees to develop a Long-term Effectiveness Assessment (LTEA), which shall build on the results of the Copermittees' August 2005 Baseline LTEA. The LTEA shall be submitted by the Principal Permittee to the Regional Board by October 31, 2010.

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b. The LTEA shall be designed to address each of the objectives listed in section I.3.a.(8) of this Order, and to serve as a basis for the Copermittees' Report of Waste Discharge for the next permit cycle.

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c. The LTEA shall address outcome levels 1-6, and shall specifically include an evaluation of program implementation to changes in water quality (outcome levels 5 and 6).

d. The LTEA shall assess the effectiveness of the Receiving Waters Monitoring Program in meeting its objectives and its ability to answer the five core management questions. This shall include assessment of the frequency of monitoring conducted through the use of power analysis and other pertinent statistical methods. The power analysis shall identify the frequency and intensity of sampling needed to identify a 10% reduction in the concentration of constituents causing the high priority water quality problems within each watershed over the next permit term with 80% confidence.

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e. The LTEA shall address the jurisdictional, watershed, and regional programs, with an emphasis on watershed assessment.

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J. REPORTING

1. Urban Runoff Management Plans

a. Jurisdictional Urban Runoff Management Plans

(1) Copermittees - The written account of the overall program to be conducted by each Copermittee to meet the jurisdictional requirements of section D of this Order is referred to as the Jurisdictional Urban Runoff Management Plan (JURMP). Each Copermittee shall revise and update its JURMP so that it describes all activities the Copermittee has undertaken or is undertaking to implement the requirements of each component of Jurisdictional Urban Runoff Management Program section D of this Order. Each JURMP shall be updated and revised to specifically address the items specified in Attachment D. Each Copermittee shall submit its updated and revised JURMP to the Principal Permittee by the date specified by the Principal Permittee.

(2) Principal Permittee – The Principal Permittee shall be responsible for collecting and assembling the individual JURMPs which cover the activities conducted by each individual Copermittee. The Principal Permittee shall submit the JURMPs to the Regional Board on July 1, 2007.

(3) At a minimum, each Copermittee's JURMP shall be updated and revised to contain the following information:

a. Non-Storm Water Discharges
   i. Identification of non-storm water discharge categories identified as a source of pollutants to waters of the U.S.
   ii. A description of whether non-storm water discharge categories identified under section 1(a) above will be prohibited or required to implement appropriate control measures to reduce the discharge of pollutants to the MEP.
   iii. Identification of any control measures to be required and implemented for non-storm water discharge categories identified under section 1(a) above.
   iv. A description of a program to reduce pollutants from non-emergency fire fighting flows identified by the Copermittee to be significant sources of pollutants.

b. Administrative and Legal Procedures
   i. Certified statement by the chief legal counsel that the Copermittee has adequate legal authority to implement and enforce each of the requirements contained in 40 CFR 122.26(d)(2)(i)(A-F) and this Order.
   ii. Identification of all departments within the jurisdiction that conduct urban runoff related activities, and their roles and responsibilities under the Order. Include an up-to-date

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organizational chart specifying these departments and key personnel.

iii. Updated urban runoff related ordinances, with explanations of how they are enforceable.

iv. Identification of the local administrative and legal procedures available to mandate compliance with urban runoff related ordinances and therefore with the conditions of the Order.

v. A finding of adequacy of enforcement tools to ensure compliance with this Order.

vi. Description of how urban runoff related ordinances are implemented and appealed.

vii. Description of whether the municipality can issue administrative orders and injunctions or if it must go through the court system for enforcement actions.

c. Development Planning

i. A description of the water quality and watershed protection principles that have been or will be included in the Copermittee's General Plan, and a time schedule for when modifications are planned, if applicable.

ii. A description of the Copermittee's current environmental review process and how it addresses impacts to water quality and appropriate mitigation measures. If the Copermittee plans to modify the process during the permit term, a time schedule for modifications shall be included.

iii. A description of the development project approval process and requirements.

iv. An updated SUSMP document that meets the requirements specified in sections D.1.d and D.1.g(6). The updated SUSMP may be submitted under separate cover as an attachment to the JURMP.

v. A description of the database to be used to track and inventory approved treatment control BMPs and treatment control BMP maintenance.

vi. A completed watershed-based inventory of approved treatment control BMPs.

vii. A description of the program to be implemented to ensure approved treatment control BMPs are operating effectively and have been adequately maintained, including information on treatment control BMP inventory, prioritization, inspection, and annual verification.

viii. A description of inspections that will be conducted to verify BMPs have been constructed according to requirements.

ix. A description of collaboration efforts to be conducted to develop the HMP.

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x. A description of enforcement mechanisms and how they will be used.

d. Construction
   i. Updated grading and other applicable ordinances.
   ii. A description of the construction and grading approval processes.
   iii. Updated construction and grading project requirements.
   iv. A completed watershed-based inventory of all construction sites.
   v. A description of steps that will be taken to maintain and update monthly a watershed-based inventory of all construction sites.
   vi. A list and description of the minimum BMPs that will be implemented, or required to be implemented, including pollution prevention.
   vii. A description of the steps that will be taken to ensure the implementation of the designated BMPs at all construction sites.
   viii. A description of planned inspection frequencies.
   ix. A description of inspection procedures.
   x. A description of steps that will be taken to track construction site inspections to ensure that all construction sites are inspected at the minimum frequencies required.
   xi. A description of available enforcement mechanisms, under what conditions each will be used, and how they will escalate.
   xii. A description of notification procedures for non-compliant sites.

e. Municipal
   i. A completed inventory of all municipal facilities and activities.
   ii. A description of which BMPs will be implemented, or required to be implemented, for municipal facilities and activities, including pollution prevention.
   iii. A description of steps that will be taken to ensure the implementation of designated BMPs at municipal facilities and activities.
   iv. A description of municipal maintenance activities and schedules.
   v. A description of the management strategy and BMPs to be implemented for pesticides, herbicides, and fertilizer use.
   vi. A description of street and parking facility sweeping activities and schedules.
   vii. A description of controls and measures to be implemented to limit infiltration of seepage from sanitary sewers to MS4s.
   viii. A description of inspection frequencies and procedures.
   ix. A description of enforcement mechanisms and how they will be used.

f. Industrial and Commercial

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i. A completed and prioritized inventory of all industrial and commercial sites/sources that could contribute a significant pollutant load to the MS4.
ii. A list of minimum BMPs that will be implemented, or required to be implemented, for each facility type or pollutant-generating activity, including pollution prevention.
iii. A description of the steps that will be taken to ensure the implementation of designated BMPs, including notification efforts.
iv. Identification of high priority sites/sources and sites/sources to be inspected during the first year of implementation.
v. A description of the steps taken to identify sites/sources to be inspected during the first year of implementation, including rationale for their selection.
vi. A description of steps that will be taken to identify sites/sources to be inspected in subsequent years.
vii. A description of inspection procedures.
viii. A description compliance verification mechanisms to be implemented.
ix. A description of the program to be implemented to regulate mobile businesses, including notification of BMP requirements and local ordinances.
x. A description of enforcement mechanisms and how they will be used.
xi. A description of steps that will be taken to identify non-filers and notify the Regional Board of non-filers.

g. Residential
i. A list of residential areas and activities that have been identified as high priority.
ii. A list of minimum BMPs that will be implemented, or required to be implemented, for high priority residential activities.
iii. A description of which pollution prevention methods will be encouraged for implementation, and the steps that will be taken to encourage implementation.
iv. A description of the steps that will be taken to ensure the implementation of prescribed BMPs for high priority residential activities.
v. A description of efforts to facilitate proper disposal of used oil and other toxic materials.
vi. A description of enforcement mechanisms and how they will be used.

h. Illicit Discharge Detection and Elimination
i. A description of the program to actively seek and eliminate illicit discharges and illicit connections.

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ii. An updated MS4 map, including locations of the MS4, dry weather field screening and analytical monitoring sites, and watersheds.
iii. A description of dry weather field screening and analytical monitoring to be conducted (including procedures) which addresses all requirements included in sections B.1-4 of Receiving Waters Monitoring and Reporting Program No. 2006-11.
iv. A description of investigation and inspection procedures to follow up on dry weather monitoring results or other information which indicate potential for illicit discharges and illicit connections.
v. A description of procedures to eliminate detected illicit discharges and illicit connections.
vi. A description of enforcement mechanisms and how they will be used.
vii. A description of the mechanism to receive notification of spills.
viii. A description of measures to prevent, respond to, contain, and clean up all sewage and other spills.
ix. A description of efforts to facilitate public reporting of illicit discharges and connections, including a public hotline.

i. Education
   i. A description of the content, form, and frequency of education efforts for each target community.
   ii. A description of steps to be taken to educate underserved target audiences, high-risk behaviors, and "allowable" behaviors and discharges, including various ethnic and socioeconomic groups and mobile sources.
   iii. A description of the content, form, and frequency of education efforts targeting municipal staff working on development planning, construction, industrial/commercial, and other aspects of the Jurisdictional Urban Runoff Management Program.
   iv. A description of the content, form, and frequency of education efforts targeting new development and construction target communities.
   v. A description of the content, form, and frequency of jurisdictional education efforts for the residential, general public, and school children target communities.

j. Public Participation
   i. A description of the steps that will be taken to include public participation in the development and implementation of each Copermittee's Jurisdictional Urban Runoff Management Program.

k. Fiscal Analysis

See Attachment B of the Copermittees full comments for additional explanation of changes

i. A description of the fiscal analysis to be conducted annually, consistent with the standardized fiscal analysis developed by the Copermittees as part of the Regional Urban Runoff Management Program, including identification of categories of expenditures, programs the expenditures are attributable to, and metrics to be used for reporting.

l. Program Effectiveness Assessment
   i. A description of steps that will be taken to annually conduct program effectiveness assessments in compliance with section I.1 of the Order.
   ii. Identify measurable targeted outcomes, assessment measures, and assessment methods to be used to assess the effectiveness of:
      - Each significant jurisdictional activity or BMP to be implemented.
      - Implementation of each major component of the Jurisdictional Urban Runoff Management Program.
      - Implementation of the Jurisdictional Urban Runoff Management Program as a whole.
   iii. Identify which of the outcome levels 1-6 will be utilized to assess the effectiveness of each of the items listed in sections 12(b)(1-3). Where an outcome level is determined to not be applicable or feasible for an item listed in section 12(b)(1-3), the Copermittee shall provide a discussion exhibiting inapplicability or infeasibility.
   iv. A description of the steps that will be taken to utilize monitoring data to assess the effectiveness of each of the items listed in sections 12(b)(1-3).
   v. A description of the steps that will be taken to improve the Copermittee's ability to assess program effectiveness using measurable targeted outcomes, assessment measures, assessment methods, and outcome levels 1-6. Include a time schedule for when improvement will occur.
   vi. A description of the steps that will be taken to identify aspects of the Copermittee's Jurisdictional Urban Runoff Management Program that will be changed, based on the results of the effectiveness assessment.

m. JURMP Modification
   i. Identification of the location in the JURMP of any changes made to the JURMP in order to meet the requirements of Order No. R9-2006-0011.

b. Watershed Urban Runoff Management Plans

(1) Copermittees - The written account of the program conducted by each watershed group of Copermittees is referred to as the Watershed Urban Runoff

See Attachment B of the Copermittees full comments for additional explanation of changes

Management Plan (WURMP). The Copermittees within each watershed shall be responsible for updating and revising each WURMP, as specified in Table 4 above. Each WURMP shall be updated and revised to fully describe all activities the watershed Copermittees have undertaken or will be undertaking to implement the Watershed Urban Runoff Management Program requirements of section E of this Order.

(2) Lead Watershed Permittee - Each Lead Watershed Permittee shall be responsible for coordination and meetings amongst all member watershed Copermittees. Each Lead Watershed Permittee is further responsible for the submittal of the WURMP to the Principal Permittee by the date specified by the Principal Permittee.

(3) Principal Permittee – The Principal Permittee shall assemble and submit the WURMPs to the Regional Board by July 1, 2007.

(4) Each WURMP shall include:

a. Identification of the Lead Watershed Permittee for the watershed.
b. An updated watershed map.
c. Identification and description of all pertinent water quality data.
d. Assessment and analysis of the watershed's water quality data, including identification and prioritization of the watershed's water quality problems.
e. Identification of the sources, pollutant discharges, and/or other factors causing the priority water quality problems within the watershed.
f. A description of the strategy to be used to guide Copermittee implementation of Watershed Water Quality Activities and Watershed Education Activities, including criteria for evaluating and identifying effective activities.
g. Identification and description of the Watershed Water Quality Activities to be implemented by each Copermittee for the first year of implementation, including justification for why the activities were chosen. Plans for activity implementation beyond the first year of implementation should also be provided.
h. A list of potential Watershed Education Activities, including a description of each activity and how the activity targets sources causing the identified priority water quality problems in the watershed, if applicable.
i. Identification and description of the Watershed Education Activities to be implemented by each Copermittee for the first year of implementation, including justification for why the activities were chosen. Plans for activity implementation beyond the first year of implementation should also be provided.
j. A description of the public participation mechanisms to be used and the parties anticipated to be involved.
k. A description of land-use planning collaboration mechanisms.

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Deleted: <#>A list of potential Watershed Water Quality Activities, including a description of each activity, its location(s), and how it will abate sources and reduce pollutant discharges causing the identified high priority water quality problems in the watershed. ¶

Deleted: <#>An evaluation of the likely effectiveness of the potential Watershed Water Quality Activities and Watershed Education Activities.¶

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Deleted: <#>Identification and description of watershed concept-based Watershed Education Activities to be implemented by the Copermittees for the first year of implementation. Plans for activity implementation beyond the first year of implementation should also be provided.¶

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l. A detailed description of the effectiveness assessment to be conducted for the WURMP, including a description how each of the requirements in section I.2 of this Order will be met.

Deleted: <#>A description of any TMDL BMP Implementation Plan or equivalent plan to be implemented under section H of this Order.[1] ¶

c. Regional Urban Runoff Management Plan

(1) Copermittees - The written account of the regional program to be conducted is referred to as the Regional Urban Runoff Management Plan (RURMP). Each Copermittee shall collaborate with the other Copermittees to develop the RURMP. The RURMP shall describe all activities the Copermittees have undertaken or are undertaking to implement the requirements of each component of Regional Urban Runoff Management Program section F of this Order. At a minimum, the RURMP shall contain the following information:

a. A common activities section that describes the urban runoff management activities to be implemented on a regional level. For regional activities which are to be implemented in compliance with any jurisdictional requirements of section D or watershed requirements of section E, it shall be described how the regional activities achieve compliance with the subject jurisdictional and/or watershed requirements.

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b. A description of steps that will be taken to develop and implement minimum standards for jurisdictional, watershed, and regional implementation and reporting.

c. A description of a strategy, if pursued, to integrate management, implementation, and reporting of jurisdictional, watershed, and regional activities.

d. A description of steps that will be taken to facilitate consistency in the assessment of the effectiveness of jurisdictional, watershed, and regional programs.

Deleted: <#>A description of steps that will be taken to facilitate TMDL management and implementation.¶

e. A description of steps that will be taken to facilitate consistency in the development of strategies for implementation of activities on a watershed level.

f. A description of the regional residential education program to be implemented.

g. A description of the standardized fiscal analysis method developed as required by section G of this Order.

h. A detailed description of the effectiveness assessment to be conducted for the Regional Urban Runoff Management Program, including a description how each of the requirements in section I.3 of this Order will be met.

(2) The Principal Permittee shall be responsible for creating and submitting the RURMP. The Principal Permittee shall submit the RURMP to the Regional Board on July 1, 2007.

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See Attachment B of the Copermittees full comments for additional explanation of changes

2. **Other Required Reports and Plans**

a. Hydromodification Management Plan

(1) Copermittees - Each Copermittee shall collaborate with the other Copermittees to develop the HMP. The HMP shall be submitted for approval by the Regional Board.

(2) Principal Permittee - The Principal Permittee shall be responsible for producing and submitting each document according to the schedule below.

a. Within 180 days of adoption of this permit: Submit a detailed workplan and schedule for completion of the literature review, development of a protocol to identify an appropriate Ep standard and limiting range of rainfall events, development of guidance materials, and other required information;

b. Within 545 days of adoption of this permit: Submit progress report on completion of requirements of the HMP;

c. Within 2 years of adoption of this permit: Submit a draft HMP, including the analysis that identifies the appropriate limiting storm and the identified limiting storm event(s) or event range(s);

d. Within 180 days of receiving comments or approval to proceed from the Regional Board: Submit the HMP for Regional Board approval.

e. 180 days after adoption of the HMP by the Regional Board, each Copermittee shall incorporate into its local SUSMP and fully implement the HMP for all applicable Priority Development Projects.

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b. Long-Term Effectiveness Assessment

In accordance with section I.5 of this Order, the Principal Permittee shall submit the LTEA to the Regional Board by October 31, 2010.

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c. Report of Waste Discharge

The Principal Permittee shall submit to the Regional Board, no later than 180 days in advance of the expiration date of this Order, a Report of Waste Discharge (ROWD) as an application for issuance of new waste discharge requirements. At a minimum, the ROWD shall include the following:

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a. Proposed changes to the Copermittees' urban runoff management programs.
b. Proposed changes to monitoring programs.
c. Justification for proposed changes.
d. Name and mailing addresses of the Copermittees.
e. Names and titles of primary contacts of the Copermittees.
f. Any other information necessary for the reissuance of this Order.

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3. **Annual Reports**

   a. **Jurisdictional Urban Runoff Management Plan Annual Reports**

   Each Jurisdictional Urban Runoff Management Program Annual Report shall contain a comprehensive description of all activities conducted by the Copermittee to meet all requirements of section D, including the following information:

   (1) Copermittees – Each Copermittee shall generate individual Jurisdictional Urban Runoff Management Plan Annual Reports which cover implementation of its jurisdictional activities during the past annual reporting period. Each Copermittee shall submit to the Principal Permittee its individual Jurisdictional Urban Runoff Management Plan Annual Report by the date specified by the Principal Permittee. Each individual Jurisdictional Urban Runoff Management Plan Annual Report shall be a comprehensive description of all activities conducted by the Copermittees to meet all requirements of each component of section D of this Order, including the information listed in Attachment F.

   (2) Principal Permittee – The Principal Permittee shall submit Unified Jurisdictional Urban Runoff Management Plan Annual Reports to the Regional Board by September 30 of each year, beginning on September 30, 2008. The Unified Jurisdictional Urban Runoff Management Plan Annual Report shall the twenty-one individual Jurisdictional Urban Runoff Management Plan Annual Reports.

   The Principal Permittee shall also be responsible for collecting and assembling each Copermittees' individual Jurisdictional Urban Runoff Management Plan Annual Report.

   The reporting period for these annual reports shall be the previous fiscal year. For example, the report submitted September 30, 2008 shall cover the reporting period July 1, 2007 to June 30, 2008.

   (3) At a minimum, the JURMP annual reports shall contain the following information:

      f. Development Planning
         i. A description of any amendments to the General Plan, the environmental review process, development project approval processes, or development project requirements.
         ii. Confirmation that all development projects were required to undergo the Copermittee's urban runoff approval process and meet the applicable project requirements, including a description of how this information was tracked.
         iii. A listing of the development projects to which SUSMP requirements were applied.

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iv. Confirmation that all applicable SUSMP BMP requirements were applied to all priority development projects, including a description of how this information was tracked.
v. At least one example of a priority development project that was conditioned to meet SUSMP requirements and a description of the required BMPs.
vi. A listing of the priority development projects which were allowed to implement treatment control BMPs with low removal efficiency rankings, including the feasibility analyses which were conducted to exhibit that more effective BMPs were infeasible.
vii. A listing of priority development projects which implemented the site design BMP substitution program, including a description of the site design BMPs utilized for each of the development projects.
viii. An updated treatment control BMP inventory.
ix. The number of treatment control BMPs inspected, including a summary of inspection results and findings.
x. A description of the annual verification of operation and maintenance of treatment control BMPs, including a summary of verification results and findings.
xi. Confirmation that BMP verification was conducted for all priority development projects prior to occupancy, including a description of how this information was tracked.
xii. A listing of any projects which received a SUSMP waiver.
xiii. A description of Hydromodification Management Plan (HMP) development collaboration and participation.
xiv. A listing of development projects required to meet HMP requirements, including a description of hydrologic control measures implemented.
xv. A listing of priority development projects not required to meet HMP requirements, including a description of why the projects were found to be exempt from the requirements.
xvi. A listing of development projects disturbing 50 acres or more, including confirmation that Hydromodification Analysis Studies were conducted for the projects, together with a description of hydrologic control measures implemented for each project.
xvii. The number of violations and enforcement actions (including types) taken for development projects, including information on any necessary follow-up actions taken. The discussion should exhibit that compliance has been achieved, or describe actions that are being taken to achieve compliance.
xviii. A description of notable activities conducted to manage urban runoff from development projects.

g. Construction

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i. Confirmation that all construction sites were required to undergo the Copermittee's construction urban runoff approval process and meet the applicable construction requirements, including a description of how this information was tracked.
ii. Confirmation that a regularly updated construction site inventory was maintained, including a description of how the inventory was managed.
iii. A description of modifications made to the construction and grading ordinances and approval processes.
iv. Confirmation that the designated BMPs were implemented, or required to be implemented, for all construction sites.
v. For each construction site within each priority category (high, medium, and low), identification of the period of time (weeks) the site was active within the rainy season, the number of inspections conducted during the rainy season, and the number of inspections conducted during the dry season, and the total number of inspections conducted for all sites.
vi. A description of the general results of the inspections.
vii. Confirmation that the inspections conducted addressed all the required inspection steps to determine full compliance.
viii. The number of violations and enforcement actions (including types) taken for construction sites, including information on any necessary follow-up actions taken. The discussion should exhibit that compliance has been achieved, or describe actions that are being taken to achieve compliance.
ix. A description of notable activities conducted to manage urban runoff from construction sites.

h. Municipal
i. Any updates to the municipal inventory and prioritization.
ii. Confirmation that the designated BMPs were implemented, or required to be implemented, for municipal areas and activities.
iii. A description of inspections and maintenance conducted for municipal treatment controls.
iv. Identification of the total number of catch basins and inlets, the number of catch basins and inlets inspected, the number of catch basins and inlets found with accumulated waste, and the number of catch basins and inlets cleaned.
v. Identification of the total distance (miles) of the MS4, the distance of the MS4 inspected, the distance of the MS4 found with accumulated waste, and the distance of the MS4 cleaned.
vi. Identification of the total distance (miles) of open channels, the distance of open channels inspected, the distanced of open channels found with anthropogenic litter, and the distance of open channels cleaned.
vii. Amount of waste and litter (tons) removed from catch basins, inlets, the MS4, and open channels, by category.

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viii. Confirmation that the designated BMPs for pesticides, herbicides, and fertilizers were implemented, or required to be implemented, for municipal areas and activities.
ix. Identification of the total distance of curb-miles, the distance of curb-miles swept, and the frequency of sweeping.
x. Identification of the number of municipal parking lots, the number of municipal parking lots swept, and the frequency of sweeping.
xi. Amount of material (tons) collected from street sweeping.
xii. A description of efforts implemented to limit infiltration from the sanitary sewer to the MS4
xiii. Identification of the number of sites requiring inspections, the number of sites inspected, and the frequency of the inspections.
xiv. A description of the general results of the inspections.
xv. Confirmation that the inspections conducted addressed all the required inspection steps to determine full compliance.
xvi. The number of violations and enforcement actions (including types) taken for municipal areas and activities, including information on any necessary follow-up actions taken. The discussion should exhibit that compliance has been achieved, or describe actions that are being taken to achieve compliance.
xvii. A description of notable activities conducted to manage urban runoff from municipal areas and activities.

i. Industrial and Commercial
   i. Any updates to the industrial and commercial inventory.
   ii. Confirmation that the designated BMPs were implemented, or required to be implemented, for industrial and commercial sites/sources.
   iii. A description of efforts taken to notify owners/operators of industrial and commercial sites/sources of BMP requirements, including mobile businesses.
   iv. Identification of the total number of industrial and commercial sites/sources inventoried and the total number inspected.
   v. Justification and rationale for why the industrial and commercial sites/sources inspected were chosen for inspection.
   vi. Confirmation that the inspections conducted addressed all the required inspection steps to determine full compliance.
   vii. A description of efforts implemented to verify compliance in addition to inspections.
   viii. A description of efforts implemented to address mobile businesses.
   ix. The number of violations and enforcement actions (including types) taken for industrial and commercial sites/sources, including information on any necessary follow-up actions taken. The discussion should exhibit that compliance has been

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achieved, or describe actions that are being taken to achieve compliance.

x. A description of steps taken to identify non-filers and a list of non-filers (under the General Industrial Permit) identified by the Copermittees.

xi. A description of notable activities conducted to manage urban runoff from industrial and commercial sites/sources.

j. Residential

i. Identification of the high threat to water quality residential areas and activities that were focused on.

ii. Confirmation that the designated BMPs were implemented, or required to be implemented, for residential areas and activities.

iii. A description of efforts implemented to facilitate proper management and disposal of used oil and other household hazardous materials.

iv. Types and amounts of household hazardous wastes collected, if applicable.

v. The number of violations and enforcement actions (including types) taken for residential areas and activities, including information on any necessary follow-up actions taken. The discussion should exhibit that compliance has been achieved, or describe actions that are being taken to achieve compliance.

vi. A description of collaboration efforts taken to develop and implement the Regional Residential Education Program.

vii. A description of notable activities conducted to manage urban runoff from residential areas and activities.

k. Illicit Discharge Detection and Elimination

i. Correction of any inaccuracies in either the MS4 map or the Dry Weather Field Screening and Analytical Stations Map.

ii. Reporting of all dry weather field screening and analytical monitoring results. The data should be presented in tabular and graphical form. The reporting shall include station locations, all dry weather field screening and analytical monitoring results, identification of sites where results exceeded action levels, follow-up and elimination activities for potential illicit discharges and connections, the rationale for why follow-up investigations were not conducted at sites where action levels were exceeded, any Copermittee or consultant program recommendations/changes resulting from the monitoring, and documentation that these recommendations/changes have been implemented. Dry weather field screening and analytical monitoring reporting shall comply with all monitoring and standard reporting requirements in Attachment B of Order 2006-11 and Receiving Waters Monitoring and Reporting Program No. 2006-11.

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iii. Any dry weather field screening and analytical monitoring consultant reports generated, to be provided as an attachment to the annual report.
iv. A brief description of any other investigations and follow-up activities for illicit discharges and connections.
v. The number and brief description of illicit discharges and connections identified.
vi. The number of illicit discharges and connections eliminated.
vii. Identification and description of all spills to the MS4 and response to the spills.
viii. A description of activities implemented to prevent sewage and other spills from entering the MS4.
ix. A description of the mechanism whereby notification of sewage spills from private laterals and septic systems is received.
x. Number of times the hotline was called, as compared to previous reporting periods, and a summary of the calls.
xi. A description of efforts to publicize and facilitate public reporting of illicit discharges.
xii. The number of violations and enforcement actions (including types) taken for illicit discharges and connections, including information on any necessary follow-up actions taken. The discussion should exhibit that compliance has been achieved, or describe actions that are being taken to achieve compliance.
xiii. A description of notable activities conducted to manage illicit discharges and connections.

l. Education
i. A description of education efforts conducted for each target community.
ii. A description of how education efforts targeted underserved target audiences, high-risk behaviors, and "allowable" behaviors and discharges.
iii. A description of education efforts conducted for municipal departments and personnel.
iv. A description of education efforts conducted for the new development and construction communities.
v. A description of jurisdictional education efforts conducted for residents, the general public, and school children.
Public Participation
vi. A description of public participation efforts conducted.
Program Effectiveness Assessment
vii. An assessment of the effectiveness of the Jurisdictional Urban Runoff Management Program which meets all requirements of section I.1 of this Order.

m. Fiscal Analysis

See Attachment B of the Copermittees full comments for additional explanation of changes

i. A fiscal analysis of the Copermittee's urban runoff management programs which meets all requirements of section G of this Order.

n. Special Investigations
   i. A description of any special investigations conducted.

o. Non-Emergency Fire Fighting
   i. A description of any efforts conducted to reduce pollutant discharges from non-emergency fire fighting flows.

p. JURMP Revisions
   i. A description of any proposed revisions to the JURMP.

b. Watershed Urban Runoff Management Program Annual Reports

(1) Lead Watershed Permittee - Each Lead Watershed Permittee shall generate watershed specific Watershed Urban Runoff Management Program Annual Reports for their respective watershed(s), as they are outlined in Table 4 of Order No. R9-2006-0011. Copermittees within each watershed shall collaborate with the Lead Watershed Permittee to generate the Watershed Urban Runoff Management Program Annual Reports.

(2) Each Watershed Urban Runoff Management Program Annual Report shall be a comprehensive documentation of all activities conducted by the watershed Copermittees during the previous annual reporting period to meet all requirements of section E of Order No. R9-2006-0011. Each Watershed Urban Runoff Management Program Annual Report shall also serve as an update to the WURMP.[2] Each Watershed Urban Runoff Management Program Annual Report shall, at a minimum, contain the following for its reporting period:

a. A comprehensive description of all activities conducted by the watershed Copermittees to meet all requirements of section E of Order No. R9-2006-0011.
b. Any updates to the watershed map.
c. An updated assessment and analysis of the watershed's current and past water quality data, including identification of the watershed's priority water quality problems during the reporting period. The annual report shall clearly state if the watershed's priority water quality problem(s) changed from the previous reporting period, and provide justification for the change(s).
d. Identification of the sources, pollutant discharges, and/or other factors causing the priority water quality problems within the watershed. The annual report shall clearly describe any changes to the identified sources,

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[2] The first annual report to be submitted is not anticipated to be an update to the WURMP, since it will cover the reporting period which begins immediately after WURMP submittal.

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pollutant discharges, and/or other factors that have occurred since the previous reporting period, and provide justification for the changes.

e. An updated list of potential Watershed Water Quality Activities. The annual report shall clearly describe any changes to the list of Watershed Water Quality Activities that have occurred since the previous reporting period, and provide justification for the changes.

f. Identification and description of the Watershed Water Quality Activities implemented by each Copermittee during the reporting period, including information on the activities' location(s), as well as information exhibiting that the activities reduced pollutant loads, addressed source abatement or reasonably established other quantifiable benefits to discharge or receiving water quality. The annual report shall clearly describe any changes to Watershed Water Quality Activities implementation that have occurred since the previous reporting period, and provide justification for the changes.

g. An updated list of potential Watershed Education Activities. The annual report shall clearly describe any changes to the list of Watershed Education Activities that have occurred since the previous reporting period, and provide justification for the changes.

h. Identification and description of the Watershed Education Activities implemented by each Copermittee for the reporting period, including information exhibiting that the activities directly targeted the sources and discharges of pollutants causing the watershed's priority water quality problems. The annual report shall clearly describe any changes to Watershed Education Activities implementation that have occurred since the previous reporting period, and provide justification for the changes.

i. A description of the public participation mechanisms used during the reporting period and the parties that were involved.

j. A description of Copermittee collaboration efforts.

k. A description of land-use planning mechanisms.

l. An assessment of the effectiveness of the WURMP, which meets the requirements of section I.2 of Order No. R9-2006-0011. The effectiveness assessment shall specifically exhibit the impact that implementation of the Watershed Water Quality Activities and the Watershed Education Activities had on the priority water quality problem(s) within the watershed. This information shall document changes in pollutant load discharges, urban runoff and discharge quality, and receiving water quality, where applicable and feasible.

(3) Principal Permittee – The Unified Watershed Urban Runoff Management Program Annual Report shall contain the nine separate Watershed Urban Runoff Management Program Annual Reports. Each Lead Watershed Copermittee shall submit to the Principal Permittee a Watershed Urban Runoff Management Program Annual Report by the date specified by the Principal Permittee. The Principal Permittee shall assemble and submit the Unified Watershed Urban Runoff Management Program Annual Report to the Regional Board by January 31, 2009 and every January 31 thereafter. The reporting period for these annual

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<#>Any additional source identification information;¶
<#>The number, type, location, and other relevant information about BMP implementation, including any expanded or better tailored BMPs necessary to meet the WLAs; ¶
<#>Updates in the BMP implementation prioritization and schedule; ¶
<#>An assessment of the effective ... [1]

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reports shall be the previous fiscal year. For example, the report submitted January 31, 2009 shall cover the reporting period July 1, 2007 to June 30, 2008.

c. RURMP Annual Reports

(1) The Principal Permittee shall generate the Regional Urban Runoff Management Program Annual Reports. All Copermittees shall collaborate with the Principal Permittee to generate the Regional Urban Runoff Management Program Annual Reports. Each Regional Urban Runoff Management Program Annual Report shall be a comprehensive documentation of all Regional activities conducted by the Copermittees during the previous annual reporting period to meet all requirements of section F of Order No. R9-2006-0011.

(2) The Principal Permittee shall submit the Regional Urban Runoff Management Program Annual Report to the Regional Board by January 31, 2009 and every January 31 thereafter. The reporting period for these annual reports shall be the previous fiscal year. For example, the report submitted January 31, 2009 shall cover the reporting period July 1, 2007 to June 30, 2008.

(3) Each Regional Urban Runoff Management Program Annual Report shall, at a minimum, contain the following:

a. A common activities section that describes the urban runoff management activities or BMPs implemented on a regional level, including information on how the activities complied with jurisdictional or watershed requirements, if applicable.

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b. A description of steps taken to develop and implement minimum standards for Jurisdictional Urban Runoff Management Program, Watershed Urban Runoff Management Program, and Regional Urban Runoff Management Program implementation and reporting.
c. A description of steps taken to implement the strategy to integrate management, implementation, and reporting of jurisdictional, watershed, and regional activities. This shall include a description of any progress made on development of an Integrated Annual Report Format.
d. A description of steps taken to facilitate TMDL management and implementation.
e. A description of steps taken to facilitate assessment of the effectiveness of jurisdictional, watershed, and regional programs.
f. A description of steps taken to facilitate development of strategies for implementation of activities on a watershed level.
g. A description of the regional residential education activities implemented as part of the regional residential education program.
h. A description of steps taken to implement the standardized fiscal analysis method.
i. An assessment of the effectiveness of the Regional Urban Runoff Management Program which meets the requirements of section I.3 of Order No. R9-2006-0011.

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d. Monitoring Reporting

(1) The Principal Permittee shall submit a description of the Receiving Waters Monitoring Program to be implemented for every monitoring year. The submittals shall begin on September 1, 2006, and continue every year thereafter. The submittals shall describe all monitoring to be conducted during the upcoming monitoring year. For example, the September 1, 2006 submittal shall describe the monitoring to be conducted from October 1, 2006 through September 30, 2007.

If the Copermittees participate in Bight '08, their submittal for the 2008-2009 monitoring year shall describe the monitoring to be conducted for Bight '08 and exhibit how the monitoring will result in collection and analysis of data useful in addressing the goals and management questions of the Receiving Waters Monitoring Program.

(2) The Principal Permittee shall submit the Receiving Waters Monitoring Annual Report to the Regional Board on January 31 of each year, beginning on January 31, 2008. Receiving Waters Monitoring Annual Reports shall meet the following requirements below. To the extent that the Copermittees are able to integrate required content into RURMP or individual WURMP annual reports, this content need only be summarized in this report.

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(3) Annual monitoring reports shall include the data/results, methods of evaluating the data, graphical summaries of the data, and an explanation/discussion of the data for each monitoring program component.

(4) Annual monitoring reports shall include a watershed-based analysis of the findings of each monitoring program component. Each watershed-based analysis shall include:

a. Identification and prioritization of water quality problems within each watershed.
b. Identification and description of the nature and magnitude of potential sources of the water quality problems within each watershed.
c. Exhibition of pollutant load and concentration increases or decreases at each mass loading and temporary watershed assessment station.
d. Evaluation of pollutant loads and concentrations at mass loading and temporary watershed assessment stations with respect to land use, population, sources, and other characteristics of watersheds using tools such as multiple linear regression, factor analysis, and cluster analysis.
e. Identification of links between source activities/conditions and observed receiving water impacts.
f. Identification of recommended future monitoring to identify and address sources of water quality problems.
g. Results and discussion of any TIE conducted, together with actions that will be implemented to reduce the discharge of pollutants and abate the

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sources causing the toxicity.

(5) Annual monitoring reports shall include a detailed description of all monitoring conducted under Investigation Order No. R9-2004-0277 for Chollas Creek. Annual monitoring reports shall also include all information required by Investigation Order No. R9-2004-0277.

(6) Annual monitoring reports shall include discussions for each watershed which answer each of the management questions listed in section I.B of this Receiving Waters Monitoring and Reporting Program.

(7) Annual monitoring reports shall identify how each of the goals listed in section I.A of this Receiving Waters Monitoring and Reporting Program has been addressed by the Copermittees' monitoring.

(8) Annual monitoring reports shall include identification and analysis of any long-term trends in storm water or receiving water quality. Trend analysis shall use nonparametric approaches, where applicable.

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(9) Annual monitoring reports shall provide an estimation of total pollutant loads (wet weather loads plus dry weather loads) due to urban runoff for each of the watersheds specified in Table 3 of Order No. R9-2006-0011.

(10) Annual monitoring reports shall for each monitoring program component listed above, include an assessment of compliance with applicable water quality standards.

(11) Annual monitoring reports shall describe monitoring station locations by latitude and longitude coordinates, frequency of sampling, quality assurance/quality control procedures, and sampling and analysis protocols.

(12) Annual monitoring reports shall use a standard report format and shall include the following:

a. A stand alone comprehensive executive summary addressing all sections of the monitoring report;
b. Comprehensive interpretations and conclusions; and
c. Recommendations for future actions.

(13) All monitoring reports submitted to the Principal Permittee or the Regional Board shall contain the certified perjury statement described in Attachment B of Order No. R9-2006-0011.

(14) Annual monitoring reports shall be reviewed prior to submittal to the Regional Board by a committee (consisting of no less than three members). All review comments shall also be submitted to the Regional Board.

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(15) Annual monitoring reports shall be submitted in both electronic and paper formats.

(16) The Principal Permittee shall submit by July 1, 2007 a detailed description of the monitoring programs to be implemented under requirements II.A.7-11 of Receiving Waters Monitoring and Reporting Program No. R9-2006-0011. The description shall identify and provide the rationale for the constituents monitored, locations of monitoring, frequency of monitoring, and analyses to be conducted with the data generated.

(17) By January 31, 2010, the City of San Diego shall submit a report which evaluates the data and assumptions used to estimate the WLA to Shelter Island Yacht Basin of 30 kg Cu/year. The report shall evaluate if any changes have occurred in the watershed which could cause or contribute to a higher copper urban runoff discharge and any actions necessary to address these changes. The report shall be an attachment to the Watershed Urban Runoff Management Program Annual Report for the San Diego Bay watershed.

(18) Monitoring programs and reports shall comply with section II.E of Receiving Waters Monitoring and Reporting Program No. R9-2006-0011 and Attachment B of Order No. R9-2006-0011.

(19) Following completion of an annual cycle of monitoring in October, the Copermittees shall make the monitoring data that has been through the quality assurance/ quality control program, available to the Regional Board at the Regional Board's request.

4. Universal Reporting Requirements

All submittals shall include an executive summary, introduction, conclusion, recommendations, and signed certified statement. Each Copermittee shall submit a signed certified statement covering its responsibilities for each applicable URMP or other submittal. The Principal Permittee shall submit a signed certified statement covering its responsibilities for each applicable URMP or other submittal and the unified sections of the submittals for which it is responsible.

5. Annual Report Integration

a. The Copermittees are encouraged to submit, for Regional Board review and approval, an annual reporting format which integrates the information submitted in the JURMP, WURMP, and RURMP Annual Reports and Monitoring Reports. This document shall be called the "Integrated Annual Report Format."

b. Upon approval of the Integrated Annual Report Format by the Regional Board, an Integrated Annual Report shall be submitted annually, which may substitute for the JURMP Annual Reports, WURMP Annual Reports, RURMP Annual Report, and/or Monitoring Reports, as approved by the Regional Board. The Principal Permittee

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Deleted: At a minimum, the Integrated Annual Report Format shall:

Deleted: <#>Ensure exhibition of compliance with all requirements of JURMP, WURMP, and RURMP sections D, E, and F of Order No. R9-2006-0011.¶
<#>Ensure reporting of all information required in Attachment E and sections J.1-3 of Order No. R9-2006-0011.¶
<#>Ensure reporting of all information required in this Monitoring and Reporting program.¶
<#>Ensure consistent and comparable reporting of jurisdictional and watershed information by all Copermittees and watershed groups.¶
<#>Specifically identify all types of information that will be reported (e.g., amount of debris collected during street sweeping), including reporting criteria for each type of information (e.g., reported in tons). ¶
<#>Describe quality assurance/quality control methods to be used to assess accuracy of jurisdictional and watershed information conveyed.¶
<#>Describe each Copermittee's reporting responsibilities under the format.¶
<#>Improve the Copermittees' ability to assess JURMP and WURMP effectiveness in terms of water quality. ¶
<#>Include a separate section for reporting on each Copermittee's activities.¶
<#>Include a separate section for reporting on each watershed's activities.¶
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shall be responsible for the generation and submittal of the Integrated Annual Reports. Each Copermittee shall be responsible for the information in the Integrated Annual Report pertaining to its jurisdictional, watershed, regional, and monitoring responsibilities. The Integrated Annual Report shall be submitted the first January 31 following approval of the reporting format by the Regional Board, and every January 31 thereafter. The reporting period for Integrated Annual Reports shall be the previous fiscal year. For example, a report submitted January 31, 2010 shall cover the reporting period July 1, 2008 to June 30, 2009.

c. The format and information provided in Integrated Annual Reports shall match and be consistent with the format and information described in the Integrated Annual Report Format.

6. **Universal Reporting Requirements** - All Annual Report submittals shall include an executive summary, introduction, conclusion, recommendations, and signed certified statement. Each Copermittee shall submit signed certified statements covering its responsibilities for each applicable Annual Report. The Principal Permittee shall submit signed certified statements covering its responsibilities for each applicable Annual Report and the sections produced by the Principal Permittee.

7. **Interim Reporting Requirements** - For the July 2005–June 2006 and July 2006–June 2007 reporting periods, Jurisdictional URMP and Watershed URMP Annual Reports shall be submitted on January 31, 2007 and January 31, 2008, respectively. Each Jurisdictional URMP and Watershed URMP Annual Report submitted for these reporting periods shall at a minimum be comprehensive descriptions of all activities conducted to fully implement the Copermittees' Jurisdictional URMP and Watershed URMP documents, as those documents were developed to comply with the requirements of Order No. 2001-01. The Principal Permittee shall be responsible for submitting these documents in a unified manner, consistent with the unified reporting requirements of sections J.1.b and J.2.c of Order No. R9-2006-0011.

   For the October 2005-October 2006 monitoring period, the Principal Permittee shall submit the Receiving Waters Monitoring Annual Report on January 31, 2007. The Receiving Waters Monitoring Annual Report shall address the monitoring conducted to comply with the requirements of Order No. 2001-01.

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I. PURPOSE

A. This Receiving Waters Monitoring and Reporting Program is intended to meet the following goals:

1. Assess compliance with Order No. R9-2006-0011;
2. Measure and improve the effectiveness of the Copermittees' urban runoff management programs;
3. Assess the chemical, physical, and biological impacts to receiving waters resulting from urban runoff discharges;
4. Characterize urban runoff discharges;
5. Identify sources of specific pollutants;
6. Prioritize drainage and sub-drainage areas that need management actions;
7. Detect and eliminate illicit discharges and illicit connections to the MS4; and
8. Assess the overall health of receiving waters.

B. In addition, this Receiving Waters Monitoring and Reporting Program is designed to answer the following core management questions:

1. Are conditions in receiving waters protective, or likely to be protective, of beneficial uses?
2. What is the extent and magnitude of the current or potential receiving water problems?
3. What is the relative urban runoff contribution to the receiving water problem(s)?
4. What are the sources of urban runoff that contribute to receiving water problem(s)?
5. Are conditions in receiving waters getting better or worse?

II. MONITORING PROGRAM

A. Core Receiving Waters Monitoring Program

Each Copermittee shall collaborate with the other Copermittees to develop, conduct, and report on a year round watershed based Receiving Waters Monitoring Program. The monitoring program design, implementation, analysis, assessment, and reporting shall be conducted on a watershed basis for each of the hydrologic units. The monitoring program shall be designed to meet the goals and answer the questions listed in section I above. The monitoring program shall include the following monitoring:

1. MASS LOADING STATION (MLS) MONITORING

   a. The following existing mass loading stations shall continue to be monitored: Santa Margarita River,[1] San Luis Rey River, Agua Hedionda Creek, Escondido Creek, San Dieguito River, Penasquitos, Tecolote Creek, San Diego River,

[1] For the Santa Margarita River mass loading station, if Camp Pendleton will not conduct the required monitoring or prevents access for the Copermittees to conduct the required monitoring, the mass loading station location shall be moved to where the County of San Diego has land-use jurisdiction.

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Chollas Creek, Sweetwater River, and Tijuana River. The mass loading stations shall be monitored at the frequency identified in Table 1.

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Table 1. Monitoring Rotation and Number of Stations in Watersheds

Watershed Management Area	Watershed	Permit Year 1 2006-2007				Permit Year 2 2007-2008				Permit Year 3 2008-2009				Permit Year 4 2009-2010				Permit Year 5 2010-2011			
		MLS	TWAS	ABLM	BA	MLS	TWAS	ABLM	BA	MLS	TWAS	ABLM	BA	MLS	TWAS	ABLM	BA	MLS	TWAS	ABLM	BA
Santa Margarita	Santa Margarita River	1		Implement refined program based on assessment	4			Implement refined program based on assessment		1	Bight '08			1		Implement refined program based on assessment	4			Implement refined program based on assessment	
San Luis Rey	San Luis Rey River	1	2		3					1				1	2		3				
Carlsbad	Buena Vista Creek		1		1										1		1				
	Agua Hedionda Creek	1	1		2					1				1	1		2				
	Escondido Creek	1	1		2					1				1	1		2				
San Dieguito	San Dieguito River	1	2		3					1				1	2		3				
Penasquitos	Penasquitos	1	2		3					1				1	2		3				
Mission Bay	Rose Creek						1		1										1		1
	Tecolote Creek					1	1		2	1								1	1		2
San Diego River	San Diego River					1	3		4	1								1	3		4
San Diego Bay	Chollas Creek	1			1	1			1	1				1			1	1			1
	Sweetwater River					1	1		2	1								1	1		2
	Otay River						1		1										1		1
Tijuana	Tijuana River					1	2		3	1								1	1		2

Comment [SMcP1]: Ambient Bay & Lagoon Program - See Copermittee Comment letter.

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b. Each mass loading station to be monitored in a given year shall be monitored twice during wet weather events and twice during dry weather flow events. The exception is the 2008-2009 monitoring year, which shall include monitoring of all mass loading stations for one wet weather flow event only if the Copermittees participate in Bight '08.

c. Each mass loading station shall be monitored for the first wet weather event of the season which meets the USEPA's criteria as described in 40 CFR 122.21(g)(7). Monitoring of the second wet weather event shall be conducted after February 1. Dry weather mass loading monitoring events shall be sampled in September or October prior to the start of the wet weather season and in May or June after the end of the wet weather season. If flows are not evident in October, then sampling shall be conducted during non-rain events in the wet weather season.

d. Mass loading sampling and analysis protocols shall be consistent with 40 CFR 122.21(g)(7)(ii) and with the USEPA Storm Water Sampling Guidance Document (EPA 833-B-92-001). Wet weather samples shall be flow-weighted composites, collected for the duration of the entire runoff event, where practical. Where such monitoring is not practical, such as for large watersheds with significant groundwater recharge flows, composites shall be collected at a minimum during the first 3 hours of flow. Dry weather event samples shall be flow-weighted composites, collected for a time duration adequate to be representative of changes in pollutant concentrations and runoff flows which may occur over a typical 24 hour period. A minimum of 3 sample aliquots, separated by a minimum of 15 minutes, shall be taken for each hour of monitoring, unless the Regional Board Executive Officer approves an alternate protocol. Automatic samplers shall be used to collect samples from mass loading stations. Grab samples shall be taken for temperature, pH, specific conductance, biochemical oxygen demand, oil and grease, total coliform, fecal coliform, and enterococcus.

e. Copermittees shall measure or estimate flow rates and volumes for each mass loading station sampling event in order to determine mass loadings of pollutants. Data from nearby USGS gauging stations may be utilized, or flow rates may be estimated in accordance with the USEPA Storm Water Sampling Guidance Document (EPA-833-B-92-001), Section 3.2.1.

f. In the event that the required number of events are not sampled during one monitoring year at any given station, the Copermittees shall submit, with the subsequent Receiving Waters Monitoring Annual Report, a written explanation for a lack of sampling data, including streamflow data from the nearest USGS gauging station.

g. The following constituents shall be analyzed for each monitoring event at each station:

Comment [SMcP2]: In Table D.9.1 – Proposed Monitoring Rotation & Number of Stations by Watershed presented in the Report of Waste Discharge recommended one wet weather mass loading event at all mass loading stations to preserve long-term trends if the Copermittees participate in Bight'08.

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Comment [SMcP3]: Due to the unpredictable nature of storm events an increased window of opportunity is requested. Moreover, this increased the likelihood of bioassessment sampling occurring concurrently with mass emission monitoring.

Table 2. Analytical Testing for Mass Loading and Temporary Watershed Assessment Stations

Conventionals, Nutrients, Hydrocarbons	Pesticides	Metals (Total and Dissolved)	Bacteriological
Total Dissolved Solids	Diazinon	Antimony	Total Coliform
Total Suspended Solids	Chlorpyrifos	Arsenic	Fecal Coliform
Turbidity	Malathion	Cadmium	Enterococcus
Total Hardness	Pyrethroids*	Chromium	
pH		Copper	
Specific Conductance		Lead	
Temperature		Nickel	
Dissolved Phosphorus		Selenium	
Nitrite		Zinc	
Nitrate			
Total Kjeldahl Nitrogen			
Ammonia			
Biological Oxygen Demand, 5-day			
Chemical Oxygen Demand			
Total Organic Carbon			
Dissolved Organic Carbon			
Methylene Blue Active Substances			
Oil and Grease			

*Begin monitoring not later than the 2007-2008 monitoring year.

h.

i. The following toxicity testing shall be conducted for each monitoring event at each station as follows:
   (1) 7-day chronic test with the cladoceran *Ceriodaphnia dubia* (USEPA protocol EPA-821-R-02-013).
   (2) Chronic test with the freshwater algae *Selenastrum capricornutum* (USEPA protocol EPA-821-R-02-013).
   (3) Acute survival test with amphipod *Hyalella azteca* (USEPA protocol EPA-821-R-02-012).

j. The presence of acute toxicity shall be determined in accordance with USEPA protocol (EPA-821-R-02-012). The presence of chronic toxicity shall be determined in accordance with USEPA protocol (EPA-821-R-02-013).

2. TEMPORARY WATERSHED ASSESSMENT STATION (TWAS) MONITORING

a. The minimum number of temporary watershed assessment stations to be monitored in a given monitoring year is identified in Table 1. The number of stations located within each watershed may change from the number identified in Table 1, provided the total number of stations monitored in a given year is not reduced below the minimum number of stations identified in Table 1. The temporary watershed assessment stations shall be monitored and located according to a systematic plan which:

Comment [SMcP4]: See Copermittee Comment Letter

Deleted: In addition to the constituents listed in Table 2 above, monitoring stations in the Chollas Creek watershed shall also analyze samples for polychlorinated biphenyls (PCBs), Chlordane, and polycyclic aromatic hydrocarbons (PAHs) for each monitoring event

(1) Ensures that the Copermittees' Receiving Waters Monitoring Program most effectively answers questions 1-5 of section I.B above.
(2) Provides statistically useful information.
(3) Identifies the extent and magnitude of receiving water problems within each watershed.
(4) Provides spatial coverage of each watershed.
(5) Monitors previously un-assessed sub-watershed areas.
(6) Focuses on specific areas of concern and high priority areas.
(7) Provides adequate information to assess the effectiveness of implemented programs and control measures in reducing discharged pollutant loads and improving urban runoff and receiving water quality.

b. For each temporary watershed assessment station identified to be monitored in a given year, the station shall be monitored twice during wet weather events and twice during dry weather flow events.

c. Temporary watershed assessment stations shall be monitored in the same manner as the mass loading stations in accordance with the monitoring protocols and requirements outlined in sections II.A.1.c-j above.

3. BIOASSESSMENT (BA) MONITORING

a. The minimum number of bioassessment stations to be monitored in each watershed in a given monitoring year is identified in Table 1. Bioassessment stations shall include an adequate number of reference stations, with locations of reference stations identified according to protocols outlined in "A Quantitative Tool for Assessing the Integrity of Southern Coastal California Streams," by Ode, et al. 2005.[2]

b. Bioassessment stations shall be collocated with both mass loading stations and temporary watershed assessment stations where feasible.

c. Bioassessment stations to be monitored in a given monitoring year shall be monitored in late spring/May (to represent the influence of wet weather on the communities) and late summer/October (to represent the influence of dry weather flows on the communities). The timing of monitoring of bioassessment stations shall coincide with dry weather monitoring of mass loading and temporary watershed assessment stations.

d. Monitoring of bioassessment stations shall utilize the targeted riffle composite approach, as specified in the Surface Water Ambient Monitoring Program (SWAMP) Quality Assurance Management Plan (QAMP), as amended.

[2] Ode, et al. 2005. "A Quantitative Tool for Assessing the Integrity of Southern Coastal California Streams." Environmental Management. Vol. 35, No. 1, pp. 1-13.

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e. Monitoring of bioassessment stations shall incorporate assessment of periphyton in addition to macroinvertebrates, using the USEPA's 1999 Rapid Bioassessment Protocols for Use in Wadeable Streams and Rivers.[3]

f. Bioassessment analysis procedures shall include calculation of the Index of Biotic Integrity (IBI) for benthic macroinvertebrates for all bioassessment stations, as outlined in "A Quantitative Tool for Assessing the Integrity of Southern Coastal California Streams," by Ode, et al. 2005.

g. A professional environmental laboratory shall perform all sampling, laboratory, quality assurance, and analytical procedures.

4. FOLLOW-UP ANALYSIS AND ACTIONS

When results from the chemistry, toxicity, and bioassessment monitoring described above indicate urban runoff-induced degradation at a mass loading or temporary watershed assessment station, Copermittees within the watershed shall evaluate the extent and causes of urban runoff pollution in receiving waters and prioritize and implement management actions to eliminate or reduce sources. Toxicity Identification Evaluations (TIEs) shall be conducted to determine the cause of toxicity as outlined in Table 3 below. Other follow-up activities which shall be conducted by the Copermittees are also identified in Table 3. Once the cause of toxicity has been identified by a TIE, the Copermittees shall implement the measures necessary to reduce the pollutant discharges and abate the sources causing the toxicity.

Table 3. Triad Approach to Determining Follow-Up Actions

	Chemistry	Toxicity	Bioassessment	Action
1.	Persistent[4] exceedance of water quality objectives (high frequency constituent of concern identified)	Evidence of persistent toxicity[5]	Indications of alteration[6]	Conduct TIE[7] to identify contaminants of concern, based on TIE metric. Address upstream sources as a high priority.
2.	No persistent exceedances of water quality objectives	No evidence of persistent toxicity	No indications of alteration	No action necessary.
3.	Persistent exceedance of water quality objectives (high frequency constituent	No evidence of persistent toxicity	No indications of alteration	Address upstream sources as a low priority.

Comment [SMcP5]: This clarifies that a TIE is not necessary if the source of toxicity can be identified another way. The wording is taken from page 95 of the Fact Sheet and thus, is consistent with the intent of the Permit.

[3] USEPA, 1999. Rapid Bioassessment Protocols for Use in Wadeable Streams and Rivers. EPA-841-B-99-002.
[4] Persistent exceedance shall mean exceedances of established water quality objectives, benchmarks, or action levels by a pollutant known to cause toxicity for two wet weather and/or two dry weather samples in a given year.
[5] Evidence of toxicity shall mean where more than 50% of the toxicity tests for any given species have a No Observed Effect Concentration (NOEC) of less than 100%.
[6] Indications of alteration shall mean an IBI score of Poor or Very Poor.
[7] If the type and source of pollutants can be identified based on the data alosne and an analysis of potential sources in the drainage area, a TIE is not necessary.

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	Chemistry	Toxicity	Bioassessment	Action
	of concern identified)			
4.	No persistent exceedances of water quality objectives	Evidence of persistent toxicity	No indications of alteration	Conduct TIE to identify contaminants of concern, based on TIE metric. Address upstream sources as medium priority.
5.	No persistent exceedances of water quality objectives	No evidence of persistent toxicity	Indications of alteration	No action necessary to address toxic chemicals. Address potential role of urban runoff in causing physical habitat disturbance.
6.	Persistent exceedance of water quality objective (high frequency constituent of concern identified)	Evidence of persistent toxicity	No indications of alteration	If chemical and toxicity tests indicate persistent degradation, conduct TIE to identify contaminants of concern, based on TIE metric and address upstream source as a medium priority.
7.	No persistent exceedances of water quality objectives	Evidence of persistent toxicity	Indications of alteration	Conduct TIE to identify contaminants of concern, based on TIE metric. Address upstream sources as a high priority. Address potential role of urban runoff causing physical habitat disturbance.
8.	Persistent exceedance of water quality objectives objective (high frequency constituent of concern identified)	No evidence of persistent toxicity	Indications of alteration	Address upstream source as a high priority.

5. AMBIENT BAY AND LAGOON MONITORING (ABLM)

a. Ambient Bay and Lagoon Monitoring shall be conducted according to the schedule identified in Table 1.

b. If results of the Ambient Bay and Lagoon Monitoring assessment to be conducted in 2005-2006 indicate a general relationship and/or linkage between conditions in bays/lagoons/estuaries with conditions at mass loading stations, then monitoring shall be conducted at the following locations: Santa Margarita River Estuary, Oceanside Harbor, San Luis Rey Estuary, Buena Vista Lagoon, Agua Hedionda Lagoon, Batiquitos Lagoon, San Elijo Lagoon, San Dieguito Lagoon, Los Penasquitos Lagoon, Mission Bay, Sweetwater River Estuary, and Tijuana River Estuary. This monitoring shall be designed to most effectively answer each of questions 1-5 of section I.B above as they pertain to bays/lagoons/estuaries.

Comment [SMcP6]: Consistent with the change in Table 1.

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c. If results of the Ambient Bay and Lagoon Monitoring assessment to be conducted in 2005-2006 do not indicate a relationship and/or linkage between

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conditions in bays/lagoons/estuaries with conditions at mass loading stations, then monitoring shall be conducted for special investigations of the bays/lagoons/estuaries. These special investigations shall be designed to most effectively answer each of questions 1-5 of section I.B above as they pertain to bays/lagoons/estuaries, with an emphasis on answering question 4.

d. Ambient Bay and Lagoon Monitoring shall utilize the triad approach, analyzing chemistry, toxicity, and benthic infauna data.

e. Ambient Bay and Lagoon Monitoring shall include a water column monitoring component as necessary to supply information needed for the development, implementation, and assessment of Total Maximum Daily Loads (TMDLs).

6. COASTAL STORM DRAIN MONITORING

The Copermittees shall collaborate to develop and implement a coastal storm drain monitoring program. The monitoring program shall include:

a. Identification of coastal storm drains which discharge to coastal waters.

b. Monthly sampling of all flowing coastal storm drains identified in section II.A.6.a for total coliform, fecal coliform, and enterococcus.[8] Where flowing coastal storm drains are discharging to coastal waters, paired samples from the storm drain discharge and coastal water (25 yards down current of the discharge) shall be collected. If flowing coastal storm drains are not discharging to coastal waters, only the storm drain discharge needs to be sampled.

(1) Frequency of sampling of coastal storm drains may be reduced to every other month if the paired coastal storm drain data:

(a) Exhibits three consecutive storm drain samples with all bacterial indicators below the Copermittees' sampling frequency reduction criteria, as the sampling frequency reduction criteria was developed under Order No. 2001-01.
(b) Exhibits that the three consecutive samples discussed in (a) above are paired with receiving water samples that do not exceed Assembly Bill (AB) 411 or Basin Plan standards.
(c) Exhibits that less than 20% of the storm drain samples were above any of the sampling frequency reduction criteria during the previous year.

(2) The Copermittees shall notify the Regional Board of any coastal storm drains eligible for sampling frequency reduction prior to October 1 of each year. Sampling frequency reduction shall not occur prior to Regional Board

[8] Coastal storm drains where sampler safety, habitat impacts from sampling, or inaccessibility are issues need not be sampled. Such coastal storm drains shall be added to the Copermittee's dry weather field screening and analytical monitoring program where feasible.

notification.

(3) Where applicable and feasible, re-sampling shall be implemented within one business day of receipt of analytical results for coastal storm drains where:

(a) Both storm drain and receiving water samples exceed AB 411 or Basin Plan standards for any bacterial indicator.
(b) The storm drain sample exceeds 95th percentile observations of the previous year's data for any bacterial indicator.

(4) If re-sampling conducted under section (3) above exhibits continued exceedances of a AB 411 or Basin Plan standards in the receiving water, or exceedances of 95th percentile in the storm drain, investigations of sources of bacterial contamination shall commence within one business day of receipt of analytical results where feasible. If investigations cannot be performed within one business day, the investigation must commence at the next feasible opportunity and written justification as to the delay in source investigation must be submitted with the Annual CSDM Report.

(4) Investigations of sources of bacterial contamination shall occur immediately if evidence of abnormally high flows, sewage releases, restaurant discharges, and/or similar evidence is observed during sampling.

(5) Exceedances of public health standards for bacterial indicators shall be reported to the County Department of Environmental Health as soon as possible.

TRASH MONITORING

The Copermittees shall collaborate to develop and implement a monitoring program to assess the presence of trash (anthropogenic litter) in urban runoff and receiving waters. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year.

7. MS4 DISCHARGE MONITORING

The Copermittees shall collaborate to develop and implement a monitoring program to monitor pollutant discharges from MS4 outfalls in each watershed during wet and dry weather. The program shall include rationale and criteria for selection of outfalls to be monitored. The program shall at a minimum include collection of samples for those pollutants causing or contributing to violations of water quality standards within the watershed. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year.

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Comment [SMcP7]: See Copermittee Comment letter. The change is consistent with 3(b) and the current Coastal Monitoring Program.
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Comment [SMcP8]: See Copermittee Comment letter. Pyrethroids are added to Table 2.
Comment [SMcP9]: See Copermittee Comment letter. The Toxic Hot Spots program was incorporated into the TMDL Program.
Deleted: TOXIC HOT SPOT MONITORING . The Copermittees shall collaborate to develop and implement a monitoring program to assess the relative contribution of urban runoff on Toxic Hot Spots in San Diego Bay
Deleted: .
Deleted: PYRETHROIDS MONITORING . The Copermittees shall collaborate to develop and implement a monitoring program to effectively measure and assess the presence of pyrethroids in urban runoff and receiving waters, as well as assess the impacts of pyrethroids on beneficial uses. This monitoring program shall be implemented within each watershed and shall begin no later ... [1]
Comment [SMcP10]: See Copermittee Comment letter for Trash Monitori ... [2]
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Comment [SMcP11]: See Copermittee letter.
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See Attachment B of the Copermittees full comments for additional explanation of changes

9. SOURCE IDENTIFICATION MONITORING

8. The Copermittees shall identify areas within the watershed where additional source identification monitoring is required. The monitoring shall include focused monitoring on those specific pollutants that have been identified through MLS/TWAS, TIEs, MS4, and other existing programs. The monitoring should be developed to identify sources of discharges of pollutants causing the high priority water quality problems within each watershed. The monitoring should be designed to move upstream into each watershed as necessary to identify sources. The monitoring program shall use source inventories and "Threat to Water Tentative Receiving Waters Monitoring - 10 - March 10, 2006 and Reporting Program No. R9-2006-0011 Quality" analysis to guide monitoring efforts. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year.

9. TMDL MONITORING

All monitoring shall be conducted as required in Investigation Order No. R9-2004-0277 for Chollas Creek.

Comment [SMcP12]: See Copermittee Comment letter.

Deleted: SOURCE IDENTIFICATION STUDIES .

The Copermittees shall collaborate to develop and implement a monitoring program to identify sources of discharges of pollutants causing the high priority water quality problems within each watershed. The monitoring program shall include focused monitoring which moves upstream into each watershed as necessary to identify sources. The monitoring program shall use source inventories and "Threat to Water Quality" analysis to guide monitoring efforts. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year. .

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See Attachment B of the Copermittees full comments for additional explanation of changes

B. Regional Monitoring Program

1. The Copermittees shall participate and coordinate with federal, state, and local agencies and other dischargers in development and implementation of a regional watershed monitoring program as directed by the Executive Officer.

2. Bight '08

   a. During the 2008-2009 monitoring year (Permit Year 3), the Copermittees may participate in the Bight '08 study. The Copermittees shall ensure that such participation results in collection and analysis of data useful in addressing the goals and management questions of the Receiving Waters Monitoring Program. Any participation shall include the contribution of all funds not otherwise spent on full implementation of mass loading station, temporary watershed assessment station, ambient bay and lagoon, and bioassessment monitoring. All other monitoring shall continue during the 2008-2009 monitoring year (Permit Year 3) as required.

   b. If the Copermittees do not participate in Bight '08, mass loading station, temporary watershed assessment station, ambient bay an lagoon, and bioassessment monitoring shall be conducted as follows:

      (1) Permit Year 4 (2009-2010) monitoring shall be conducted in Permit Year 3 (2008-2009) (see Table 1).
      (2) Permit Year 5 (2010-2011) monitoring shall be conducted in Permit Year 4 (2009-2010) (see Table 1).
      (3) Permit Year 4 (2009-2010) monitoring shall be conducted in Permit Year 5 (2010-2011).

   c. If the Copermittees partially participate in Bight '08, monitoring shall be conducted as described in section II.B.2.b above, with the exception of any monitoring offset by the contribution of funds to Bight '08.

3. Regional Harbor Monitoring – The Copermittees which discharge to harbors shall participate in the development and implementation of the Regional Harbor Monitoring Program.

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See Attachment B of the Copermittees full comments for additional explanation of changes

C. Special Studies

The Copermittees shall conduct special studies as directed by the Executive Officer.

D. Dry Weather Field Screening and Analytical Monitoring

As part of its Jurisdictional Urban Runoff Management Program, each Copermittee shall update as necessary its dry weather field screening and analytical monitoring program to meet or exceed the requirements of this section. Dry weather analytical and field screening monitoring consists of (1) field observations; (2) field screening monitoring; and (3) analytical monitoring at selected stations. Each Copermittee's program shall be designed to detect and eliminate illicit connections and illegal discharges to the MS4 using frequent, geographically widespread dry weather discharge monitoring and follow-up investigations. Each Copermittee shall conduct the following dry weather field screening and analytical monitoring tasks:

1. SELECT DRY WEATHER FIELD SCREENING AND ANALYTICAL MONITORING STATIONS

Based upon a review of its past Dry Weather Monitoring Program, each Copermittee shall select dry weather analytical monitoring stations within its jurisdiction. Stations shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the MS4 by either (a) placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the MS4 or major outfall; or, (b) stations may be selected non-randomly provided adequate coverage of the entire MS4 system is ensured. The dry weather analytical and field screening monitoring stations shall be established considering the following guidelines and criteria:

Deleted: and that the selection of stations meets, exceeds, or provides equivalent coverage to the requirements given below

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a. A grid system consisting of perpendicular north-south and east-west lines spaced ¼ mile apart shall be overlayed on a map of the MS4, creating a series of cells;
b. All cells that contain a segment of the MS4 shall be identified and one dry weather analytical monitoring station shall be selected in each cell;
c. Stations should be located downstream of any sources of suspected illegal or illicit activity;
d. Stations shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system within each cell;
e. Hydrological conditions, total drainage area of the site, traffic density, age of the structures or buildings in the area, history of the area, and land use types shall be considered in locating stations;
f. Determining Number of Stations: Based upon review of previous Dry Weather Monitoring Programs, each Copermittee shall determine a minimum number of stations to be sampled each year with provisions for alternate stations to be sampled in place of selected stations that do not have flow.

2. COMPLETE MS4 MAP

Each Copermittee shall clearly identify each dry weather field screening and analytical monitoring station on its MS4 Map as either a separate GIS layer or a map overlay hereafter referred to as a Dry Weather Field Screening and Analytical Stations Map. Each Copermittee shall confirm that each drainage area within its jurisdiction contains at least one station.

3. DEVELOP DRY WEATHER ANALYTICAL MONITORING PROCEDURES

Each Copermittee shall develop and/or update written procedures for dry weather field screening monitoring and analytical monitoring (consistent with 40 CFR part 136)[9], including field observations, monitoring, and analyses to be conducted. At a minimum, the procedures must meet the following guidelines and criteria:

Comment [SMcP13]: See Copermittee Comment letter. Changes clarify that only analytical monitoring is to be consistent with requirements of 40 CFR part 136.

a. Determining Sampling Frequency: Dry weather field screening and analytical monitoring shall be conducted at each identified station at least once between May 1st and September 30th of each year or as often as the Copermittee determines is necessary to comply with the requirements of section D.4 of Order No. R9-2006-0011.

b. If flow or ponded runoff is observed at a dry weather field screening or analytical monitoring station and there has been at least seventy-two (72) hours of dry weather, make observations and collect at least one (1) grab sample. Record general information such as time since last rain, quantity of last rain, site descriptions (i.e., conveyance type, dominant watershed land uses), flow estimation (i.e., width of water surface, approximate depth of water, approximate flow velocity, flow rate), and visual observations (i.e., odor, color, clarity, floatables, deposits/stains, vegetation condition, structural condition, and biology).

c. At a minimum, collect samples for analytical laboratory analysis of the following constituents for at least twenty five percent (25%) of the dry weather monitoring stations where water is present:
   (1) Total Hardness
   (2) Oil and Grease
   (3) Diazinon and Chlorpyrifos
   (4) Cadmium (Dissolved) or field test kit
   (5) Copper (Dissolved) or field test kit
   (6) Lead (Dissolved) or field test kit
   (7) Zinc (Dissolved) or field test kit
   (8) Enterococcus bacteria [10]
   (9) Total Coliform bacteria [10]
   (10) Fecal Coliform bacteria [10]

[9] 40 CFR part 136 applies to analytical monitoring only, not to field screening monitoring. Dry Weather monitoring is exempt from the Quality Assurance Management Plan for the State of California 's Surface Water Ambient Monitoring Program adopted by the State Water Resources Control Board.
[10] Colilert and Enterolert may be used as alternative methods. Fecal coliform is determined by calculation.

d. At a minimum, conduct field screening analysis of the following constituents at all dry weather monitoring stations where water is present:

   (a) Specific conductance (calculate estimated Total Dissolved Solids).
   (b) Turbidity
   (c) pH
   (d) Reactive Phosphorous[11]
   (e) Nitrate Nitrogen
   (f) Ammonia Nitrogen
   (g) Cadmium (Dissolved) or analytical laboratory method
   (h) Copper (Dissolved) or analytical laboratory method
   (i) Lead (Dissolved) or analytical laboratory method
   (j) Zinc (Dissolved) or analytical laboratory method
   (k) Surfactants (MBAS)

Comment [SMcP14]: Reactive phosphorous is exchangeable with orthophosphate-P that is more generally used terminology in the water quality field. The inserted footnote clarifies this.

e. If the station is dry (no flowing or ponded runoff), make and record all applicable observations and select another station from the list of alternate stations for monitoring.

f. Develop and/or update criteria for dry weather field screening and analytical monitoring results whereby exceedance of the criteria will require follow-up investigations to be conducted to identify and eliminate the source causing the exceedance of the criteria.

g. Dry weather field screening and analytical monitoring stations identified to exceed dry weather monitoring criteria for any constituents shall continue to be screened in subsequent years.

h. Develop and/or update procedures for source identification follow up investigations in the event of exceedance of dry weather field screening and analytical monitoring result criteria. These procedures shall be consistent with procedures required in section D.4.d of Order No. R9-2006-0011.

i. Develop and/or update procedures to eliminate detected illicit discharges and connections. These procedures shall be consistent with each Copermittees Illicit Discharge and Elimination component of its Jurisdictional Urban Runoff Management Plan as discussed in section D.4 of Order No. R9-2006-0011.

4. CONDUCT DRY WEATHER ANALYTICAL MONITORING

The Copermittees shall commence implementation of dry weather field screening and analytical monitoring under the requirements of this Order by May 1, 2007. Each Copermittee shall conduct dry weather analytical and field screening monitoring in accordance with its storm water conveyance system map and dry

[11] Exchangeable with orthophosphate-P

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weather analytical and field screening monitoring procedures as described in section II.D.3 above. If monitoring indicates an illicit connection or illegal discharge, conduct the follow-up investigation and elimination activities as described in submitted dry weather field screening and analytical monitoring procedures and sections D.4.d and D.4.e of Order No. R9-2006-0011. Until the dry weather field screening and analytical monitoring program is implemented under the requirements of this Order, each Copermittee shall continue to implement dry weather field screening and analytical monitoring as it was most recently implemented pursuant to Order No. 2001-01.

E. Monitoring Provisions

All monitoring activities shall meet the following requirements:

1. Where procedures are not otherwise specified in this Receiving Waters Monitoring and Reporting Program, sampling, analysis and quality assurance/quality control must be conducted in accordance with the Quality Assurance Management Plan (QAMP) for the State of California's Surface Water Ambient Monitoring Program (SWAMP), adopted by the State Water Resources Control Board (SWRCB). Mass loading stations and temporary watershed assessment stations will be exempt from this requirement as the SWAMP does not address mass emission monitoring.

Comment [SMcP15]: See Copermittee Comment letter.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity [40 CFR 122.41(j)(1)].

3. The Copermittees shall retain records of all monitoring information, including all calibration and maintenance of monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the Report of Waste Discharge and application for this Order, for a period of at least five (5) years from the date of the sample, measurement, report, or application. This period may be extended by request of the Regional Board or USEPA at any time and shall be extended during the course of any unresolved litigation regarding this discharge. [40 CFR 122.41(j)(2), CWC section 13383(a)]

4. Records of monitoring information shall include [40 CFR 122.41(j)(3)]:
   a. The date, exact place, and time of sampling or measurements;
   b. The individual(s) who performed the sampling or measurements;
   c. The date(s) analyses were performed;
   d. The individual(s) who performed the analyses;
   e. The analytical techniques or methods used; and
   f. The results of such analyses.

5. All sampling, sample preservation, and analyses must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this Receiving Waters Monitoring and Reporting Program or approved by the Executive Officer [40 CFR 122.41(j)(4)].

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6. The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Order shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or both. [40 CFR 122.41(j)(5)]

7. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this Receiving Waters Monitoring and Reporting Program. [40 CFR 122.41(l)(4)(iii)]

8. All chemical, bacteriological, and toxicity analyses shall be conducted at a laboratory certified for such analyses by the California Department of Health Services or a laboratory approved by the Executive Officer.

9. For priority toxic pollutants that are identified in the California Toxics Rule (CTR) (65 Fed. Reg. 31682), the Copermittees shall instruct its laboratories to establish calibration standards that are equivalent to or lower than the Minimum Levels (MLs) published in Appendix 4 of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP). If a Copermittee can demonstrate that a particular ML is not attainable, in accordance with procedures set forth in 40 CFR 136, the lowest quantifiable concentration of the lowest calibration standard analyzed by a specific analytical procedure (assuming that all the method specified sample weights, volumes, and processing steps have been followed) may be used instead of the ML listed in Appendix 4 of the SIP. The Copermittee must submit documentation from the laboratory to the Regional Board for approval prior to raising the ML for any priority toxic pollutant.

10. The Regional Board Executive Officer or the Regional Board may make revisions to this Receiving Waters Monitoring and Reporting Program at any time during the term of Order No R9-2006-0011, and may include a reduction or increase in the number of parameters to be monitored, locations monitored, the frequency of monitoring, or the number and size of samples collected.

11. The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both. [40 CFR 122.41(k)(2)]

12. Monitoring shall be conducted according the USEPA test procedures approved under 40 CFR 136, "Guidelines Establishing Test Procedures for Analysis of Pollutants under the Clean Water Act" as amended, unless other test procedures have been specified in this Receiving Waters Monitoring and Reporting Program, in Order No.

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584 R9-2006-0011, or by the Executive Officer.
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586 13. If the discharger monitors any pollutant more frequently than required by the permit
587 using test procedures approved under 40 CFR part 136, unless otherwise specified in
588 the Order, the results of this monitoring shall be included in the calculation and
589 reporting of the data submitted in the reports requested by the Regional Board. [40
590 CFR 122.41(l)(4)(ii)]
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I. PURPOSE

A. This Receiving Waters and Urban Runoff Discharge Monitoring is intended to meet the following goals: Deleted: and Reporting Program

1. Assess compliance with Order No. R9-2006-0011;
2. Measure and improve the effectiveness of the Copermittees' urban runoff management programs;
3. Assess the chemical, physical, and biological impacts to receiving waters resulting from urban runoff discharges;
4. Characterize urban runoff discharges;
5. Identify sources of specific pollutants;
6. Prioritize drainage and sub-drainage areas that need management actions;
7. Detect and eliminate illicit discharges and illicit connections to the MS4; and
8. Assess the overall health of receiving waters.

B. In addition, this Receiving Waters and Urban Runoff Discharge Monitoring is designed to answer the following core management questions: Deleted: and Reporting Program

1. Are conditions in receiving waters protective, or likely to be protective, of beneficial uses?
2. What is the extent and magnitude of the current or potential receiving water problems?
3. What is the relative urban runoff contribution to the receiving water problem(s)?
4. What are the sources of urban runoff that contribute to receiving water problem(s)?
5. Are conditions in receiving waters getting better or worse?

II. WATERSHED BASED MONITORING PROGRAM

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Each Copermittee shall collaborate with the other Copermittees to develop, conduct, and report on a year round watershed based Receiving Waters and Urban Runoff Discharge Monitoring Program. The monitoring program design, implementation, analysis, assessment, and reporting shall be conducted on a watershed basis for each of the hydrologic units. The monitoring program shall be designed to meet the goals and answer the questions listed in section I above. The monitoring program shall include the following components: Deleted: monitoring

A. RECEIVING WATERS MONITORING PROGRAM

1. MASS LOADING STATION (MLS) MONITORING

a. The following existing mass loading stations shall continue to be monitored: Santa Margarita River,[1] San Luis Rey River, Agua Hedionda Creek, Escondido Creek, San Dieguito River, Penasquitos, Tecolote Creek, San Diego River,

[1] For the Santa Margarita River mass loading station, if Camp Pendleton will not conduct the required monitoring or prevents access for the Copermittees to conduct the required monitoring, the mass loading station location shall be moved to where the County of San Diego has land-use jurisdiction.

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Chollas Creek, Sweetwater River, and Tijuana River. The mass loading stations shall be monitored at the frequency identified in Table 1.

San Diego Municipal Stormwater Copermittee Final Comments: 6/06/2006
Tentative Receiving Waters Monitoring and Urban Runoff Discharge Program
Re-organization

See Attachment B of the Copermittees full comments for additional explanation of changes

Table 1. Monitoring Rotation and Number of Stations in Watersheds

Watershed Management Area	Watershed	Permit Year 1 2006-2007				Permit Year 2 2007-2008				Permit Year 3 2008-2009				Permit Year 4 2009-2010				Permit Year 5 2010-2011			
		MLS	TWAS	ABLM	BA	MLS	TWAS	ABLM	BA	MLS	TWAS	ABLM	BA	MLS	TWAS	ABLM	BA	MLS	TWAS	ABLM	BA
Santa Margarita	Santa Margarita River	1			4					1				1			4				
San Luis Rey	San Luis Rey River	1	2		3					1				1	2		3				
Carlsbad	Buena Vista Creek		1		1										1		1				
	Agua Hedionda Creek	1	1		2					1				1	1		2				
	Escondido Creek	1	1		2					1				1	1		2				
San Dieguito	San Dieguito River	1	2	Implement Refined program based on assessment	3			Implement refined program based on assessment		1	Bight '08			1	2	Implement refined program based on assessment	3			Implement refined program based on assessment	
Penasquitos	Penasquitos	1	2		3					1				1	2		3				
Mission Bay	Rose Creek						1		1										1		1
	Tecolote Creek					1	1		2	1								1	1		2
San Diego River	San Diego River					1	3		4	1								1	3		4
San Diego Bay	Chollas Creek	1			1	1			1	1				1			1	1			1
	Sweetwater River					1	1		2	1								1	1		2
	Otay River						1		1										1		1
Tijuana	Tijuana River					1	2		3	1								1	1		2

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b. Each mass loading station to be monitored in a given year shall be monitored twice during wet weather events and twice during dry weather flow events. The exception is the 2008-2009 monitoring year, which shall include monitoring of all mass loading stations for one wet weather flow event only if the Copermittees participate in Bight '08.

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c. Each mass loading station shall be monitored for the first wet weather event of the season which meets the USEPA's criteria as described in 40 CFR 122.21(g)(7). Monitoring of the second wet weather event shall be conducted after February 1. Dry weather mass loading monitoring events shall be sampled in September or October prior to the start of the wet weather season and in May or June after the end of the wet weather season. If flows are not evident in October, then sampling shall be conducted during non-rain events in the wet weather season.

d. Mass loading sampling and analysis protocols shall be consistent with 40 CFR 122.21(g)(7)(ii) and with the USEPA Storm Water Sampling Guidance Document (EPA 833-B-92-001). Wet weather samples shall be flow-weighted composites, collected for the duration of the entire runoff event, where practical. Where such monitoring is not practical, such as for large watersheds with significant groundwater recharge flows, composites shall be collected at a minimum during the first 3 hours of flow. Dry weather event samples shall be flow-weighted composites, collected for a time duration adequate to be representative of changes in pollutant concentrations and runoff flows which may occur over a typical 24 hour period. A minimum of 3 sample aliquots, separated by a minimum of 15 minutes, shall be taken for each hour of monitoring, unless the Regional Board Executive Officer approves an alternate protocol. Automatic samplers shall be used to collect samples from mass loading stations. Grab samples shall be taken for temperature, pH, specific conductance, biochemical oxygen demand, oil and grease, total coliform, fecal coliform, and enterococcus.

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e. Copermittees shall measure or estimate flow rates and volumes for each mass loading station sampling event in order to determine mass loadings of pollutants. Data from nearby USGS gauging stations may be utilized, or flow rates may be estimated in accordance with the USEPA Storm Water Sampling Guidance Document (EPA-833-B-92-001), Section 3.2.1.

f. In the event that the required number of events are not sampled during one monitoring year at any given station, the Copermittees shall submit, with the subsequent Receiving Waters Monitoring Annual Report, a written explanation for a lack of sampling data, including streamflow data from the nearest USGS gauging station.

g. The following constituents shall be analyzed for each monitoring event at each station:

Table 2. Analytical Testing for Mass Loading and Temporary Watershed Assessment Stations

Conventionals, Nutrients, Hydrocarbons	Pesticides	Metals (Total and Dissolved)	Bacteriological
Total Dissolved Solids	Diazinon	Antimony	Total Coliform
Total Suspended Solids	Chlorpyrifos	Arsenic	Fecal Coliform
Turbidity	Malathion	Cadmium	Enterococcus
Total Hardness	Pyrethroids*	Chromium	
pH		Copper	
Specific Conductance		Lead	
Temperature		Nickel	
Dissolved Phosphorus		Selenium	
Nitrite		Zinc	
Nitrate			
Total Kjeldahl Nitrogen			
Ammonia			
Biological Oxygen Demand, 5-day			
Chemical Oxygen Demand			
Total Organic Carbon			
Dissolved Organic Carbon			
Methylene Blue Active Substances			
Oil and Grease			

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* Pyrethroid monitoring will begin not later than the 2007-2008 season.

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Deleted: In addition to the constituents listed in Table 2 above, monitoring stations in the Chollas Creek watershed shall also analyze samples for polychlorinated biphenyls (PCBs), Chlordane, and polycyclic aromatic hydrocarbons (PAHs) for each monitoring event.

h. The following toxicity testing shall be conducted for each monitoring event at each station as follows:

(1) 7-day chronic test with the cladoceran *Ceriodaphnia dubia* (USEPA protocol EPA-821-R-02-013).
(2) Chronic test with the freshwater algae *Selenastrum capricornutum* (USEPA protocol EPA-821-R-02-013).
(3) Acute survival test with amphipod *Hyalella azteca* (USEPA protocol EPA-821-R-02-012).

i. The presence of acute toxicity shall be determined in accordance with USEPA protocol (EPA-821-R-02-012). The presence of chronic toxicity shall be determined in accordance with USEPA protocol (EPA-821-R-02-013).

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j. Assessments of the presence of trash (anthropogenic litter) in receiving waters. Copermittees shall ensure that the monitoring sites provide adequate spatial coverage for receiving waters. Copermittees shall also ensure that trash data is collected and evaluated in conjunction with analytical data, when applicable. This monitoring program shall be implemented within each watershed and shall begin no later than 2007-2008 monitoring year.

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k. Assessments of trash shall provide information on the spatial extent and nature of the types of trash present.

2. TEMPORARY WATERSHED ASSESSMENT STATION (TWAS) MONITORING

a. The minimum number of temporary watershed assessment stations to be monitored in a given monitoring year is identified in Table 1. The number of stations located within each watershed may change from the number identified in Table 1, provided the total number of stations monitored in a given year is not reduced below the minimum number of stations identified in Table 1. The temporary watershed assessment stations shall be monitored and located according to a systematic plan which:

(1) Ensures that the Copermittees' Receiving Waters Monitoring Program most effectively answers questions 1-5 of section I.B above.
(2) Provides statistically useful information.
(3) Identifies the extent and magnitude of receiving water problems within each watershed.
(4) Provides spatial coverage of each watershed.
(5) Monitors previously un-assessed sub-watershed areas.
(6) Focuses on specific areas of concern and high priority areas.
(7) Provides adequate information to assess the effectiveness of implemented programs and control measures in reducing discharged pollutant loads and improving urban runoff and receiving water quality.

b. For each temporary watershed assessment station identified to be monitored in a given year, the station shall be monitored twice during wet weather events and twice during dry weather flow events.

c. Temporary watershed assessment stations shall be monitored in the same manner as the mass loading stations in accordance with the monitoring protocols and requirements outlined in sections II.A.1.c-k above. Deleted: j

3. BIOASSESSMENT (BA) MONITORING

a. The minimum number of bioassessment stations to be monitored in each watershed in a given monitoring year is identified in Table 1. Bioassessment stations shall include an adequate number of reference stations, with locations of reference stations identified according to protocols outlined in "A Quantitative Tool for Assessing the Integrity of Southern Coastal California Streams," by Ode, et al. 2005.[2]

[2] Ode, et al. 2005. "A Quantitative Tool for Assessing the Integrity of Southern Coastal California Streams." Environmental Management. Vol. 35, No. 1, pp. 1-13.

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b. Bioassessment stations shall be collocated with both mass loading stations and temporary watershed assessment stations where feasible.

c. Bioassessment stations to be monitored in a given monitoring year shall be monitored in late spring/May (to represent the influence of wet weather on the communities) and late summer/October (to represent the influence of dry weather flows on the communities). The timing of monitoring of bioassessment stations shall coincide with dry weather monitoring of mass loading and temporary watershed assessment stations.

d. Monitoring of bioassessment stations shall utilize the targeted riffle composite approach, as specified in the Surface Water Ambient Monitoring Program (SWAMP) Quality Assurance Management Plan (QAMP), as amended.

e. Monitoring of bioassessment stations shall incorporate assessment of periphyton in addition to macroinvertebrates, using the USEPA's 1999 Rapid Bioassessment Protocols for Use in Wadeable Streams and Rivers.[3]

f. Bioassessment analysis procedures shall include calculation of the Index of Biotic Integrity (IBI) for benthic macroinvertebrates for all bioassessment stations, as outlined in "A Quantitative Tool for Assessing the Integrity of Southern Coastal California Streams," by Ode, et al. 2005.

g. A professional environmental laboratory shall perform all sampling, laboratory, quality assurance, and analytical procedures.

4. FOLLOW-UP ANALYSIS AND ACTIONS

When results from the chemistry, toxicity, and bioassessment monitoring described above indicate urban runoff-induced degradation at a mass loading or temporary watershed assessment station, Copermittees within the watershed shall evaluate the extent and causes of urban runoff pollution in receiving waters and prioritize and implement management actions to eliminate or reduce sources. Toxicity Identification Evaluations (TIEs) shall be conducted to determine the cause of toxicity as outlined in Table 3 below. Other follow-up activities which shall be conducted by the Copermittees are also identified in Table 3. Once the cause of toxicity has been identified by a TIE, the Copermittees shall implement the measures necessary to reduce the pollutant discharges and abate the sources causing the toxicity.

[3] USEPA, 1999. Rapid Bioassessment Protocols for Use in Wadeable Streams and Rivers. EPA-841-B-99-002.

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210 5. Table 3. Triad Approach to Determining Follow-Up Actions

	Chemistry	Toxicity	Bioassessment	Action
1.	Persistent[4] exceedance of water quality objectives (high frequency constituent of concern identified)	Evidence of persistent toxicity[5]	Indications of alteration[6]	Conduct TIE[7] to identify contaminants of concern, based on TIE metric. Address upstream sources as a high priority.
2.	No persistent exceedances of water quality objectives	No evidence of persistent toxicity	No indications of alteration	No action necessary.
3.	Persistent exceedance of water quality objectives (high frequency constituent of concern identified)	No evidence of persistent toxicity	No indications of alteration	Address upstream sources as a low priority.
4.	No persistent exceedances of water quality objectives	Evidence of persistent toxicity	No indications of alteration	Conduct TIE to identify contaminants of concern, based on TIE metric. Address upstream sources as medium priority.
5.	No persistent exceedances of water quality objectives	No evidence of persistent toxicity	Indications of alteration	No action necessary to address toxic chemicals. Address potential role of urban runoff in causing physical habitat disturbance.
6.	Persistent exceedance of water quality objective (high frequency constituent of concern identified)	Evidence of persistent toxicity	No indications of alteration	If chemical and toxicity tests indicate persistent degradation, conduct TIE to identify contaminants of concern, based on TIE metric and address upstream source as a medium priority.
7.	No persistent exceedances of water quality objectives	Evidence of persistent toxicity	Indications of alteration	Conduct TIE to identify contaminants of concern, based on TIE metric. Address upstream sources as a high priority. Address potential role of urban runoff causing physical habitat disturbance.
8.	Persistent exceedance of water quality objectives objective (high frequency constituent of concern identified)	No evidence of persistent toxicity	Indications of alteration	Address upstream source as a high priority.

[4] Persistent exceedance shall mean exceedances of established water quality objectives, benchmarks, or action levels by a pollutant known to cause toxicity for two wet weather and/or two dry weather samples in a given year.

[5] Evidence of toxicity shall mean where more than 50% of the toxicity tests for any given species have a No Observed Effect Concentration (NOEC) of less than 100%.

[6] Indications of alteration shall mean an IBI score of Poor or Very Poor.

[7] If the type and source of pollutants can be identified based on the data alone and an analysis of potential sources in the drainage area, a TIE is not necessary.

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6. AMBIENT BAY AND LAGOON MONITORING (ABLM)

   a. Ambient Bay and Lagoon Monitoring shall be conducted according to the schedule identified in Table 1.

   b. If results of the Ambient Bay and Lagoon Monitoring assessment to be conducted in 2005-2006 indicate a general relationship and/or linkage between conditions in bays/lagoons/estuaries with conditions at mass loading stations, then monitoring shall be conducted at the following locations: Santa Margarita River Estuary, Oceanside Harbor, San Luis Rey Estuary, Buena Vista Lagoon, Agua Hedionda Lagoon, Batiquitos Lagoon, San Elijo Lagoon, San Dieguito Lagoon, Los Penasquitos Lagoon, Mission Bay, Sweetwater River Estuary, and Tijuana River Estuary. This monitoring shall be designed to most effectively answer each of questions 1-5 of section I.B above as they pertain to bays/lagoons/estuaries.

   c. If results of the Ambient Bay and Lagoon Monitoring assessment to be conducted in 2005-2006 do not indicate a relationship and/or linkage between conditions in bays/lagoons/estuaries with conditions at mass loading stations, then monitoring shall be conducted for special investigations of the bays/lagoons/estuaries. These special investigations shall be designed to most effectively answer each of questions 1-5 of section I.B above as they pertain to bays/lagoons/estuaries, with an emphasis on answering question 4.

   d. Ambient Bay and Lagoon Monitoring shall utilize the triad approach, analyzing chemistry, toxicity, and benthic infauna data.

   e. Ambient Bay and Lagoon Monitoring shall include a water column monitoring component as necessary to supply information needed for the development, implementation, and assessment of Total Maximum Daily Loads (TMDLs).

7. COASTAL STORM DRAIN MONITORING

   The Copermittees shall collaborate to develop and implement a coastal storm drain monitoring program. The monitoring program shall include:

   a. Identification of coastal storm drains which discharge to coastal waters.

   b. Monthly sampling of all flowing coastal storm drains identified in section II.A.6.a for total coliform, fecal coliform, and enterococcus.[8] Where flowing coastal storm drains are discharging to coastal waters, paired samples from the storm drain discharge and coastal water (25 yards down current of the discharge)

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[8] Coastal storm drains where sampler safety, habitat impacts from sampling, or inaccessibility are issues need not be sampled. Such coastal storm drains shall be added to the Copermittee's dry weather field screening and analytical monitoring program where feasible.

shall be collected. If flowing coastal storm drains are not discharging to coastal waters, only the storm drain discharge needs to be sampled.

(1) Frequency of sampling of coastal storm drains may be reduced to every other month if the paired coastal storm drain data:

(a) Exhibits three consecutive storm drain samples with all bacterial indicators below the Copermittees' sampling frequency reduction criteria, as the sampling frequency reduction criteria was developed under Order No. 2001-01.
(b) Exhibits that the three consecutive samples discussed in (a) above are paired with receiving water samples that do not exceed Assembly Bill (AB) 411 or Basin Plan standards.
(c) Exhibits that less than 20% of the storm drain samples were above any of the sampling frequency reduction criteria during the previous year.

(2) The Copermittees shall notify the Regional Board of any coastal storm drains eligible for sampling frequency reduction prior to October 1 of each year. Sampling frequency reduction shall not occur prior to Regional Board notification.

(3) Where applicable and feasible, re-sampling shall be implemented within one business day of receipt of analytical results for coastal storm drains where:

(a) Both storm drain and receiving water samples exceed AB 411 or Basin Plan standards for any bacterial indicator.
(b) The storm drain sample exceeds 95th percentile observations of the previous year's data for any bacterial indicator.

(4) If re-sampling cannot be conducted within one business day, it must be implemented at the next feasible opportunity and written justification as to the delay in re-sampling must be submitted in the appropriate Copermittee Report.

(5) If re-sampling conducted under section (3) above exhibits continued exceedances of a AB 411 or Basin Plan standards in the receiving water, or exceedances of 95th percentile in the storm drain, investigations of sources of bacterial contamination shall commence within one business day of receipt of analytical results where feasible. If investigations cannot be performed within one business day, the investigation must commence at the next feasible opportunity and written justification as to the delay in source investigation must be submitted with the Annual CSDM Report.

(6) Investigations of sources of bacterial contamination shall occur immediately if evidence of abnormally high flows, sewage releases, restaurant discharges, and/or similar evidence is observed during sampling.

Deleted: Re-sampling shall be implemented within 24 hours of receipt of analytical results for coastal storm drains where

Deleted: If re-sampling conducted under section (3) above exhibits continued exceedances of a AB 411 or Basin Plan standards in either the storm drain or receiving water, investigations of sources of bacterial contamination shall commence within 24 hours of receipt of analytical results

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(7) Exceedances of public health standards for bacterial indicators shall be reported to the County Department of Environmental Health as soon as possible.

B. URBAN RUNOFF DISCHARGE MONITORING

The Urban Runoff Discharge Monitoring Program shall be designed to meet the goals and answer the core management questions listed in section I above. **The monitoring shall be reviewed annually and modified as needed to include pollutants of concern identified through the Receiving Waters Monitoring Program, Section II.A.** The Urban Runoff Discharge Monitoring Program shall include the following components:

1. COMPLETE MS4 MAP

Each Copermittee shall create a map of its Urban Runoff Discharge Monitoring sites. The map should clearly identify all MS4 Discharge Monitoring sites contained in Section II.B.2.a, b, c, and all IC/ID Field Screening sites. It is preferred that the map be created as either a separate GIS layer or a map overlay on its MS4 Map, hereafter referred to as the Urban Runoff Discharge Monitoring Map. Each Copermittee shall confirm that each drainage area within its jurisdiction contains at least one monitoring station.

2. MS4 DISCHARGE MONITORING

a. MS4 OUTFALLS

The Copermittees shall develop and implement monitoring to monitor pollutant discharges from MS4 outfalls in each watershed during wet and dry weather. **The monitoring program design, implementation, analysis, assessment, and reporting shall be designed with a watershed focus for each of the hydrologic units.** The program shall include rationale and criteria for selection of outfalls to be monitored. Monitoring shall, at a minimum, include collection of samples for those pollutants causing or contributing to violations of water quality standards within the watershed. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year.

b. UPSTREAM MS4 MONITORING

Site selection for dry weather MS4 discharge monitoring shall at a minimum follow the analytical requirements from the previous Permit (2001-01) which required sample collection for laboratory analytes for at least 25% of the 2001-01 Dry Weather program stations. Upstream MS4 monitoring locations shall be guided by watershed priorities and coordinated to best represent the needs of the watershed. The use of existing sites shall be evaluated prior to initiating the program to ensure that there is flow at the selected sites. New sites may be

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Deleted: <#>TOXIC HOT SPOT MONITORING .

The Copermittees shall collaborate to develop and implement a monitoring program to assess the relative contribution of urban runoff on Toxic Hot Spots in San Diego Bay. .

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<#>PYRETHROIDS MONITORING .

The Copermittees shall collaborate to develop and implement a monitoring program to effectively measure and assess the presence of pyrethroids in urban runoff and receiving waters, as well as assess the impacts of pyrethroids on beneficial uses. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year. .

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<#>TRASH MONITORING .

The Copermittees shall collaborate to develop and implement a monitoring program to effectively measure and assess the presence of trash (anthropogenic litter) in urban runoff and receiving waters, as well as assess the impacts of trash on beneficial uses. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year. .

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<#>MS4 DISCHARGE MONITORING .

The Copermittees shall collaborate to develop and implement a monitoring program to characterize pollutant discharges from MS4 outfalls in each watershed during wet and dry weather. Outfalls to be monitored shall be representative of the outfalls within each watershed in terms of size, flow, drainage area conditions (such as land use), etc. The program shall include rationale and criteria for selection of outfalls to be monitored. The program shall at a minimum include collection of samples for those pollutants causing or contributing to violations of water quality standards within the watershed. Frequency of monitoring and monitoring methods shall ensure monitoring which is representative of outfall discharge flow and pollutant conditions. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year. . ... [1]

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substituted provided that they 1) have adequate flow, 2) provide an equal or better assessment of high priority watershed problems.

(1) At a minimum, collect samples for analytical laboratory analysis of the following constituents:

(a) Total Hardness
(b) Oil and Grease
(c) Diazinon and Chlorpyrifos
(d) Cadmium (Dissolved) or field test kit
(e) Copper (Dissolved) or field test kit
(f) Lead (Dissolved) or field test kit
(g) Zinc (Dissolved) or field test kit
(h) Enterococcus bacteria[9]
(i) Total Coliform bacteria[9]
(j) Fecal Coliform bacteria[9]
(k) Additional Constituents identified to be causing impairment or that have been identified as high priority watershed pollutants.

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c. SOURCE IDENTIFICATION MONITORING

The Copermittees shall identify areas within the watershed where additional source identification monitoring is required. The monitoring shall include focused monitoring on those specific pollutants that have been identified through MLS/TWAS, TIEs, MS4, and other existing programs. The monitoring should be developed to identify sources of discharges of pollutants causing the high priority water quality problems within each watershed. The monitoring should be designed to move upstream into each watershed as necessary to identify sources. The monitoring program shall use source inventories and "Threat to Water Quality" analysis to guide monitoring efforts. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year.

3. ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING

Each Copermittee shall conduct field screening designed to randomly detect and eliminate illicit connections and illegal discharges to the MS4 using frequent, geographically widespread discharge monitoring and follow-up investigations. Each Copermittee shall conduct the following Illegal Discharge / Illicit Connection field screening tasks: At a minimum, the procedures must meet the following guidelines and criteria:

a. SELECT ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING STATIONS

[9] Colilert and Enterolert may be used as alternative methods. Fecal coliform is determined by calculation.

Based upon a review of its past Dry Weather Monitoring Program, each Copermittee shall select stations to detect illicit connections and illegal discharges to the MS4 within its jurisdiction. Stations shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the MS4 by either (a) randomly placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the MS4 or major outfall; or, (b) stations may be selected non-randomly provided adequate coverage of the entire MS4 system is ensured. The illicit connection/illegal discharge field screening stations shall be established considering the following guidelines:

(1) A grid system consisting of perpendicular north-south and east-west lines spaced ¼ mile apart shall be overlayed on a map of the MS4, creating a series of cells;
(2) All cells that contain a segment of the MS4 shall be identified and one dry weather analytical monitoring station shall be selected in each cell;
(3) Stations should be located downstream of any sources of suspected illegal or illicit activity;
(4) Stations shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system within each cell;
(5) Hydrological conditions, total drainage area of the site, traffic density, age of the structures or buildings in the area, history of the area, and land use types shall be considered in locating stations;
(6) Determining Number of Stations: Based upon review of previous Dry Weather Monitoring Programs, each Copermittee shall determine a minimum number of stations to be sampled each year with provisions for alternate stations to be sampled in place of selected stations that do not have flow.

b. DEVELOP ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING PROCEDURES

Each Copermittee shall develop and/or update written procedures for IC/ID field screening, including field observations, monitoring, and analyses to be conducted. At a minimum, the procedures must meet the following guidelines and criteria:

(1) Sampling Frequency: Illegal Discharge / Illicit Connection field screening shall be conducted at each identified station at least once between May 1st and September 30th of each year or as often as the Copermittee determines is necessary to comply with the requirements of section D.4 of Order No. R9-2006-0011.
(2) If flow or ponded runoff is observed at a Illegal Discharge / Illicit Connection field screening station and there has been at least seventy-two (72) hours of dry weather, make observations and collect at least one (1) grab sample. Record general information such as time since last rain, quantity of last rain, site descriptions (i.e., conveyance type, dominant watershed land

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uses), flow estimation (i.e., width of water surface, approximate depth of water, approximate flow velocity, flow rate), and visual observations (i.e., odor, color, clarity, floatables, deposits/stains, vegetation condition, structural condition, and biology).

(3) At a minimum, conduct field screening analysis of the following constituents at all stations where water is present:

(a) Specific conductance (calculate estimated Total Dissolved Solids).
(b) Turbidity
(c) pH
(d) Reactive Phosphorous
(e) Nitrate Nitrogen
(f) Ammonia Nitrogen
(g) Cadmium (Dissolved) or analytical laboratory method
(h) Copper (Dissolved) or analytical laboratory method
(i) Lead (Dissolved) or analytical laboratory method
(j) Zinc (Dissolved) or analytical laboratory method
(k) Surfactants (MBAS)

(4) If the station is dry (no flowing or ponded runoff), make and record all applicable observations and select another station from the list of alternate stations for monitoring.

(5) Develop and/or update criteria for field screening results whereby exceedance of the criteria will require follow-up investigations to be conducted to identify and eliminate the source causing the exceedance of the criteria.

(6) When possible, Copermittees shall coordinate with the requirements in Sections II.C.2.a and II.C.2.b above, to provide a complete field screening and analytical assessment during dry weather.

(7) Assess the presence of trash (anthropogenic litter) in urban runoff and receiving waters. Copermittees shall ensure that the field screening stations provide adequate spatial coverage for MS4 discharges within each watershed. Copermittees shall also ensure that trash data is collected and evaluated in conjunction with other field screening and/or analytical data, when applicable.

(a) Assessments of trash shall provide information on the spatial extent and nature of the types of trash present.

(8) Field screening stations identified to exceed monitoring criteria for any constituents shall continue to be screened in subsequent years.

(9) Develop and/or update procedures to eliminate detected illicit discharges and connections. These procedures shall be consistent with each Copermittees Illicit Discharge and Elimination component of its Jurisdictional Urban Runoff Management Plan as discussed in section D.4 of Order No. R9-2006-0011.

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c. CONDUCT ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING

The Copermittees shall commence implementation of IC/ID field screening and under the requirements of this Order by May 1, 2007. Each Copermittee shall conduct field screening monitoring in accordance with its storm water conveyance system map and field screening monitoring procedures as described in section II.B.3.c above. If monitoring indicates an illicit connection or illegal discharge, conduct the follow-up investigation and elimination activities as described in the procedures and sections D.4.d and D.4.e of Order No. R9-2006-0011. Until the IC/ID field screening program is implemented under the requirements of this Order, each Copermittee shall continue to implement dry weather field screening and analytical monitoring as it was most recently implemented pursuant to Order No. 2001-01.

C. REGIONAL MONITORING PROGRAM

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1. The Copermittees shall participate and coordinate with federal, state, and local agencies and other dischargers in development and implementation of a regional watershed monitoring program as directed by the Executive Officer.

2. Bight '08

   a. During the 2008-2009 monitoring year (Permit Year 3), the Copermittees may participate in the Bight '08 study. The Copermittees shall ensure that such participation results in collection and analysis of data useful in addressing the goals and management questions of the Receiving Waters Monitoring Program. Any participation shall include the contribution of all funds not otherwise spent on full implementation of mass loading station, temporary watershed assessment station, ambient bay and lagoon, and bioassessment monitoring. All other monitoring shall continue during the 2008-2009 monitoring year (Permit Year 3) as required.

   b. If the Copermittees do not participate in Bight '08, mass loading station, temporary watershed assessment station, ambient bay and lagoon, and bioassessment monitoring shall be conducted as follows:

      (1) Permit Year 4 (2009-2010) monitoring shall be conducted in Permit Year 3 (2008-2009) (see Table 1).
      (2) Permit Year 5 (2010-2011) monitoring shall be conducted in Permit Year 4 (2009-2010) (see Table 1).
      (3) Permit Year 4 (2009-2010) monitoring shall be conducted in Permit Year 5 (2010-2011).

   c. If the Copermittees partially participate in Bight '08, monitoring shall be conducted as described in section II.B.2.b above, with the exception of any monitoring offset by the contribution of funds to Bight '08.

3. Regional Harbor Monitoring – The Copermittees which discharge to harbors shall participate in the development and implementation of the Regional Harbor Monitoring Program.

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536 **D. SPECIAL STUDIES**
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538 1. TMDL MONITORING
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540 a. All monitoring shall be conducted as required in Investigation Order No. R9-
541 2004-0277 for Chollas Creek.
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543 2. REGIONAL HARBOR MONITORING
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545 a. The Copermittees which discharge to harbors shall participate in the
546 development and implementation of the Regional Harbor Monitoring Program.
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548 3. The Copermittees shall conduct special studies as directed by the Executive Officer.
549 END OF REORGANIZATION

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<#>Dry Weather Field Screening and Analytical Monitoring¶
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As part of its Jurisdictional Urban Runoff Management Program, each Copermittee shall update as necessary its dry weather field screening and analytical monitoring program to meet or exceed the requirements of this section. Dry weather analytical and field screening monitoring consists of (1) field observations; (2) field screening monitoring; and (3) analytical monitoring at selected stations. Each Copermittee's program shall be designed to detect and eliminate illicit connections and illegal discharges to the MS4 using frequent, geographically widespread dry weather discharge monitoring and follow-up investigations. Each Copermittee shall conduct the following dry weather field screening and analytical monitoring tasks:¶
. ¶
<#>SELECT DRY WEATHER FIELD SCREENING AND ANALYTICAL MONITORING STATIONS ¶
¶
Based upon a review of its past Dry Weather Monitoring Program, each Copermittee shall select dry weather analytical monitoring stations within its jurisdiction. Stations shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the MS4 by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the MS4 or major outfall; or, stations may be selected non-randomly provided adequate coverage of the entire MS4 system is ensured and that the selection of st... [2]

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MONITORING PROVISIONS

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All monitoring activities shall meet the following requirements: .
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Where procedures are not otherwise specified in this Receiving Waters Monitoring and Reporting Program, sampling, analysis and quality assurance/quality control must be ... [3]

B. City County Managers Association (submitted by City of Encinitas)

B

City of
Encinitas

June 5, 2006

2006 JUN -7 P 5:03
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

Mr. John Robertus
San Diego Regional Water Quality Control Board
9174 Sky Park Court
San Diego, CA 92123

RE: Proposed Tentative Order # R9-2006-0011 (Draft Municipal Stormwater Permit)

Dear Mr. Robertus:

This letter represents a consensus of the City County Managers Association in the San Diego Region related to Tentative Order #R9-2006-0011.

We want to thank you and your staff for the dialogue established during the review and comment period, including two workshops and written feedback which facilitated an understanding of RWQCB staff's goals and methods to achieve them. We appreciate the time and effort you put into this process, and suggest that you consider circulating a "final" draft permit for one more series of public comments after you've made modifications based upon written comments and statements made at the June 21st public hearing. Thanks again for this public conversation.

We are writing to support the letter submitted by the County of San Diego on behalf of all Copermittees that provides both legal and technical comments to the Tentative Order. As managers responsible for addressing a multitude of needs within our communities, we face service demands that exceed our resources, and we work with our elected bodies to create a balanced approach to many challenges. Cleaning up our bay, rivers, streams and the ocean is of strategic importance to us individually and collectively, but it must be addressed within the context of many other public services we are tasked to provide including public safety – fire, police and emergency medical response, transportation, quality development, recreation, building safety, code enforcement, and economic development.

It is in this context that we express our concern over the potential fiscal impact of the proposed permit. For example, the regional monitoring requirements will increase between hundreds of thousands of dollars to $2 million depending on the

final terms of the permit. The HMP is estimated to cost approximately $2 million and a regional education program may cost between $50,000 and $2 million. Further, there are yet to be quantified program costs which will be unknown until the permit is implemented and we have identified priorities. This is further aggravated by the fact that many expenses are heavily loaded in the early years of the permit. It would be helpful if these costs could be spread over a longer period.

Fundamentally, the heavy financial burden of the new permit will strain jurisdictions that are already under financial duress and cities' financial capacity to meet requirements grows increasingly problematic. For example, Lemon Grove already eliminated a Sheriff's deputy in order to implement RWQCB requirements. The voters of Encinitas recently rejected an increase for stormwater management, and the Howard Jarvis Taxpayers Association is suing Solana Beach to stop its fee added to trash collection. The suit is very disturbing because about half the cities in the region use a similar methodology to raise stormwater management funds.

In addition to the financial burden of the proposed permit, it appears that some requirements represent unfunded state mandates contrary to Article XIIIB, section 6 of the State Constitution (Proposition 1A). To name two, the hydromodification and MS4 requirements fall into this category. Please consider these requirements to ensure the State's budget includes the required funding or suspend the requirements until such time as you secure state funding. Finally, raising fees for watershed management presents a practical problem, at a minimum. More importantly, raising fees to pay for programs outside of each city's boundaries may be illegal. Proposition 218 comes into play, and jurisdictions may not raise fees to pay for actions outside their jurisdictions. . Please carefully weigh the fiscal impacts that the proposed requirements will have on already strained municipal budgets.

Again, thank you for your attention to the substance and process of the current review. We appreciate your dedicated efforts to improve the waters of our region.

Sincerely,

Kerry Miller

June 21, 2006 Regional Board Meeting
Item 3, Supporting Document # 9

C. City of Carlsbad

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City of Carlsbad

Public Works

Storm Water Protection Program

June 7, 2006

Mr. John Robertus
Executive Officer, San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

20 copies of the original sent via courier, copy via email sent to JRobertus@waterboards.ca.gov and PHammer@waterboards.ca.gov

Re: Comments on Tentative Order No. R9-2006-011

Dear Mr. John Robertus:

On behalf of the City of Carlsbad (City), please accept the information contained in this letter as formal comment to Tentative Order No. R9-2006-011, the draft new Municipal NPDES permit (permit). Thank you for the opportunity to submit comments and we look forward to your thorough review.

The City of Carlsbad supports permit language that clearly demonstrates a link between requirements for program development and water quality improvements. In the past, there have been indications from the Regional Board staff that if watershed requirements increased, jurisdictional requirements would be adjusted to allow efficient resource allocation, with the understanding that the end result remains water quality improvement. The Copermittees have spent significant time in the last 3 months to recommend improvements to permit requirements based on 15+ years of experience. We stress the need for programs that are both beneficial to water quality and cost-effective to implement.

The City of Carlsbad supports all comments submitted by the Copermittees at the workshops held on April 26 and May 24, and in written comments submitted June 7, 2006.

The City of Carlsbad also supports all comments submitted by the legal counsels for the Copermittees.

This letter is formatted to provide you comments in the following Sections:
1. A general category with comments that are applicable throughout the document;
2. A specific sections category with specific language changes requested along with justification.

Section 1: General Comments

- Numbering the permit requirement

Carlsbad, CA 92008-7314 • (760) 602-2799 • FAX (760) 602-8562

Recommendation: Add the number reference to each requirement on each page as in old permit.
Reasoning: Currently it is very difficult to find the full citation of a requirement.

- Definition of wet season and dry season

Recommendation: Ensure the definition of wet season (October 1 through April 30) and dry season (May 1 through September 30) is consistent throughout the permit.
Reasoning: The wet and dry seasons are inconsistent in the main section of the permit and the definitions section in Attachment C.

Section 2: Specific Sections Comments

Findings

1. Table 2 Discharge Characteristics

Recommendation: Revise Table 2 to include specific segments of the water body that is listed impaired and its associated pollutant.
Reasoning: The table is currently unclear and could be interpreted as the entire watershed being impaired by the associated pollutants, which is not accurate.

2. D.1.a. on page 5

Recommendation: Add "to the MEP" to the end of the sentence "...as urban runoff management knowledge increases, the Copermittees' urban runoff management programs must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc."
Reasoning: Per the Fact Sheet on page 22, it acknowledges that the MEP standard is "...ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility" and "...municipalities must employ whatever BMPs are technically feasible and are not cost prohibitive." As currently written, the continual assessment and modification of programs is absolute and does not follow fact sheet language, and federal law, that considers technical and economic feasibility.

3. Statute and Regulatory Considerations

Recommendation: Add "and where that discharge has been tracked to a specific source" just prior to the Regional Board notification requirement.
Reasoning: Current language states that we have to notify the Regional Board of additional BMPs and an implementation schedule that addresses the pollutant causing the water quality standard exceedance. In our experience, often the pollutant can not be traced to an identifiable source, and therefore BMPs and implementation schedules are not applicable.

D.1 Dev. Planning

1. Page 25 D.1.g (5)

Recommendation: Amend the language to ensure the 180 day requirement for adoption and implementation is not conflicting with any other State agencies' review process timelines.

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Reasoning: For those jurisdictions that are under Coastal Commission jurisdiction, this requirement for 180-day adoption and implementation is not possible. In the City of Carlsbad, the SUSMP was specifically included in the adoption of the local coastal program approved by the Coastal Commission. Processing this change through Coastal Commission took over two years. Therefore, the assumption that this can be done in 180 days is unrealistic because of the impacts of state and federal agencies and their requirements.

2. Pg.15 D.1 Paragraph 1

Recommendation: In the phrase beginning with "(3)" after the words "potential to cause increased erosion" add "and reduce water quality from its existing condition".
Reasoning: Any amount of discharge treated to the MEP has a "...potential to cause increased erosion...silt pollutant generation..." New development installations of BMPs can reduce the particle load of a drainage course therefore improve the existing water quality. However, by doing so, it can make the flow "hungry" for sediment in order to achieve equilibrium. Hence creating cleaner water would appear to be in violation of the order.

3. Pg 19-20.D.1.d (6)(c)ii.

Recommendation: Please remove the ending phrase "multiplied by a factor of two."
Reasoning: Doubling the treatment capacity would reduce the storm event to below the 85th percentile. This can be a significant increase in the required treatment capacity and make the 85th percentile rule meaningless.

4. Pg 22.D.1.d (12)

Recommendation: After the sentence ending with "groundwater quality objectives", add the words "of groundwater being utilized in a beneficial manner".
Reasoning: All infiltration devices, by operation, can introduce surface flows into the groundwater. Any surface flow can carry, or leech from the soil, constituents that have the potential to "add to the exceedance of groundwater quality objectives." Therefore the City suggests that the restrictions be placed only on infiltration if it will have a detrimental effect to groundwater being utilized in a beneficial manner. Otherwise all infiltration BMPs would be prohibited.

5. Page 24 D.1.g

Recommendation: Clarify or remove language stating "utilize continuous simulation of the entire rainfall record."
Reasoning: By using the term 'continuous simulation' it would sound that we are talking about computer programs that are fed all rainfall records to identify the range of events. Then the requirement is not to exceed the lower boundary of the range of rainfall events. This seems to indicate that if there are any rainfall events, whether or not any development has taken place, that would exceed the lower boundary of the range, they would be found in violation. Again, to do such 'continuous simulation' and gather the detailed rainfall records makes compliance infeasible and impracticable.

6. Page 26 D.2.a (2)(b)

Recommendation: Begin the sentence with the words 'Unless otherwise prohibited by law'.
Reasoning: According to the State Subdivision Map Act, when a project is conditioned for approval, it can only be conditioned for requirements that are valid at the time of approval. Once a project has been designed and grading plans have been signed, there

may be a time period in which the new order, and/or grading ordinance, takes effect. Copermittees may not be able to legally require the contractor to comply with those new conditions that did not exist at the time of project approval.

Program Effectiveness Assessment
Recommendation: Add "to the MEP" to the requirement for using results from effectiveness assessment to modify activities and BMPs to maximize program effectiveness.
Reasoning: As currently written, this requirement is absolute and has no limits, such technical and economic feasibility.

Regional Requirements
Recommendation: Remove the Regional Urban Runoff Management Plan (RURMP) requirements and associated reporting and assessment requirements.
Reasoning: It was understood that the intent of the RURMP was to replace the Unified JURMP and WURMP requirements. As currently written in section F, I.3, J.3, the prescriptive RURMP requirements are far more intensive than the previous unified requirements. The goal of reporting and assessing regional standards can be achieved through the existing JURMP and WURMP reports, without the additional burden of program development, management, assessment and reporting at the regional level. Further, several RURMP requirements appear to add more requirements on a regional level with no clear connection to improvement in water quality, including F.2 minimum standards for JURMP, WURMP, and RURMP programs, assessing target outcomes on a regional level, F.4 facilitating TMDL management, and F.6 developing strategies, again on a regional level, for watersheds is not appropriate.

In conclusion, we respectfully request that the changes suggested in Section 1 and 2 be accepted into the new draft permit prior to its adoption. If changes are not going to be accepted into the new permit, we request written correspondence stating the reasons for the decision prior to adoption of the permit.

Thank you again for the opportunity to comment on this draft document. We appreciate the amount of work that your agency is doing to help protect water quality in our region. If you have any questions or need further clarification, please do not hesitate to contact me at 760-602-2730.

Regards,

Glenn T. Pruim R.E.
Public Works Director

CC: Mr. Ray Patchett, City Manager, City of Carlsbad
Mr. Ronald Ball, City Attorney, City of Carlsbad
Ms. Linda Kermott, Public Works Manager, City of Carlsbad
Ms. Elaine Lukey, Acting Environmental Programs Manager, City of Carlsbad

D. City of Chula Vista

D

OFFICE OF THE CITY MANAGER

June 6, 2006
File # 0780-85-KY181

Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Attention: Mr. John Robertus, Executive Officer

SUBJECT: COMMENTS ON THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) DRAFT MUNICIPAL PERMIT, TENTATIVE ORDER NO. R9-2006-0011 -- RWQCB REFERENCE: WPS: 10-5000.02:HAMMP

The City of Chula Vista appreciates this opportunity to provide comments on Tentative Order No. R9-2006-0011. During the past permit cycles the City of Chula Vista has gained in-depth understanding and experience in the development and implementation of effective urban runoff management programs. Our comments and recommendations are offered in the spirit of cooperation with the Regional Board in the furtherance of our common goal, which is to improve the quality of water resources within the San Diego Region and to protect their beneficial uses.

City staff has carefully reviewed the Tentative Order, has attended two workshops organized by the Regional Board to discuss various related issues, and has participated in several regional workgroup meetings and provided input to optimize the permit's language.

The County of San Diego, as the Principal Copermittee, will submit comments to the Regional Board that have been discussed at the regional level and are believed to cover common issues among the Copermittees. The City of Chula Vista generally endorses those regional comments. In addition, the City of Chula Vista has specific issues that are presented in the following pages.

We trust that the Regional Board will give full consideration to the regional and individual comments and recommendations in order to facilitate continued compliance by the Copermittees and to improve effectiveness of the Municipal Permit program.

Should you have any questions or if you need further information, please call Kirk Ammerman, Principal Civil Engineer, at (619) 397-6121. Thank you.

Sincerely,

David D. Rowlands, Jr.
City Manager

Attachment

cc: Dave Byers, Director of Public Works Operations
Rick Hopkins, Assistant Director of Public Works Operations
Kirk Ammerman, Principal Civil Engineer

D

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
TENTATIVE ORDER NO. R9-2006-0011
SAN DIEGO COUNTY MUNICIPAL STORM WATER PERMIT RE-ISSUANCE

CITY OF CHULA VISTA'S COMMENTS
JUNE 6, 2006

The City of Chula Vista provides the following comments to the San Diego Regional Water Quality Control Board as part of the public review and comment process for the re-issuance of the San Diego County NPDES Municipal Storm Water Permit.

A. GENERAL COMMENTS

1) Fiscal Impacts

On Page 47, Section G.1, Fiscal Analysis, the Tentative Order requires "*Each Copermittee shall secure the resources necessary to meet all requirements of this Order*". According to the latest submitted Jurisdictional Urban Runoff Management Program (JURMP) Annual Report, during Fiscal Year 2004-2005, the City of Chula Vista spent over $1.6 M in direct costs for compliance with the existing Municipal Permit, most of which was funded by the City's General Fund. This is in addition to fiscal impacts to developers, businesses, and City Capital Improvement Projects.

The Regional Board is aware that the Copermittees are unable to increase their storm drain fees as a result of Proposition 218. It is not clear how the Regional Board mandates that Copermittees should secure funds for ever-increasing requirements that have not been proven to be cost-effective or effective in improving water quality. Legal authority for the Regional Board to impose new requirements that may significantly impact the Copermittees' fiscal state has not been cited in the Tentative Order. The City of Chula Vista requests that such legal authority be presented for the new requirements where such legal authority exists under the Federal Clean Water Act (CWA); otherwise, those requirements for which adequate legal authority cannot be established must to be removed from the Tentative Order, unless the State provides adequate funding for implementation.

2) San Diego Bay Watershed Management Area (WMA)

On Page 3, Table 2, the City of Chula Vista has been named as a Copermittee of the San Diego Bay Watershed Management Area. In the same table, nine 303(d) pollutants of concern or water quality effects have been associated with the San Diego Bay Watershed. The Tentative Order must clarify that in the San Diego Bay Watershed, the 303(d) listed impaired segments are isolated locations and do not relate to the entire San Diego Bay.

As written, several sections within the Tentative Order impose stricter Best Management Practices (BMPs) for developments and existing land uses within watersheds that include 303(d) listed impaired segments. Such sections are as follows:

- Page 18, Section (3)
- Page 30, Sections (1) and 2(e)
- Pages 33 and 34, /Sections (1) and 2(e)
- Pages 37 and 38, Sections (1) and 2(f)
- Page 43, Section E.2.d
- Page 44, Section g

Additionally, on Page 52, Section 4.a, the Tentative Order requires all Copermittees within a watershed with a TMDL order to assess the effectiveness of its TMDL BMP Implementation Plan and to modify the BMPs to maximize the TMDL BMP Implementation Plan. The two drainage areas within the San Diego Bay Watershed currently with TMDL programs are the Chollas Creek and the Shelter Island Yacht Basin (SIYB), both of which the City of Chula Vista is not tributary to.

Further, the City of Chula Vista does not contribute urban runoff discharge to any of the 303(d) listed impaired segments or TMDL designated drainage areas of the San Diego Bay (please see attached map). Any additional efforts by the City of Chula Vista will not in any way improve the quality of water within those impaired segments. The language in the Tentative Order should be revised to address the above concerns and to clarify that only jurisdictions discharging to 303(d) listed impaired segments or with TMDL designations are to implement stricter BMPs or to participate in TMDL activities, rather than all Copermittees in the same watershed.

3) Maximum Extent Practicable (MEP) Standards vs. Water Quality Standards

Several sections of the Tentative Order require the Copermittees to reduce the discharge of pollutants in urban runoff to the MEP and achieve Water Quality Standards. Such language is included in several sections such as Sections D.1, D.2, D.3.a, D.3.b, D.3.c., etc. While Findings Section D.1.a describes the interrelated nature of MEP Standards and Water Quality Standards, there is a basic difference between the two when attempting to assess compliance. Attachment C to the Tentative Order provides a definition of MEP as follows:

"To achieve the MEP standard, municipalities must employ whatever Best Management Practices (BMPs) are technically feasible (i.e., are likely to be effective) and are not cost prohibitive".

The Tentative Order defines Water Quality Standards as the beneficial uses of water and Water Quality Objectives necessary to protect those uses. According to the Basin Plan, Water Quality Objectives can be narrative or numeric. Meeting both standards simultaneously is neither justified nor feasible because the Tentative Order does not

provide adequate flexibility to the Copermittees in controlling their urban runoff programs and, therefore, being responsible for their results.

Since the compliance criteria for urban runoff (MS4s) is the MEP standard, and in order to provide consistency in the application of, and requirements to meet, performance standards, applicable sections of the Tentative Order must be revised to eliminate "*water quality standards*" as a performance standard. This point carries through many facets of the Tentative Order, including the assessment and modification of programs based on the achievement of meeting defined standards, specifically the MEP performance standard.

Performance standards cannot be a moving target or multi-layered if they are intended to support effectiveness assessment and guide programmatic evolution and development. As mentioned above, the inclusion of *"water quality standards"* as a performance standard, and as defined in the Tentative Order, may unintentionally set up the application of numeric limits in order to maintain compliance. The definition of *water quality standards* in the tentative order directly references *water quality objectives,* which by definition include both numeric and narrative limits for pollutants. As such, the City of Chula Vista objects to the use of water quality objectives as a performance measure for urban runoff and requests that the language in the Tentative Order be revised to eliminate any ambiguity regarding the application of numeric limits as a measure of compliance with Permit requirements.

B. SECTION D.1 – DEVELOPMENT PLANNING

1) Section D.1.d(4)(b) – Site Design BMP Requirements

The referenced Section of the Tentative Order sets minimum requirements for the implementation of Site Design BMPs. There are many development and redevelopment projects in which implementation of some Site Design BMPs are not feasible due to site constraints, such as parcel size, lack of adequate landscape areas, high density land uses, safety concerns, etc. As such, the City of Chula Vista recommends that the language in this Section be revised to waive site design BMP requirements found in Section D.1.d (4), when such Site Design BMPs have been determined to be infeasible, at the discretion of the Copermittees.

2) Section D.1.g– Hydromodification

a) Page 24, Section D.1.g, Hydromodification Plan – The City of Chula Vista recognizes the need for the protection of urban streams and creeks from erosion. However, we are concerned about the requirements in this Section of the Tentative Order. The Tentative Order requires developments to retain and infiltrate additional volumes of runoff created by increased impervious areas. This may create major problems and potential litigation resulting from the following:

- The underlying geological formations of the coastal regions of the San Diego County are impermeable. Infiltrated water will not flow vertically down through

the soil, but will travel under topsoil and along the surface of impermeable layers and will emerge down slope. Any attempt to infiltrate runoff on a large scale could result in the flooding of residences, endanger slope stability, cause settlement of foundations, and lead to premature road and pavement failures.

- Retention of extra volumes of runoff in retention basins will result in the proliferation of vectors, gophers, and other pests. With the threat of West Nile Virus a reality in Southern California, and in order to comply with the directions from the County Department of Health to minimize stagnant water, retention is not a recommended option.

b) The Tentative Order requires Copermittees to control peak runoff rates and durations from developments to pre-project levels. The City of Chula Vista's Subdivision Manual includes requirements to control peak runoff rates. However, as a result of this requirement, duration of flows will increase due to the inverse proportionality of flow rates and durations.

c) The Tentative Order requires development of Hydromodification Plans by July 15, 2008. This has the disadvantage that, in the case of changes in the General Plan or any other circumstances, the adopted Hydromodification Plan would not be valid and applicable. Currently, the City of Chula Vista requires the first developer in each drainage basin to develop master facility and financing plans for wastewater collection systems, drainage systems, etc. It is recommended that development of Hydromodification Plans also be included with these requirements, thus developing Hydromodification Plans as projects are initially proposed and are obtaining their development entitlements, rather than in advance of their need. Under this framework, the City of Chula Vista proposes that the criteria and requirements for HMPs be established by July 2008 by the Copermittees. Furthermore, as experience is gained in this field with the passage of time, Copermittees will be able to identify strong and weak points of the Plans and make necessary amendments and adjustments.

d) The City of Chula Vista has reservations over the unknown success rate of the implementation of Hydromodification Plans. Such plans, although developed in other regions of California and other states, have not passed the test of time and, at this stage, are experimental. Such experimental methods should not be mandated throughout a large region such as San Diego County where they could have significant fiscal and physical impacts, with little certainty of success.

e) Due to the various natural and human-caused factors impacting stream stability, it is not clear how the success of Hydromodification Plans implementation would be reliably measured.

C. SECTION D.3 – EXISTING DEVELOPMENT

Section D.3.a(3) – Operation and Maintenance of Municipal Separate Storm Sewer System and Structural Controls

The Tentative Order requires the implementation of the following activities regarding inspection and maintenance of storm drain systems on an annual basis:

- Inspection of all storm drain catch basins and inlets at least once a year between May 1 and September 30 and removal of observed accumulated waste.
- Inspection of all open channels and removal of any observed anthropogenic litter from the open channels at least once a year between May 1 and September 30.

It is important to recognize that City of Chula Vista's drainage systems includes over 5,600 inventoried drainage structures, including inlets and catch basins, as well as approximately 20 miles of open channels. Open channels in Chula Vista include concrete lined, natural, and riprap reinforced segments. These drainage systems are inspected and maintained year-round by City staff comprised of three maintenance crews equipped with large-capacity vactor trucks. Since there are currently severe restrictions on channel maintenance activities, cleaning of channels has been limited to removal of trash and debris by hand operations only.

The Tentative Order requires inspection and maintenance of all catch basins, inlets, and open channels annually within a five-month period of the dry season. The City of Chula Vista considers this to be a very inefficient method of resource utilization for the following reasons:

a) Since storm drainage systems are inspected and maintained by City staff and equipment, it is not reasonable to increase the number of crews and equipment by 200% during the dry season and leave them idle for the rest of the year.

b) The City has prioritized portions of the drainage system for inspection and maintenance frequency. Many sections of the drainage systems have been determined to be clean most of the time, and therefore, require inspections and maintenance only once every two years. The Tentative Order must recognize this, and instead of specifying minimum maintenance frequencies, should specify minimum performance criteria and afford flexibility in managing and maintaining the MS4.

Based on the above considerations, the City of Chula Vista recommends that the Tentative Order be revised to allow flexibility for the Copermittees to prioritize their drainage systems for inspections and maintenance throughout the year and at frequencies deemed to be necessary by the Copermittees.

Additionally, clarification of open channel inspection and maintenance requirements is needed. Please provide specificity in maintenance requirements and restrictions for various open channel types, including concrete and unlined channels.

D. SECTION E – WATERSHED URBAN RUNOFF MANAGEMENT PROGRAM

Watershed activities in the Tentative Order have been expanded significantly compared to Order No. 2001-01. The Tentative Order does not recognize many jurisdictional water quality activities conducted by the Copermittees within the boundary of their jurisdictions as watershed activities, even though in fact all such activities directly benefit corresponding watersheds. The Tentative Order requires short-term and long-term Watershed Water Quality Activities and Watershed Education Activities that are in addition to jurisdictional water quality and education activities. These duplicate requirements, in addition to the Regional Urban Runoff Management Program requirements, in effect, create three permits in one. This is contrary to the Regional Board's vision and goal of gradual shift from jurisdictional to watershed permitting approach expressed by Regional Board staff during the public review process of Order No. 2001-01.

E. SECTION G – FISCAL ANALYSIS

a) Several City departments are involved in the implementation of Chula Vista's Jurisdictional Urban Runoff Management Program. The City's accounting system is currently set up for tracking accounts to suit the City's needs. In order to be able to track expenditures attributable to compliance with NPDES requirements in detail as prescribed in the Tentative Order, changes to the City's accounting system would be needed. It is not clear if the Tentative Order requires Copermittees to change their accounting systems. Clarification is necessary in this regard.

b) It is not clear how assessment of a Copermittee's fiscal analysis can be used as a measure of its compliance with Permit requirements. Clarification on this point is requested.

F. SECTION H – TOTAL MAXIMUM DAILY LOADS (TMDL)

The San Diego Bay Watershed Management Area (WMA) is comprised of several isolated areas, which have been placed on the 303(d) list of impaired segments. Additionally, two water bodies within the San Diego Bay Watershed have existing and established TMDL programs, i.e., Chollas Creek Diazinon TMDL and Shelter Island Yacht Basin Copper TMDL. The City of Chula Vista does not discharge to any of the 303(d) listed or TMDL designated drainage areas, nor can any efforts by the City of Chula Vista in implementing stricter BMPs improve the water quality in those isolated areas.

The current language in the Tentative Order Section H may be interpreted to mean that all Copermittees in the San Diego Bay Watershed are responsible for the implementation of additional BMPs in conjunction with TMDL programs. The language in this section should be revised to clearly state that only the Copermittees discharging to impaired segments are responsible for the implementation of those additional BMPs or any other activities associated with TMDL programs.

G. SECTION I – PROGRAM EFFECTIVENESS ASSESSMENT

For the purpose of maintaining consistency with the proposed language modifications above (Section H), the City of Chula Vista would propose the following changes to Section I.

Section I.4.a (p.52) states, "*For each TMDL in a watershed, the Copermittees within the watershed shall annually assess the effectiveness of its TMDL BMP Implementation Plan or equivalent plan. At a minimum, the annual effectiveness assessment shall:...*"

The City of Chula Vista would like to propose the following language modification: For each TMDL in a watershed, the responsible Copermittees within the watershed discharging to the impaired water body for which a TMDL has been established shall annually assess the effectiveness of its TMDL BMP Implementation Plan or equivalent plan. At a minimum, the annual effectiveness assessment shall:

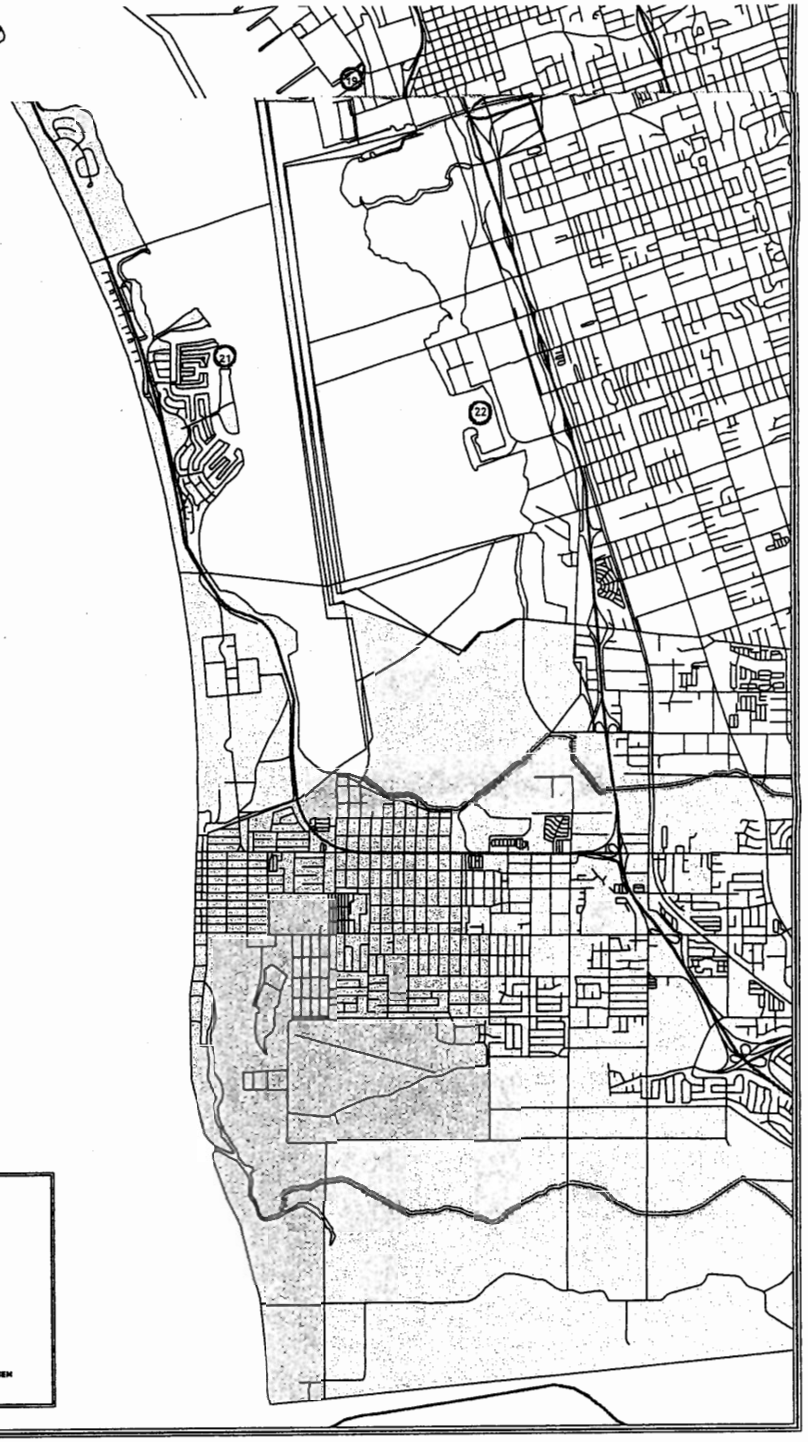

Table 1 - Status of Impaired Water Bodies in the San Diego Bay - November 2005					
Location	Impaired Water Body	2002 303(d) List	2004 Proposed Addition	2004 Proposed Deletion	TMDL
1	Near Sub. Base	Benthic Community Effects Sediment Toxicity			
2	Shelter Island Yacht Basin	Copper (dissolved)			
3	Shelter Island Shoreline Park	Bacteria			Bacteria 2006
4	America's Cup Harbor		Copper		
5	Harbor Island West Basin		Copper		
6	Harbor Island East Basin		Copper		
7	B Street & Broadway Pier	Bacteria Benthic Community Effects Sediment Toxicity			Bacteria 2006
8	Downtown Anchorage	Benthic Community Effects Sediment Toxicity			
9	G Street Pier	Bacteria			Bacteria 2006
10	Marriot Marina		Copper		
11	Near Switzer Creek	Chlordane Lindane PAHs			
12	Near Coronado Bridge	Benthic Community Effects Sediment Toxicity			
13	Tidelend Park	Bacteria			Bacteria 2006
14	Sampson & 28th Street	Copper Mercury PAHs PCBs Zinc			Copper 2005 Mercury 2005 PAHs 2006
15	Glorietta Bay		Copper		
16	Chollas Creek	Bacteria Cadmium Copper Diazinon Lead Zinc		Cadmium	Bacteria 2005 Copper 2005 Lead 2005 Zinc 2005
17	Near Chollas Creek	Benthic Community Effects Sediment Toxicity			Benthic Community Effects 2006 Sediment Toxicity 2006
18	32nd Street Naval Station	Benthic Community Effects Sediment Toxicity			
19	7th Street Channel	Benthic Community Effects Sediment Toxicity			Benthic Community Effects 2008 Sediment Toxicity 2008
20	24th Street Marine Terminal	Benthic Community Effects Sediment Toxicity			
21	Coronado Cays		Copper		
22	Chula Vista Marina	Bacteria	Copper	Bacteria	Bacteria 2006

Table 2 - Status of Impaired Water Bodies in or Around Chula Vista Not Listed in Table 1 - November 2005					
Location	Impaired Water Body	2002 303(d) List	2004 Proposed Addition	2004 Proposed Deletion	TMDL
100	Lower Otay Reservoir		Color Iron Manganese Nitrogen Ammonia - (Total Ammonia) pH (High)		
101	Poggi Canyon Creek		DDT		

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NOT TO SCALE

City of Chula Vista
San Diego Bay
303(d) Listed and
TMDL Water Bodies

CITY OF CHULA VISTA
GEOGRAPHIC INFORMATION SYSTEM

Map Created November 29, 2005 - K:\Public Works Operations\NPDES\GIS\san diego bay tmdl.apr

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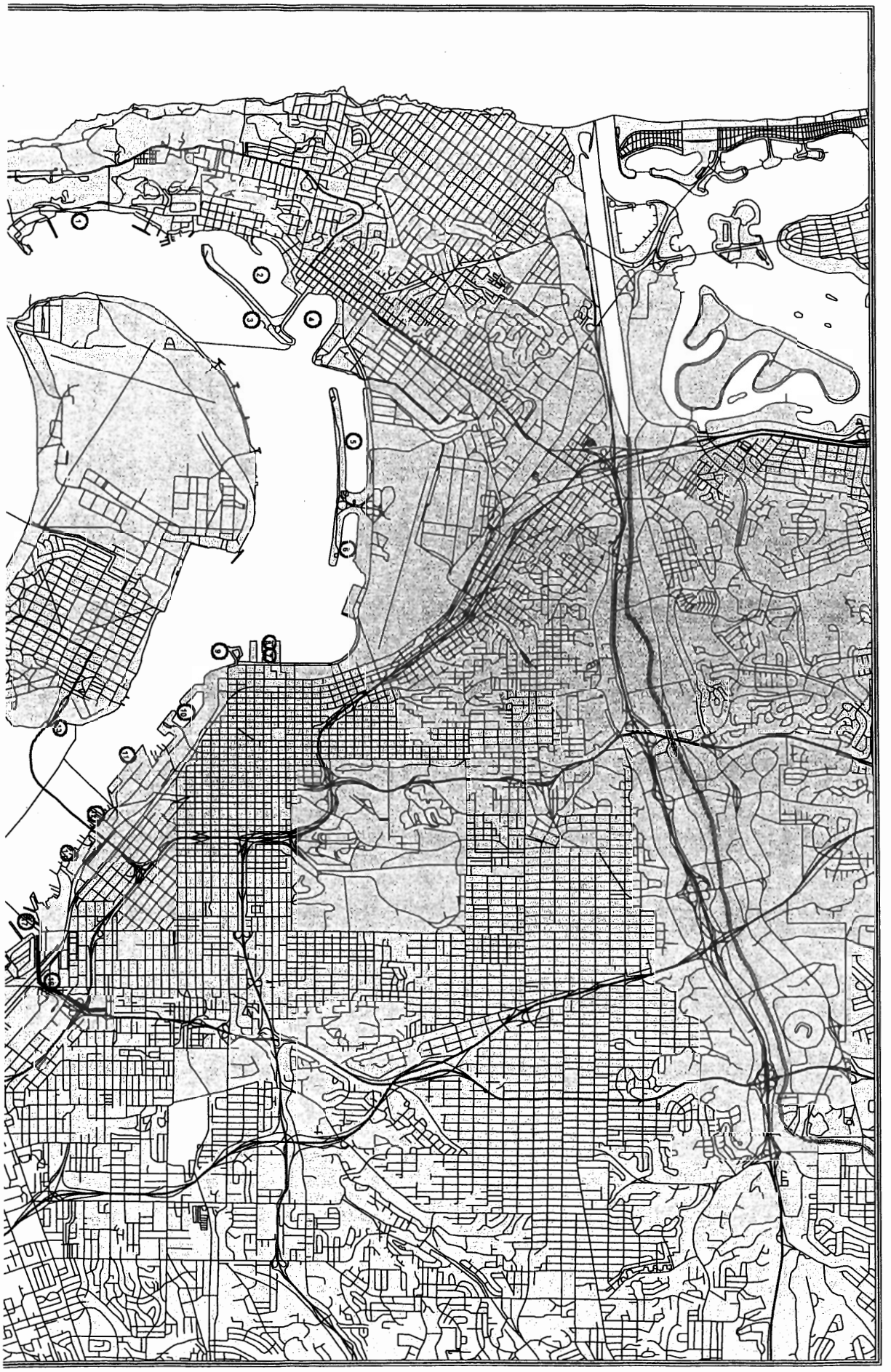

E. City of Del Mar

City of Del Mar
1050 Camino Del Mar · Del Mar, California 92014-2698

E

Where the Turf meets the Surf

Sent Via Fax: (858) 571-6972

June 6, 2006

John Minan, Chair
San Diego Regional Water Quality Control Board
9174 Sky Park Court
Suite 100
San Diego, CA 92123

RE: Tentative Order No. R9-2006-0011

Dear Mr. Minan:

On behalf of the City of Del Mar, I am writing to comment on Tentative Order No. R9-2006-0011, the reissuance of Order No. 2001-01 for Waste Discharge Requirements for urban runoff from the municipal separate storm sewer systems in San Diego. As you know, Del Mar is a very small coastal City with two miles of beach and 4,400 residents, and we have been proactively implementing the stormwater requirements under Order No. 2001-01. As a coastal City bordered by sensitive waters, we understand the need to protect water quality and comply with the regulations.

We would like to take this opportunity to comment on this Tentative Order with the hope that your Board will fashion permit regulations that will allow us to reduce pollutant discharges in urban runoff in a manner that is cost effective, technically feasible, and is accepted by the public. Our comments are grouped into four main areas: costs, appropriate jurisdiction, redundancy, and the need for clarification. Additionally, we support the collective regional comments that have been submitted by the Copermittees.

Unfunded State Mandates

Proposition 1A, which was overwhelmingly supported by the voters in California in November 2004, requires the State to fund legislative mandates on local governments or to drop the requirements. While the municipal stormwater permits are not new, Tentative Order R9-2006-0011 contains significant new mandates which will greatly increase the program costs for the City of Del Mar (potentially 100-200% increase for watershed and regional programs, and 50% for jurisdictional).

E

The Del Mar Council is interested in knowing whether any studies have been performed that indicate the dollars invested in compliance have resulted in demonstrable improvements in our water quality. The Regional Board Fact Sheet (page 7) states that the Copermittees' storm water programs have expanded dramatically since adoption of Order No. 2001-01, and audits of the Copermittees' jurisdictional programs are largely in compliance with the Order. The Federal Clean Water Act and the State Porter-Cologne Water Quality Control Act require issuance of permits to control the point-source urban runoff discharges from a publicly-owned municipal separate storm sewer system. Del Mar has been implementing the program in compliance with the Order and with State and Federal Law. Therefore, significantly increasing mandates in this draft order on jurisdictional, watershed, and regional levels without providing the funds to enable us to comply is not appropriate. On the one hand, the draft permit recognizes that Copermittees are unable to raise fees to pay for the Watershed Management Program, thus a state mandate may not be imposed. Those mandates in the draft order which exceed the requirement of federal law must be reimbursed including street sweeping annual inspection and cleaning of MS4's, General Plan and land use review, erosion control, hydro-modification, regulation of water flowing "into" the MS4, environmental review and all assessment and monitoring programs. Tentative Order Finding E.9 recognizes that certain mandates of the Order exceed the requirements of Federal Law. If these added mandates are approved, the State must provide the resources to the City of Del Mar and our sister cities to comply with the added requirements.

With Proposition 218, local government's options for funding current stormwater programs are severely limited. We request that the Regional Board join with us to formally support State legislation that will provide local governments with adequate funding mechanisms for these programs.

Appropriate Responsibility/Jurisdiction

The City of Del Mar has previously corresponded with the Regional Board on the issue of jurisdiction regarding the 22nd District Agricultural Association (DAA). Similarly, the 22nd DAA has previously submitted comments on Order No. 2001-01 and has stated that they are not subject to oversight or reporting requirements of the local jurisdiction. A letter from the City to Phil Hammer dated September 27, 2002 summarized the outcome of a meeting with Regional Board staff and a determination that the City of Del Mar is not required to regulate DAA activities under Order 2001-01 and the City's JURMP. This determination should continue with Tentative Order R9-2006-0011.

In this draft permit, the Regional Board improperly attempts to make the municipality regulate the discharges from other permitted MS4s (NCTD), dischargers (like the 22nd DAA) or non-permitted agencies, when the City has no legal jurisdiction over that discharger. Contrary to C.1.g. in the draft order, a municipality cannot force another agency into an agreement. Additionally, California drainage law does not allow the City to "terminate a storm water discharge to the MS4" as the Regional Board cites on page 33 of the Fact Sheet. If the Regional Board is issuing stormwater permits to other entities (industrial facilities, construction sites, small MS4s, etc.), then the Regional Board must fully enforce the requirements with these other dischargers at the same level you require us to do under this permit. Without a change in the

law providing legal authority, it is inappropriate to simply require a municipality to enter into agreements or regulate discharges from State or other agencies.

D.1.d.(11) Waiver Provision: This draft permit also shows an overstepping of Regional Board authority into the MS4 program. For example, D.1.d.(11) requires the copermittee to notify the Regional Board within 5 days of the issuance of a waiver of infeasibility, presumably so the Regional Board can review and dispute the finding. Del Mar is obligated to implement the new development requirements in our Standard Urban Storm Water Mitigation Plan (SUSMP) and would detail any waiver procedures in the SUSMP. In addition, Del Mar is obligated to file an annual report with the Regional Board. This annual report combined with the detailed SUSMP should be sufficient to satisfy compliance with this order, as the 5 day notification is burdensome, has no benefit, and results in Regional Board micromanagement of Del Mar's program.

E. WURMP. Table 4: The City of Del Mar supports the City of Poway's request to be the lead for the Peñasquitos Watershed.

Redundancy/Duplication

D.3.a.(6) Sanitary sewer: This and other references to sewage collection systems (D.3.a.(7)) should be removed completely from the Order, as the State Water Resources Control Board has issued Statewide Proposed General Waste Discharge Requirements for Sewage Collection System Agencies, which will apply to Del Mar. These new Waste Discharge Requirements will exceed the requirements listed in this draft order, and the Regional Board should not issue any duplicate or potentially conflicting regulations, which only increase administrative burden for municipalities.

D.3.a.(7) Inspection of Municipal Areas & Activities: (a)i. should be deleted, as the roads and facilities are required to be swept in D.3.a.(5). (a)ii. and iv.[3] should be removed, as these components of the MS4 are addressed in D.3.a.(3).

Overbreadth and Vagueness

The Permit contains many provisions that are vague. The Permit, therefore, can not be enforced nor can the Copermittees know how to comply with its terms. In certain circumstances, the Copermittees will not know whether their conduct is necessarily proscribed. In other instances, the terms of the Permit fail to provide an ascertainable standard of conduct. Given the vagueness of certain provisions, Copermittees could suffer arbitrary enforcement.

For example, the term structural flood control device in D.3(2)(d) is not defined. A broad interpretation of this would result in inappropriate requirements placed on a City to prescriptively retrofit the current storm drain system, instead of applying structural retrofits only when pollution prevention and source control BMPs have been ineffective in meeting the MEP standard.

D.3.a.(5)(d). This should be revised so that it clearly only applies to events where the Copermittee's jurisdiction has issued the permit for the event, and not events occurring at state agencies in or adjacent to the City. For example, the 22nd DAA manages and operates the Del Mar Fairgrounds and the Horsepark, which are large and successful venues. They host approximately 350 events each year, with annual income and budget that are orders of magnitude larger than the budget for the City of Del Mar. Del Mar should not be required to sweep the streets following events held at the Fairgrounds or Del Mar Thoroughbred Club races, as Del Mar can not permit or regulate these activities.

All references to "tributary to" (which is not defined) should be changed to "directly adjacent" or "discharging directly to" as specified in D.1.d.(2)(f).

The Finding in D.3.c. (page 8) states that the urban stream is both an MS4 and a receiving water. This is inconsistent with the legal definitions of "Waters of the State", "MS4" and "Waters of the U.S." If a "receiving water" is a "Water of the U.S." as defined in the Order, then the MS4 is not a receiving water. This appears to be an attempt by the Regional Board to make the municipality solely responsible for the water quality in a creek flowing through a municipality, which goes beyond the scope of the MS4 permit. These point source discharges to surface water are the reason that NPDES municipal storm water permits are issued, but that does not justify a misapplication of State and Federal definitions in order to apply more stringent standards for storm water discharges.

Summary

We agree that jurisdictions must be responsible for meeting the MS4 permit requirement to reduce pollutants in their MS4 discharges to the Maximum Extent Practicable, but we disagree that a municipality is fully or solely responsible for receiving water quality. The MS4 NPDES permit is intended to regulate the point source discharges from a publicly-owned municipal separate storm sewer system. The permits do not cover privately-owned direct discharges to receiving water. There are currently no permits to cover agricultural discharges or other non-point source discharges. The State's management programs do not enforce runoff requirements in these areas at any level equivalent to the individual MS4 permits. Pollutant contributions to surface water also occur through atmospheric deposition and from wildlife. Because of these difficult to address sources, it appears that the Regional Board is inappropriately placing an inordinate amount of the burden for surface water quality on the municipality through this Order.

We believe that success will occur when all responsible parties and agencies do their part to reduce storm water pollution, and that increased collaboration to focus on solutions will result in water quality improvements more rapidly than significantly increasing a jurisdiction's administrative burden as is being proposed in this draft Order.

Thank you for this opportunity to comment on this Tentative Order. We hope that you take our comments seriously and respond in a manner that recognizes some of the real problems this draft Order will create. We hope that any revisions you make will be circulated widely and that we will be given another opportunity to comment before the Order is finalized by the Board. If

you have any questions about the points we have raised, please do not hesitate to contact our City Manager, Lauraine Brekke-Esparza or Carmen Kasner, City Engineer.

Sincerely,

Crystal Crawford

Crystal Crawford
Mayor

CC: Del Mar City Councilmembers
John Robertus, Executive Officer, Regional Water Quality Control Board
Lauraine Brekke-Esparza, City Manager
Tamara Smith, City Attorney
Carmen Kasner, City Engineer

June 21, 2006 Regional Board Meeting
Item 3, Supporting Document # 9

F. City of Encinitas

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City of Encinitas

June 6, 2006

Mr. John Robertus
Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Ste 100
San Diego, CA 92123

Subject: City of Encinitas Comments on Tentative Order R9-2006-0011

Dear Mr. Robertus:

This letter presents the City of Encinitas' comments on the Tentative Order R9-2006-0011, herein referred to as the Draft Permit. The City would like to thank the Regional Board staff for preparing a well written and improved Draft Permit. The City also appreciates the willingness of the Regional Board members to review and incorporate changes that may improve water quality with limited resources. The City respectfully requests that these comments be reviewed and considered by the Regional Water Quality Control Board Staff and Board members, and that the recommended changes to the Draft Permit be incorporated into the final document prior to adoption by the Board. In addition to the following comments, the City of Encinitas concurs with the Regional Comments submitted by the County of San Diego on behalf of all Copermittees in the San Diego Region

Watershed Management

On November 30, 2004 a Memorandum of Understanding was signed between the California EPA and the California Resource Agencies for the Implementation of the Framework for Protecting California's Watersheds (Attachment A). In order to provide clean beaches, clean water and healthy watersheds the State has organized the agencies to cost-effectively use its resources, reduce duplication and be innovative. Watershed management is the approach for achieving these objectives. Watersheds provide an effective natural unit to integrate agency programs that provide technical assistance or financial support for watershed management and/or restoration, and to ensure the efficient use of state funds.

Managing programs on a watershed basis allows for management and administration on a local level, providing Copermittees an intimate knowledge of water quality problems and successes in the watersheds. A watershed management strategy will require cities in the same watersheds to coordinate with one another to solve complex water quality issues and emphasize the local water quality concerns facing a watershed, allowing for these issues to be more fully understood and dealt with more effectively. For example, watershed management is necessary for the proper implementation of Total Maximum Daily Load (TMDL) requirements. Some TMDLs are in place in the region, while many others are in the development phase. Implementation of the TMDLs will require Copermittees to work extensively within their watersheds to solve complex problems contributing to exceedances of water quality objectives. With the implementation of

TMDLs, watershed-based Memorandums of Understanding (MOUs) are inevitable. These MOUs will provide an ideal management structure for the Copermittees to collaborate and effectively manage their watersheds. The MOUs will likely extend outside of the Copermittees included in this Draft Permit, to involve other agencies and responsible parties in the watershed.

Watershed groups will be more likely to gain the necessary funding for implementing effective projects through grant programs. State agencies distributing available grant funds for the programs will be more apt to provide funding for groups which involve many stakeholders in the watersheds and not only municipalities.

The City anticipates watershed MOUs in the near future to implement TMDLs and recognizes the value of managing the urban runoff programs in the same manner, on a watershed basis. As the Draft Permit is written, many new requirements involving the Regional Urban Runoff Management Program (RURMP) are presented. However, the Copermittees have been collaborating regionally for the past five years, under Order 2001-01, to develop and implement those programs that are appropriate at the regional level. The inclusion of an additional RURMP reporting requirement adds another level of bureaucracy that drains the jurisdictions resources away from their own watersheds.

In support of a watershed based ideal, the City recommends two significant organizational changes to the Draft Permit. The first proposes a deletion of the RURMP requirements, as they are effectively covered under other sections of the Draft Permit. The second focuses on the monitoring programs and proposes a re-organization of the Tentative Receiving Waters Monitoring and Reporting Program. As explained previously, the goal of both re-organizations is to facilitate the watershed-based approach to monitoring and storm water management. The removal of the RURMP will allow the programs to focus on the watersheds, without diverting limited resources to regional programs and their development. The City feels strongly that keeping resources and knowledge at the local (i.e. watershed) levels will be the most effective way to reduce pollution and improve our local waters. The proposed monitoring section includes all required components of the Tentative Order and provides for a better approach to monitoring, separating true receiving waters monitoring from urban runoff monitoring and focusing the programs around the watersheds where possible. The new organization as presented in Attachment C has been presented to the Regional Board staff and is supported by them, as well as the Regional Monitoring Workgroup and Copermittees.

Regional Urban Runoff Management Program

Leading up to the release of the Draft Permit, the City was of the understanding that the RWQCB intended to guide the urban runoff management programs towards watershed based implementation, consistent with the current policies in water quality management at the state and federal levels. Under Order 2001-01, many programs were developed at the Regional level and implemented as appropriate, in either regional, watershed, or jurisdictional capacities. Programs such as the Regional Monitoring Program and the Long Term Effectiveness Assessment Programs were highly successful, while others such as the Regional Education programs and the Regional Data Management program experienced limited successes. The need for consistency and collaboration is recognized for many of the required programs, and should be orchestrated at the regional level. However, the City disagrees with the requirement to form a new layer of program development and management, with the addition of the Regional Urban Runoff Management Program (RURMP). The City opposes the inclusion of the RURMP in the Draft Permit and requests that those requirements under Section F be met elsewhere in

the permit. In meeting these requirements elsewhere in the permit, Section F should be struck from the Draft Permit.

The creation of the RURMP will require local jurisdictions to allocate resources to a regional program, which will in turn deplete budgets for the remaining watershed and jurisdictional programs. The addition of the RURMP is not in lieu of any existing or proposed requirements under the Draft Permit, but is a new addition to the permit. The City of Encinitas, and likely many other Copermittees, is working under limited budgets at this time and do not see the advantage to reducing funding to the local jurisdictional and watershed programs to support a regional program. The creation of the RURMP, with the requirements listed in Section F (Regional Urban Runoff Management Program), in Section I.3. (Program Effectiveness Assessment. Regional), and in Section J.3. (Reporting. Regional Urban Runoff Management Plan) will require Copermittees to divert much needed resources, including staff time and money, to the Regional Programs and away from programs which are proving successful at the local jurisdictional and watershed levels.

Many of the requirements of the lead Copermittee can be addressed as they have been under Order 2001-01 and do not necessitate the creation of the RURMP. Requirements including the Long Term Effectiveness Assessment (LTEA) as stated in Section F.3, the Report of Waste Discharge (ROWD), and the Unified Jurisdictional and Watershed Urban Runoff Management Plans are one time submittals which need to be orchestrated at the regional level but do not require the creation of the RURMP. The LTEA and the ROWD are stand alone reports to be completed one time at the end of the permit. Development and progress of the new programs, such as the Hydromodification Plan (HMP) can be reported in the Unified JURMP and/or WURMP reports.

In an effort to reduce the duplicative requirements of the tentative order, the City respectfully requests that the Regional Board consider removing the requirements of the formation of a Regional Urban Runoff Management Program and all associated reporting and assessment. These requirements will not serve to improve water quality, and will divert the focus and funding necessary to implement effective watershed based urban runoff management programs. Under the requirements set forth in the Draft Permit, the watershed management programs will undoubtedly lead to improvements in water quality. The creation of another regional layer of oversight and reporting will only take much needed resources and focus away from the watershed groups, as the cities are operating under strict budgets. At this time, there is no funding on the horizon to supplement the current programs, and efforts to collect money from the public have failed, leaving the City of Encinitas' Clean Water Program reliant entirely on the general fund. The RURMP requirements as written will only increase the time spent at meetings and writing reports and will not serve the goal of measurably improving water quality in the region.

Receiving Waters Monitoring and Reporting Program No. R9-2006-0011

The City recommends a reorganization of the Tentative Receiving Waters Monitoring and Reporting Program in support of a watershed-based approach to monitoring. The purpose of the following outline is two-fold. One, to separate monitoring programs that are administered and reported on a watershed, regional, or special studies basis; and two, to separate and clearly distinguish between monitoring that occurs in the receiving waters and that which occurs in the MS4.

As such, the recommended re-organization included with the comments submitted by the County of San Diego will lay the groundwork for more comprehensive reporting on the monitoring programs. It is evident in the Review of San Diego County MS4 Monitoring Program (Tetra Tech, Inc., March 2006) that much of the data collected by the Copermittees was not assessed in the review. For example, dry weather, data not included in the assessment, is collected annually at approximately 1,000 sites across the County with the main objective of locating and eliminating illicit discharges and illegal connections to the MS4. Another benefit of the dry weather monitoring program is that it provides a spatially defensible overview of water quality conditions in the MS4 across the County. This program was not evaluated in the Tetra Tech Review due to its exclusion from the watershed assessments provided in the Regional Annual Monitoring Reports. The recommended monitoring section was developed with all monitoring programs in mind under the premise that all programs should be analyzed concurrently and reported on consistently for the watersheds. The goal is to unify the watershed analysis and reporting into one document, increasing the power of the assessments and the usefulness of the findings to the watershed groups.

The separation of the monitoring programs into receiving water and urban runoff sections will allow for a better comparison of the water quality data collected in these areas. This will better support all five core management questions allowing the data compiled to be based on the type of water monitoring as opposed to the group (i.e. consultant, jurisdiction, etc.) performing the monitoring. For example, jurisdictions currently perform spatially comprehensive dry weather monitoring and the resulting source investigations as part of their JURMP. In many cases, these programs have been collecting useful monitoring data for years and may provide useful data and assessments for the watersheds. Yet the Dry Weather Monitoring Reports are currently presented only in the Copermittees' JURMP Annual Reports.

The re-organization does not change the proposed monitoring programs but only reorganizes the individual monitoring efforts into a stronger overall program and is supported by the Regional Monitoring Workgroup as well as the City of Encinitas. This text has been developed by the Copermittees to be consistent with the Tentative Order and does not change the requirements or the intent of the Tentative Order. The comments and suggestions submitted by the Regional Monitoring Workgroup are incorporated into the revised program.

In summary, the City supports a watershed based permit with the goal of improving water quality by focusing at the local level. Over the life of Order 2001-01, the City has assisted in the development of many programs on the regional level, some effective and some not. The focus must now turn to the implementation of these programs in the watershed. As the lead Copermittee in the Carlsbad Watershed and an active participant in the regional programs, Encinitas continues to present different views of the stormwater program than the views held by the larger Copermittees in the region. The difference in the size of the Copermittees jurisdictions should not be overlooked in understanding the comments presented by each. The cities have been tasked with implementing Order 2001-01 and will soon implement Order 2006-0011. Both permits affect the smaller Copermittees different than the larger ones. For example, watershed programs are easier to implement for smaller jurisdictions, which are not spread into many different watersheds in the region; hence, the desire of the smaller jurisdictions to move toward a watershed approach, while larger jurisdictions push for a unified regional approach. With this in mind, a one size fits all permit may not be the most appropriate solution to the water quality problems in the area. While the City concurs with the majority of the comments submitted by the County of San Diego, a few of the recommended changes may not be the best solution for the small cities.

Attached are the technical comments by section submitted in addition to those Copermittee comments submitted by the County of San Diego.

Attachment A – MOU between the CalEPA & California Resource Agency
Attachment B - City of Encinitas Technical Comments
Attachment C - Organizational Chart for the San Diego Region based on watersheds
Attachment D - Recommended reorganization of the monitoring section of the draft permit.

Thank you in advance for your consideration and incorporation of the comments.

Sincerely,

Kerry Miller
City Manager

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ATTACHMENT A

California Environmental Protection Agency

STATE OF CALIFORNIA resources AGENCY

MEMORANDUM OF UNDERSTANDING

Between the

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

And the

CALIFORNIA RESOURCES AGENCY
For the Implementation of the

Framework for Protecting California's Watersheds

"I intend to show the world that economic growth and the environment can coexist.
And if you want to see it, then come to California."
Governor Arnold Schwarzenegger, 2004 State of the State Address

Revised November 30, 2004

I. BACKGROUND

Clean beaches, clean water, and healthy watersheds are part of the legacy of California, and necessary to support the state's resources, environment and communities, both human and wildlife. A healthy environment is critical to California's economic future, contributing to human health and quality of life, clean water, habitats and wildlife, sustainable resource use, recreation and tourism, and the businesses and jobs that are attracted by these values.

In order to protect these values, California must cost-effectively use its resources and investments to leverage funds and reduce duplication, ensure program accountability, and encourage creative public-private partnerships and innovation. Watershed management is a valuable approach for achieving these objectives.

Watersheds provide an effective natural unit to integrate agency programs that provide technical assistance or financial support for watershed management and/or restoration, and to ensure the efficient use of state funds. Coordination by watershed also incorporates and capitalizes on the hundreds of local watershed partnerships in the state that are already engaged in the restoration and management of the state's streams, rivers, and lands, and the use of watershed management principles and practices. These partnerships are a powerful resource for developing innovative

solutions to critical problems and for leveraging resources to ensure efficient and effective use of public funds.

II. FRAMEWORK FOR PROTECTING CALIFORNIA'S WATERSHEDS

A. Multiple state programs within Cal/EPA and Resources are currently administering programs that provide technical assistance, financial support, enforcement, management of resources, information and other services critical to the accomplishment of the commitments outlined in this MOU. Coordination of these programs has been the subject of several state efforts, including:

1. Report to the Legislature, as required by AB 2117 (Wayne), Chapter 735, Statutes of 2000, which investigated and evaluated what the state should do to assist local partnerships as they work to protect individual watersheds. The report recommended that the state adopt statewide watershed policy; develop a strategic plan; improve technical assistance, communication and access to science and monitoring information for local partnerships; ensure public accountability; and clarify link to regulations.

2. Development of the California Agency Watershed Management Strategic Plan, which describes specific initiatives to be undertaken by Cal/EPA and Resources to coordinate and improve state agency processes in order to improve service to local watershed efforts, to demonstrate improvement in watershed health, and to promote collective investment among state, federal and local resources.

3. The Watershed, Clean Beaches, and Water Quality Act (Act) authored by Assembly member Pavley (Division 20.4, section 30901, et seq; and Division 21, Chapter 5.5, section 31220 of the Public Resources Code), for the purpose of ensuring that Resources Agency and Cal/EPA coordinate and integrate programs to fund projects. It is intended to include working with diverse local efforts, support community-based, collaborative strategies, and give priority to projects with multiple benefits. It also establishes the Integrated Watershed Management Program (IWMP) and requires an MOU between Resources and Cal/EPA to ensure coordination of IWMP with their other programs and to establish a stakeholder advisory process to assist in setting priorities and allocating funds for watershed projects.

4. Most recently, the Governor's Environmental Action Plan and California's Action Strategy for Protecting Our Ocean (the "Ocean Action Plan") that contain initiatives to protect California's rivers, bays, groundwater and coastline. The "Ocean" action strategy calls for which restructuring, focusing, and strengthening the California Watershed Management MOU to identify priority watersheds for resource protection and use, fishery recovery, and water quality, and improve delivery of state technical and financial assistance to impaired coastal watersheds (Action 11). It would also

"integrate coastal water quality programs to improve their efficiency and effectiveness in cleaning up coastal watersheds, estuaries, bays, beaches, and near-shore waters" (Action 12).

B. This MOU replaces the April 28, 2003 California Watershed Management MOU required by the Watershed, Clean Beaches, and Water Quality Act. This MOU is written for the implementation of the following:

- The California Agency Watershed Strategic Plan
- Coordination of the new Integrated Watershed Management Program with all other watershed programs
- Stakeholder advisory processes to assist in setting priorities and allocating funds
- Watershed protection objectives in the Governor's Environmental Action Plan and the "Ocean Action Plan"

III. STATE AGENCY RESPONSIBILITIES

This MOU cannot be implemented without the cooperation and involvement of the state agencies. The Secretaries for Cal/EPA and Resources will oversee the implementation efforts of this MOU. This MOU will focus on agency programs within Cal/EPA and Resources.

A. The responsibilities of the secretaries, under this MOU, include, but are not limited to the following:

1. Direct their departments to establish an interagency forum to revise the California Agency Watershed Management Strategic Plan and to prioritize initiatives to ensure their cost-effectiveness and consistency with the Governor's Environmental Action Plan and "Ocean Action Plan."

2. Establish an interagency forum for improving integration and coordination of environmental policies and watershed programs, including funding, planning, permitting or other activities. This forum will be overseen by a group of deputy directors, directors or executive directors from agency departments, boards, commissions or conservancies with program responsibilities for commitments contained in this MOU. This group should consider opportunities to coordinate and integrate activities through local and regional efforts such as CalFed, Southern California Wetlands Recovery Project, the California Ocean Protection Council, recovery plans for fish or other aquatic species, and also with federal funding programs.

3. Meet annually to review integration and coordination of watershed programs with State, local and federal agencies, and the public to identify additional opportunities for progress.

4. Ensure that individual boards, departments, or conservancies use stakeholder advisory processes to assist in setting priorities and allocating funding for watershed projects as required by the Act. Where grant programs overlap in mandate and geographic jurisdiction, agencies will work together to solicit stakeholder input, to develop criteria and to establish and conduct project selection processes.

B. This MOU recognizes that agency programs make funding and many other regulatory and programmatic decisions.

IV. PROVISIONS AND AGREEMENTS

Nothing in this MOU is intended to delegate, limit, or expand any agency or agency program's responsibilities, statutory and other authorities, or discretion. This MOU can be executed in parts. Certain monies specified in Public Resources Code, section 30947 for the SWRCB are subject to the terms of this MOU.

Based upon an annual review of program implementation by the agencies, and agency programs, the MOU will be reviewed and amended if necessary.

This MOU shall remain in effect unless terminated by either agency secretary.

This MOU is not a contract; but defines a cooperative process for improving the health of California's watersheds.

V. SIGNED AND DATED

Mike Chrisman
MIKE CHRISMAN
Secretary for Resources

11/30/2004
DATE

TERRY TAMMINEN
Secretary for Environmental Protection

11/30/2004
DATE

D. Jurisdictional Urban Runoff Management Program

1. Development Planning Component Comments

Page 17, Section D.1.d.(1).

Current Text:

Priority Development Projects are: a) all new Development projects, and b) those redevelopment projects that create, add, or replace at least 5,000 square feet of impervious surfaces on an already developed site, that fall under project categories or locations listed in section D.1.d.(2).

Comment:

1). As discussed with and agreed upon by Eric Becker, SDRWQCB, at the first Draft Permit workshop, the permit language should be modified to more clearly convey that in order for a project to be classified as a Priority Project, the development shall meet a requirement under Section D.1.d.(1) and at least one characteristic of subsection two, D.1.d.(2). The current wording may be interpreted to state that all new development projects will be categorized with Priority Project status regardless of whether any of the characteristics listed in Section D.1.d.(2) are present.

2) This definition does not provide an exception for linear projects that do not lend themselves to post-construction BMS, such as sidewalks and pavement overlays. The work "replace" can be struck or a specific exception can be included for linear projects.

Suggested Revision:

Priority Development Projects are ~~: a) all new Development projects, and b) those redevelopment projects that create, add, or replace at least 5,000 square feet of impervious surfaces on an already developed site, that fall under project categories or locations listed in section D.1.d.(2).~~ any developments that fall under project categories or locations listed in section D.1.d.(2) and propose either a) new development, or b) redevelopment that creates or adds, or replaces at least 5,000 square feet of impervious surfaces on an already developed site.

Page 19, Section D.1.d(6)

Current Text:

(a) Treatment control BMPs for all Priority Development Projects shall mitigate (infiltrate, filter, or treat) the required volume or flow of runoff (identified in section D.1.d.(6)(c)) from all developed portions of the project, including landscaped areas.

Comment:

The inclusion "landscaped areas" as "developed portions" of the project is a disincentive for developers to maximize natural or pervious areas. A project could theoretically be required to treat flows from BMPs themselves if the development is using a treatment train.

Suggested Revision:

(a) Treatment control BMPs for all Priority Development Projects shall mitigate (infiltrate, filter, or treat) the required volume or flow of runoff (identified in section D.1.d.(6)(c)) from all developed portions of the project, ~~including landscaped areas~~.

Page 23, Section D.1.e(2)

Current Text:

(b) The prioritization of all projects with approved treatment control BMPs into high, medium, and low priority categories. At a minimum, projects with drainage insert treatment control BMPs shall be designated as at least a medium priority. Prioritization of other projects with treatment control BMPs shall include consideration of treatment control BMP size, recommended maintenance frequency, likelihood of operational and maintenance issues, location, receiving water quality, and other pertinent factors.

(c) Projects with treatment control BMPs that are high priority shall be inspected by the Copermittee annually. Projects with treatment control BMPs that are medium priority shall be inspected by the Copermittee every other year. Projects with treatment control BMPs that are low priority shall be inspected once during the five year permit cycle. All inspections shall ensure effective operation and maintenance of the treatment control BMPs, as well as compliance with all ordinances, permits, and this Order. At least 20% of the projects within a jurisdiction with approved treatment BMPs shall be inspected annually.

Comment:

It is unclear why the entire project would be prioritized and not just the BMPs. Often once the project is complete there is no longer a "project", but there are individual homes or buildings that incorporate BMPs. The prioritization should only apply to the BMPs themselves and not the entire project.

Suggested Revision:

(b) The prioritization of all ~~projects with~~ approved treatment control BMPs into high, medium, and low priority categories. At a minimum, ~~projects with~~ drainage insert treatment control BMPs shall be designated as at least a medium priority. Prioritization of other ~~projects with~~ treatment control BMPs shall include consideration of treatment control BMP size, recommended maintenance frequency, likelihood of operational and maintenance issues, location, receiving water quality, and other pertinent factors.

(c) ~~Projects with treatment~~ Treatment control BMPs that are high priority shall be inspected by the Copermittee annually. ~~Projects with treatment~~ Treatment control BMPs that are medium priority shall be inspected by the Copermittee every other year. ~~Projects with treatment~~ Treatment control BMPs that are low priority shall be inspected once during the five year permit cycle. All inspections shall ensure effective operation and maintenance of the treatment control BMPs, as well as compliance with all ordinances, permits, and this Order. At least 20% of the ~~projects~~ BMPs within a jurisdiction ~~with approved treatment BMPs~~ shall be inspected annually.

Page 24, Section D.12.g.

Current Text:

The HMP, once approved by the Regional Board, shall be incorporated into the local SUSMP and implemented by each Copermittee so that post-project runoff discharge rates and durations shall not exceed estimated pre-project discharge rates and durations where the increased potential for erosion or other significant adverse impacts to beneficial uses, attributable to changes in the amount and timing of runoff.

Comment:
The requirement prohibits any increase in runoff volume to be generated by a project. During the workshop, Phil Hammer of the RWQCB indicated that duration of post-development discharge would in fact be allowed to increase above the pre-development duration provided that discharge rates would be maintained at or below a pre-project level.

Suggested Revision:
The HMP, once approved by the Regional Board, shall be incorporated into the local SUSMP and implemented by each Copermittee so that post-project runoff discharge rates shall not exceed estimated pre-project discharge rates where the increased potential for erosion or other significant adverse impacts to beneficial uses, attributable to changes in the amount and timing of runoff.

Page 25, Section D.1.g(3)
Current Text:
(3) Section D.1.g.(1)(d) does not apply to Priority Development Projects where the project discharges stormwater runoff into channels or storm drains where the potential for erosion or other impacts to beneficial uses is minimal. Such situations may include discharges into channels that are concrete-lined or significantly hardened (e.g., with rip-rap, sackrete, etc.) downstream to their outfall in bays or the ocean, underground storm drains discharging to bays or the ocean, and construction of projects in highly impervious (e.g., >70%) watersheds, where the potential for single-project and/or cumulative impacts is minimal. Specific criteria for identification of such situations shall be included as a part of the HMP. However, plans to restore a channel reach may reintroduce the applicability of HMP controls, and would need to be addressed in the HMP.

Comment:
1) This condition encourages the use of channel lining and discourages restoration of existing lined channels.
2) The City concurs with the County's comment regarding changing the >70% impervious area exclusion to <30% developable, however, this exclusion should be on a jurisdictional level, not watershed, since the HMP will ultimately be implemented on a jurisdictional level.
3) With the incorporation of the possibility of exclusions from the HMP requirements based on developable land area, include a statement allowing qualified jurisdictions to opt out of HMP development as well as implementation.

Suggested Revision:
Without understanding the full intent of this condition, we can not suggest a revision of this section.

2. Construction Component Comments

Page 27, Section D.2.c(k) (BMP Implementation)
Current Text:
(k) Implementation of advanced treatment for sediment at construction sites that are determined by the Copermittee to be a significant threat to water quality. In evaluating the threat to water quality, the following factors shall be considered by the Copermittee: (1) soil erosion potential; (2) the site's slopes; (3) project size and type; (4) sensitivity of

receiving water bodies; (5) proximity to receiving water bodies; (6) non-storm water discharges; (7) ineffectiveness of other BMPs; and (8) any other relevant factors.

Comments:

1. Although a site may pose a significant threat to water quality, this threat may be mitigated to the MEP through required BMP implementation using various sediment and erosion control and materials management practices. As written, the requirement states that all sites which pose a high threat shall have advanced treatment, which may not be necessary in all circumstances. Furthermore, the City does not specify which BMPs a contractor must use, but instead requires the use of a combination of measures appropriate for the site to prevent sediment transport and discharge. The City must have the ability to determine when advanced treatment is necessary and should not be put in the position of requiring advanced treatment on all high priority sites.
2. This section of the permit designates minimum BMPs and as such should not include advanced treatment. Cities may include advanced treatment in their BMP manuals for construction activity, and may require this type of BMP where necessary.
3. Costs associated with implementation of advanced treatment must be considered. The costs effectively prohibit the cities from requiring this type of BMP on all high priority sites.

Suggested Revision:

(k) Implementation of advanced treatment for sediment at construction sites that are determined by the Copermittee to be a significant threat to water quality where other conventional BMPs have failed to control sediment transport to the MEP. In evaluating the threat to water quality, the following factors shall be considered by the Copermittee: (1) soil erosion potential; (2) the site's slopes; (3) project size and type; (4) sensitivity of receiving water bodies; (5) proximity to receiving water bodies; (6) non-storm water discharges; (7) ineffectiveness of other BMPs; and (8) any other relevant factors.

Page 29, Section D.2.f. (Reporting of Non-compliant Sites)

Current Text:

In addition to the notification requirements in section 5(e) of Attachment B, each Copermittee shall notify the Regional Board when the Copermittee issues a stop work order or other high level enforcement to a non-compliant construction site in their jurisdiction.

Comment:

The City understands the need to notify the Regional Board of enforcement measures on construction sites when the violations pose a threat to human or environmental health. However, stop work notices are an enforcement tool used by many departments throughout the City in order to correct a variety of violations. For this reason, the language should be more specific to require notification of Regional Board when a stop work notice is issued for violations related to storm water related issues such as BMP violations and/or illegal discharges.

Suggested Revision:

In addition to the notification requirements in section 5(e) of Attachment B, each Copermittee shall notify the Regional Board when the Copermittee issues a stop work order or other high level enforcement to a non-compliant construction site in their jurisdiction for violations related to storm water Best Management Practices.

3. Existing Development Component Comments

a. Municipal

The City concurs with comments submitted by the County of San Diego as the lead Copermittee for this section.

b. Industrial and Commercial

The City concurs with comments submitted by the County of San Diego as the lead Copermittee for this section.

c. Residential

No Comments.

4. Illicit Discharge Detection and Elimination Component Comments

The City concurs with comments submitted by the County of San Diego as the lead Copermittee for this section.

5. Education Component Comments

If the residential education program is required on a regional basis, it should be eliminated from the jurisdictional programs.

6. Public Participation Component Comments

No comments.

E. Watershed Urban Runoff Management Program

The City of Encinitas would like to stress to the RWQCB the need to more fully support the watershed programs with monitoring, implementation and assessment of permit requirements. As stated earlier in this letter, we believe that bolstering the regional program is moving in the opposite direction current trends in water quality management. Watershed management is a valuable and cost-effective approach that can lead to efficient use of resources and reduction of duplication. It can ensure program accountability and encourage creative public-private partnerships and innovation. Watershed management provides an effective natural unit to ensure the efficient use of local and state funds.

We would also like to reiterate our support for the alternative WURMP Section language presented by the County in the regional response. The WURMP requirements and definitions as currently presented in the Draft Permit are confusing and we do not believe that they will result in better water quality activities, but rather short-term activities that will be implemented, assessed and abandoned in order to make room for "new" activities to comply with the need to tally the number of activities. It is important that the watershed activities implemented are part of a strategy that is implemented over time. Only then can we assess their effectiveness and changes to water quality. A program that is constantly changing as a reaction to the need to "count" activities will result in a program where the nexus between actions and results can never be determined. If the RWQCB does not accept the Copermittees' alternative language, we respectfully request that significant modifications be made to the current Draft Permit language.

F. Regional Urban Runoff Management Program Comments

Under Order 2001-01, many programs were developed at the Regional level and implemented as appropriate, in either regional, watershed, or jurisdictional capacities. Programs such as the Regional Monitoring Program and the Long Term Effectiveness Assessment Programs were highly successful, while others such as the Regional Education programs and the Regional Data Management program experienced limited successes. The need for consistency and collaboration is recognized for many of the required programs, and should be orchestrated at the regional level. However, the City disagrees with the requirement to form a new layer of program development and management, with the addition of the Regional Urban Runoff Management Program (RURMP). The City opposes the inclusion of the RURMP in the Draft Permit and requests that those requirements under Section F be met elsewhere in the permit. In meeting these requirements elsewhere in the permit, Section F should be struck from the Draft Permit.

The creation of the RURMP will require local jurisdictions to allocate resources to a regional program, which will in turn deplete budgets for the remaining watershed and jurisdictional programs. The addition of the RURMP is not in lieu of any existing or proposed requirements under the Draft Permit, but is a new addition to the permit. The City of Encinitas, and likely many other Copermittees, is working under limited budgets at this time and do not see the advantage to reducing funding to the local jurisdictional and watershed programs to support a regional program. The creation of the RURMP, with the requirements listed in Section F (Regional Urban Runoff Management Program), in Section I.3. (Program Effectiveness Assessment. Regional), and in Section J.3. (Reporting. Regional Urban Runoff Management Plan) will require Copermittees to divert much needed resources, including staff time and money, to the Regional Programs and away from programs which are proving successful at the local jurisdictional and watershed levels.

Page 46, Section F.7

One primary example of diverting funds to the regional programs is in the RURMP requirement Section F.7 which requires the RURMP to develop and implement a Regional Residential Education Program. Operating on limited budgets, the City's will be asked to financially support the regional education efforts. This in turn will limit the amount of local education and outreach that the can occur. Under the Draft Permit, education requirements will necessitate three programs, one at the jurisdictional level, one watershed based, and one regional. While it is understood that all three levels have a distinct purpose, the goal must be to move towards one effective program, meeting at the watershed levels.

The City of Encinitas has had a truly successful education program in conjunction with the North County Storm Water Education Group. This group has been primarily watershed based and has been successful at promoting watershed and pollution awareness at many levels, including education at the elementary schools, at local and regional events, and in several forms of media, including printed newspaper adds and articles. The City, operating under a limited budget, was able to successfully educate nearly every child in Encinitas from second to sixth grades with the Splash and Green Mobile Laboratories. A regional requirement will effectively eliminate the money necessary to support the current local programs and provide for a less effective regional program. The watershed education programs, such as the North County group, have been very successful and we believe that the watershed based programs have proven to be more beneficial than a regional program.

Many of the requirements of the lead Copermittee can be addressed as they have been under Order 2001-01 and do not necessitate the creation of the RURMP. Requirements including the Long Term Effectiveness Assessment (LTEA) as stated in Section F.3, the Report of Waste Discharge (ROWD), and the Unified Jurisdictional and Watershed Urban Runoff Management Plans are one time submittals which need to be orchestrated at the regional level but do not require the creation of the RURMP. The LTEA and the ROWD are stand alone reports to be completed one time at the end of the permit. Development and progress of the new programs, such as the Hydromodification Plan (HMP) can be reported in the Unified JURMP and/or WURMP reports.

Page 46-47, Sections F.1 and F.8

Many of the requirements under Section F are to be developed and implemented as determined to be necessary by the Copermittees and most of these are not needed. Section F.1 to develop and implement urban runoff management activities on a regional level does not require the formation of the RURMP. While some programs do need regional development, they are included in other places in the permit and can be reported in the Unified Reports currently required under Order 2001-01. For example, Section F.8 (RURMP) requires the development of a standardized fiscal analysis method and Section G (Fiscal Analysis) requires that the Copermittees develop a standardized fiscal analysis for implementation by the jurisdictions. While the development will be accomplished most effectively at the regional level, the development and rationale should be submitted in the Unified Jurisdictional Urban Runoff Management Program (JURMP) Annual Report. Each jurisdiction is required to conduct and report on the fiscal analysis in their individual JURMP annual reports. There is no need to report on this activity in a separate, new report, adding another layer of cost and effort to an already excessive reporting structure.

Page 46, Section F.2

Requirement F.2 to develop minimum standards for the JURMP, WURMP, and RURMP programs is not necessary. The RWQCB has written the Draft Permit to be very prescriptive and sets forth the minimum standards for the jurisdictional and watershed programs clearly. A regional effort to re-write these minimum standards a second time is not needed.

Page 46, Section F.3

Requirement F.3 to develop and implement a strategy to integrate JURMP, WURMP, and RURMP activities and reporting is much needed. However, there is not a need to report on the progress under the RURMP. The goals of the USEPA and the State of California Water Resources Control Board recognize the importance of focusing these programs around the watersheds, as these units provide for the ideal structure to implement programs aimed at pollution reduction and elimination. For this reason, the development of a strategy for integrating the programs must be focused on the needs of the watershed and should be reported in the Unified WURMP Annual Reports, already required under Order 2001-01 and the tentative order. The City suggests an organization such as that presented in Attachment C, to facilitate the integration of the programs. Under this strategy, the lead watershed Copermittees would also be designated as the liaison for the watershed between the Copermittees and the RWQCB. This will facilitate better communication and understanding between RWQCB staff and the Copermittees. Understanding that this integration will be developed in the future as a collaborative effort, the focus must remain on the watersheds and not be diverted to a newly created level of oversight under the Draft Permit.

Page 46, Section F.4

Requirement F.4 for the RURMP to facilitate TMDL management and implementation is not an effort that should be undertaken by the regional group. TMDLs are specific to watersheds and the stakeholders in the watersheds. Understanding that there may be certain pollutants that are listed across watersheds, this is where the similarities in the TMDLs will cease. Each impaired water body is unique and the watershed groups are most suited to assist in the development and implementation of the TMDLs. Stakeholder Advisory Groups, which include important responsible parties and stakeholders beyond the Copermittees, have been assembled to work on upcoming TMDLs in the region and further oversight is not necessary at this time. The watershed groups are aware of the respective studies underway in their watersheds and are most familiar with the water quality issues in each case. The watershed groups will utilize the data collected for their annual assessments of the watershed programs to assist in TMDL management and implementation. For these reasons, TMDLs should be assigned to their respective watershed groups for management and implementation and not to a regional group or as part of a regional program. Discussions regarding development and implementation of watershed based MOUs between Copermittees and other stakeholders in the watersheds are in progress and will ultimately guide the management and implementation of the TMDLs.

Page 46, Section F.6

Requirement F.6 to facilitate the development of strategies for implementation of activities on a watershed level is not necessary at this time. There is currently an effective Regional Watershed Workgroup which was formed to fulfill this need under Order 2001-01. This group has been meeting regularly throughout the existing permit cycle and addressing larger scale needs of the watershed groups. There is no need for this under the RURMP as it is a regional watershed group. Any strategies that are developed should be reported in the required Unified WURMP Annual Reports and need not be reported in the RUMRP Annual Report under the Draft Permit.

In an effort to reduce the duplicative requirements of the tentative order, the City respectfully requests that the Regional Board consider removing the requirements of the formation of a Regional Urban Runoff Management Program and all associated reporting and assessment. The City feels that these requirements will not serve to improve water quality, and will divert the focus and funding necessary to implement effective watershed based urban runoff management programs. Under the requirements set forth in the Draft Permit, the watershed management programs will undoubtedly lead to improvements in water quality. The creation of another regional layer of oversight and reporting will only take much needed resources and focus away from the watershed groups, as the cities are operating under strict budgets. At this time, there is no funding on the horizon to supplement the current programs, and efforts to collect money from the public have failed, leaving the City of Encinitas' Clean Water Program reliant entirely on the general fund. The RURMP requirements as written will only increase the time spent at meetings and writing reports and will not serve the goal of measurably improving water quality in the region.

G. Fiscal Analysis Comments

The City concurs with comments submitted by the County of San Diego as the lead Copermittee for this section.

H. Total Maximum Daily Loads

It is anticipated that several TMDL will be developed during the upcoming Permit cycle. Although we support integration of TMDLs with the Municipal NPDES Permit, at this time we do not know how the TMDLs will be structured or what the requirements will be. Therefore, we believe that it is premature to include specific and detailed TMDL requirements in the Draft Permit. These requirements may end up inconsistent or duplicative of requirements in the actual TMDL Orders, once developed. We believe that the Draft Permit should include general reference to the TMDL implementation plans, such as the wording included on Page 10, Section A.12 of the Tentative Receiving Waters Monitoring and Reporting Program No. R9-2006-0011. The general reference is appropriate for Page 52, Section I.4. TMDL BMP Implementation Plan and Page 17, Section III.2(13) of the Tentative Receiving Waters Monitoring and Reporting Program No. R9-2006-0011.

I. Program Effectiveness Assessement

Page 48, Section I.a.(1).a
Current Text:
(a) Each significant jurisdictional activity or BMP implemented;

Comment:
We request that examples be provided of the types of activities and BMPs that fall into the "significant" category. Should we assume that these are activities that are outside of the major components of the JURMP and are above and beyond the required program activities?

Suggested Revision:
N/A

Page 49, Section I.1.b
Current Text:
Based on the results of the effectiveness assessment, each Copermittee shall modify its jurisdictional activities or BMPs to maximize Jurisdictional Urban Runoff Management Program effectiveness. Jurisdictional activities or BMPs that are ineffective or less effective than other comparable jurisdictional activities or BMPs shall be replaced or improved upon by implementation of more effective jurisdictional activities or BMPs. Where monitoring data exhibits persistent water quality problems, jurisdictional activities or BMPs applicable to the water quality problems shall to be modified and improved on at least an annual basis to correct the water quality problems.

Comment:
It is unreasonable to require program modifications on an annual basis, particularly when the assessment is based on monitoring data. It will take some time to determine that a water quality problem is persistent, not withstanding the problems with identifying what represents "persistent", and even more time to adjust program activities that may have taken years to establish. Even if a program is adjusted, it may take several years, if ever, to see a change is water quality so that Copermittees will be continually adjusting their programs in a knee-jerk fashion.

Suggested Revision:
Based on the results of the effectiveness assessment, each Copermittee shall modify its jurisdictional activities or BMPs to maximize Jurisdictional Urban Runoff Management Program effectiveness. ~~Jurisdictional activities or BMPs that are ineffective or less effective than other comparable jurisdictional activities or BMPs shall be replaced or improved upon by implementation of more effective jurisdictional activities or BMPs. Where monitoring data exhibits persistent water quality problems, jurisdictional activities or BMPs applicable to the water quality problems shall to be modified and improved on at least an annual basis to correct the water quality problems.~~

Page 50, Section I.2.b
Current Text:
Based on the results of the effectiveness assessment, the watershed Copermittees shall modify their Watershed Water Quality Activities, Watershed Education Activities, and other aspects of the Watershed Urban Runoff Management Program in order to maximize Watershed Urban Runoff Management Program effectiveness. Watershed Water Quality Activities or Watershed Education Activities that are ineffective or less effective than other comparable Watershed Water Quality Activities or Watershed Education Activities shall be replaced or improved upon by implementation of more effective Watershed Water Quality Activities or Watershed Education Activities. Where monitoring data exhibits persistent water quality problems, Watershed Water Quality Activities and Watershed Education Activities applicable to the water quality problems shall to be modified and improved on at least an annual basis to correct the water quality problems.

Comment:
Same comment as above for jurisdictional assessment.

Suggested Revision:
Based on the results of the effectiveness assessment, the watershed Copermittees shall modify their Watershed Water Quality Activities, Watershed Education Activities, and other aspects of the Watershed Urban Runoff Management Program in order to maximize Watershed Urban Runoff Management Program effectiveness. ~~Watershed Water Quality Activities or Watershed Education Activities that are ineffective or less effective than other comparable Watershed Water Quality Activities or Watershed Education Activities shall be replaced or improved upon by implementation of more effective Watershed Water Quality Activities or Watershed Education Activities. Where monitoring data exhibits persistent water quality problems, Watershed Water Quality Activities and Watershed Education Activities applicable to the water quality problems shall to be modified and improved on at least an annual basis to correct the water quality problems.~~

Page 52, Section I.4
Current Text:
Entire section.

Comment:
TMDL assessment will be included in individual TMDL Implementation Plans and should be summarized and referenced in the WURMP annual reports as appropriate. Inclusion of specific assessment language in the permit regarding annual TMDL assessment and reporting may be in conflict with the contents of the TMDL Implementation Plan and is not appropriate. Annual

assessments of the effectiveness of the TMDL will be duplicative of required assessments written into the implementation plans and should not be required under the Draft Permit.

Suggested Revision:
At this point, with so much unknown about the upcoming TMDL Implementation Plans, we suggest omitting all but part (c.) of this section and modifying it as shown below.

As part of its Watershed Urban Runoff Management Program Annual Reports, each group of Copermittees in a watershed with a TMDL shall incorporate, by summary and reference, the ~~report on any TMDL BMP Implementation Plan or equivalent plan~~ effectiveness assessments as outlined in their respective TMDL BMP Implementation Plan. ~~as implemented under each of the requirements of sections I.4.a and I.4.b above.~~

Page 53, Section I.5.d

Current Text:
The LTEA shall assess the effectiveness of the Receiving Waters Monitoring Program in meeting its objectives and its ability to answer the five core management questions. This shall include assessment of the frequency of monitoring conducted through the use of power analysis and other pertinent statistical methods. The power analysis shall identify the frequency and intensity of sampling needed to identify a 10% reduction in the concentration of constituents causing the high priority water quality problems within each watershed over the next permit term with 80% confidence.

Comment:
The need for assessment of the monitoring programs are clear however, the prescriptive methods to perform the assessment are not necessary and should be removed from the Draft Permit. The Copermittees should be able to determine the most effective means of assessing the monitoring programs and should not be directed to use a certain statistical method as prescribed by the Draft Permit and likely a consultant. When it is time to perform the long term assessments, the Copermittees' Regional Monitoring Workgroup will determine the most appropriate methods of assessment and guide the process. Assessments such as those performed by the City of Encinitas for the dry weather monitoring program may be sufficient to show long term trend reductions. These assessments are concise and effective at illustrating pollutant reductions, can be performed in house and more frequently, and are more cost effective than hiring a consultant to validate the monitoring programs.

Suggested Revision:
The LTEA shall assess the effectiveness of the Receiving Waters Monitoring Program in meeting its objectives and its ability to answer the five core management questions. This ~~shall~~ may include assessment of the frequency of monitoring conducted through the use of power analysis and other pertinent statistical methods. ~~The power analysis shall identify the frequency and intensity of sampling needed to identify a 10% reduction in the concentration of constituents causing the high priority water quality problems within each watershed over the next permit term with 80% confidence.~~

J. Reporting

The City concurs with comments submitted by the County of San Diego as the lead Copermittee for this section, with the exception of comment #48 "Consolidation of Unified JURMP and Unified WURMP submittals under the RURMP".

As the City has stated previously in the RURMP section, many of the required sections to be unified into a RURMP seem appropriately reported in the past as Unified JURMP and WURMP sections.

For example, requirement F.3 to develop and implement a strategy to integrate JURMP, WURMP, and RURMP activities and reporting is much needed. However, there is not a need to report on the progress under the RURMP. The goals of the USEPA and the State of California Water Resources Control Board recognize the importance of focusing these programs around the watersheds, as these units provide for the ideal structure to implement programs aimed at pollution reduction and elimination. For this reason, the development of a strategy for integrating the programs must be focused on the needs of the watershed and should be reported in the Unified WURMP Annual Reports.

Requirement F.6 is to facilitate the development of strategies for implementation of activities on a watershed level. Strategies that are developed should be reported in the required Unified WURMP Annual Reports and need not be reported in the RUMRP Annual Report under the Draft Permit. It is appropriate to report on the WURMP strategies in the Unified WURMP report.

Requirement F.8 to develop a standardized fiscal analysis method under Section G will be implemented by each Copermittee and watershed and therefore should be reported in the unified sections of the existing JURMP and WURMP. The requirement to develop the fiscal analysis will be met by the regional group; however implementation will not be on a regional basis and needs not be incorporated into a RURMP report.

K. Modification of Programs

No comments.

L. All Copermittee Collaboration

No comments.

M. Principal Permittee Responsibilities

Page 57, Section M.1

Current Text:
Serve as liaison between the Copermittees and the Regional Board on general permit issues, and when necessary and appropriate, represent the Copermittees before the Regional Board.

Comment:
The role of liaison between the Copermittees and the Regional Board may be best accomplished by the watershed leads. The City recommends that the designated watershed

leads as established in Table 4 of the tentative order and in Attachment C also be designated as liaison to the Regional Board where appropriate.

Suggested Revision:
Serve as liaison between the Copermittees and the Regional Board on general permit issues, and when necessary and appropriate, represent the Copermittees before the Regional Board. Where applicable, watershed lead Copermittees may also serve as a liaison to the Regional Board and may represent the Copermittees in their watershed before the Regional Board.

Tentative Receiving Waters Monitoring and Reporting Program No. R9-2006-0011 Comments

The City supports the reorganization of the Tentative Receiving Waters Monitoring and Reporting Program as presented in Attachment D. The following comments have been incorporated into the Attachment.

Section II.A. Core Receiving Waters Monitoring Program

Page 3, Section II.A.1.b.
Current Text:
Each mass loading station to be monitored in a given year shall be monitored twice during wet weather events and twice during dry weather flow events. The exception is the 2008-2009 monitoring year, which shall include monitoring of all mass loading stations for one dry weather flow event only if the Copermittees participate in Bight '08.

Comment:
The Report of Waste Discharge recommends that during the 2008-2009 monitoring year, one wet weather event will be monitored at all mass loading stations to preserve long-term trend information.

Suggested Revision:
Each mass loading station to be monitored in a given year shall be monitored twice during wet weather events and twice during dry weather flow events. The exception is the 2008-2009 monitoring year, which shall include monitoring of all mass loading stations for one ***wet*** weather flow event only if the Copermittees participate in Bight '08.

Page 3, Section II.A.1.c.
Current Text:
Each mass loading station shall be monitored for the first wet weather event of the season which meets the USEPA's criteria as described in 40 CFR 122.21(g)(7). Monitoring of the second wet weather event shall be conducted after February 1. Dry weather mass loading monitoring events shall be sampled in October prior to the start of the wet weather season and in May after the end of the wet weather season. If flows are not evident in October, then sampling shall be conducted during non-rain events in the wet weather season.

Comment:
Due to the unpredictable nature of storm events, flexibility should be included in the dry weather monitoring requirements. The dry weather sampling period preceding the rainy season should include September and October, since October 1 is the beginning of the rainy season. The dry

weather sampling period following the rainy season should include May and June due to the possibility of late season storms in May.

Suggested Revision:
Each mass loading station shall be monitored for the first wet weather event of the season which meets the USEPA's criteria as described in 40 CFR 122.21(g)(7). Monitoring of the second wet weather event shall be conducted after February 1. Dry weather mass loading monitoring events shall be sampled in ***September or*** October prior to the start of the wet weather season and in May ***or June*** after the end of the wet weather season. If flows are not evident in ***September or*** October, then sampling shall be conducted during non-rain events in the wet weather season.

Page 5, Section II.A.3.c.
Current Text:
Bioassessment stations to be monitored in a given monitoring year shall be monitored in the late spring/May (to represent the influence of wet weather on the communities) and late summer/October (to represent the influence of dry weather flows on the communities). The timing of monitoring of bioassessment stations shall coincide with dry weather monitoring of mass loading and temporary watershed assessment stations.

Comment:
The bioassessment monitoring will coincide with the MLS and TWAS monitoring for wet and dry events. Due to the unpredictable nature of storm events, flexibility should be included in the dry weather monitoring requirements. The dry weather sampling period to represent the influence of wet weather on the communities should be consistent with Section II.A.1.c and should include May and June due to the possibility of late season storms in May. The dry weather sampling period designated to represent the influence of dry weather flows on the communities should include September and October, since October 1 is the beginning of the rainy season. This also would be consistent with the recommendation for Section II.A.1.c.

Suggested Revision:
Bioassessment stations to be monitored in a given monitoring year shall be monitored in the late spring ***(***May ***or June)*** (to represent the influence of wet weather on the communities) and late summer ***(September or*** October***)*** (to represent the influence of dry weather flows on the communities). The timing of monitoring of bioassessment stations shall coincide with dry weather monitoring of mass loading and temporary watershed assessment stations.

Section II.A.4.Table 3
Current Text:
Footnotes 4, 5, and 6.

Comment:
The intent of the footnotes should be clarified. Toxicity should be separated into wet and dry weather analysis.

Where sources of toxicity can be determined by other methods such as chemistry data, the use of a TIE is not necessary. This is the intent of the Draft Permit as stated in the fact sheet: "If the type and source of pollutants can be identified based on the data alone and an analysis of potential sources in the drainage area, a TIE is not necessary."

Suggested Revisions:
The footnotes 4, 5, and 6 within Table 3 (Triad Approach to Determining Follow-up Actions) should be relocated to the column headings to better connect the footnotes to the appropriate columns. The column headings would then read: Chemistry[4], Toxicity[5], and Bioassessment[6].

The footnotes should then be revised as follows:
[4] Persistent chemistry exceedance shall mean exceedances of established water quality objectives, benchmarks, or action levels by a pollutant known to cause toxicity for two wet weather and/or two dry weather samples in a given year.
[5]Evidence of persistent toxicity shall mean where more than 50% of the toxicity tests for any given species during wet weather samples or where more than 50% of the toxicity tests for any given species during dry weather samples have a No Observed Effect Concentration (NOEC) of less than 100%.
[6]Indications of alteration shall mean an IBI score of Poor or Very Poor.
[7]If the type and source of pollutants can be identified based on the data alone and an analysis of potential source in the drainage area, a TIE is not necessary.

Section II.A.6 Coastal Storm Drain Monitoring

p.8, Section II.A.6.b(3)
Current Text:
Re-sampling shall be implemented within 24 hours of receipt of analytical results for coastal storm drains where:

(a) Both storm drain and receiving water samples exceed AB411 or Basin Plan standards for any bacterial indicator.
(b) The storm drain sample exceeds 95th percentile observations of the previous year's data for any bacterial indicator.

Comment:
Mandatory re-sampling within 24 hours does not consider: weather conditions, staff availability, laboratory staffing/hours, or associated costs.

Suggested Revision:
Where applicable and feasible, ~~R~~re-sampling shall be implemented within ~~24 hours~~ one business day of receipt of analytical results for coastal storm drains where:

(a) Both storm drain and receiving water samples exceed AB411 or Basin Plan standards for any bacterial indicator.
(b) The storm drain sample exceeds 95th percentile observations of the previous year's data for any bacterial indicator.

If re-sampling can not be conducted within one business day, it must be implemented at the next feasible opportunity and written justification as to the delay in re-sampling must be submitted in the appropriate Copermittee Report.

p.8, Section II.A.6.b(4)
Current Text:
If re-sampling conducted under section (3) above exhibits continued exceedances of a AB 411 or Basin Plan standards in either the storm drain or receiving water, investigations of sources of bacterial contamination shall commence within 24 hours of receipt of analytical results.

Comment:
Copermittees should not be required commit resources to investigations of storm drains exceeding AB411 or Basin Plan standards. Upstream tracking of bacteria within the MS4 is nearly impossible when the concentrations of bacteria are relatively low.

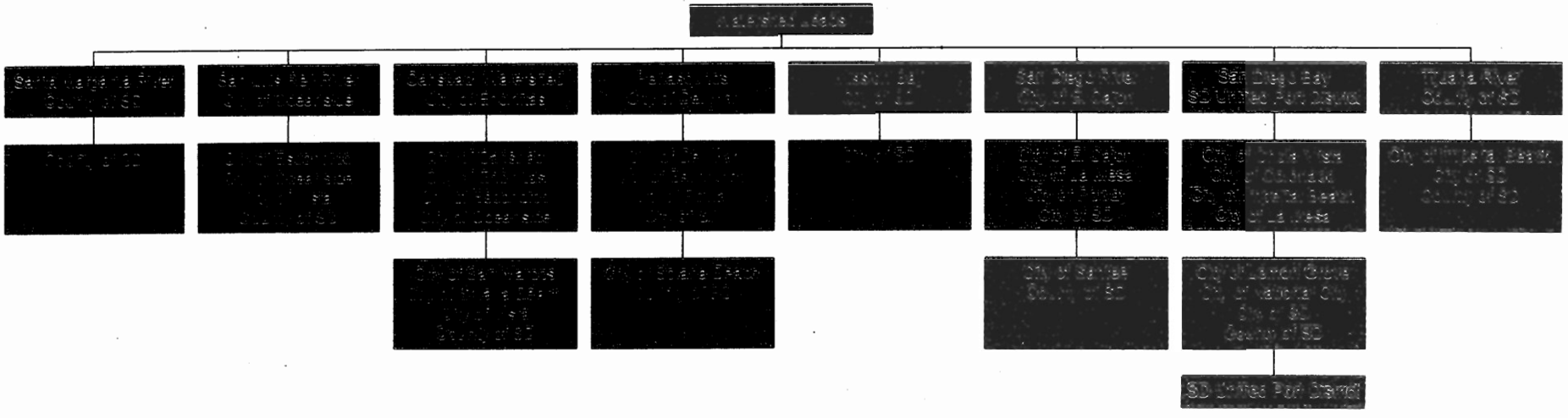
Mandatory investigations within 24 hours do not consider: weather conditions, staff availability, laboratory staffing/hours, or associated costs.

Suggested Revision:
If re-sampling conducted under section (3) above exhibits continued exceedances of AB411 or Basin Plan standards in the receiving water, or exceedances of 95th percentile in the storm drain, investigations of sources of bacterial contamination shall commence within ~~24 hours~~ one business day of receipt of analytical results, where feasible. If investigations can not be performed within one business day, the investigation must commence at the next feasible opportunity and written justification as to the delay in source investigation must be submitted with the Annual CSDM Report.

p.9, Section II.A.6.b(6)
Current Text:
Exceedances of public health standards for bacterial indicators shall be reported to the County Department of Public health as soon as possible.
Comment:
Incorrect agency.

Suggested Revision:
Exceedances of public health standards for bacterial indicators shall be reported to the County Department of ~~Public~~ Environmental Health as soon as possible.

Attachment C. San Diego Region Organizational Chart based on Watersheds



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Attachment D
TENTATIVE RECEIVING WATERS AND URBAN RUNOFF DISCHARGE MONITORING AND REPORTING PROGRAM NO. R9-2006-0011

I. PURPOSE

A. This Receiving Waters and Urban Runoff Discharge Monitoring and Reporting Program is intended to meet the following goals:
   1. Assess compliance with Order No. R9-2006-0011;
   2. Measure and improve the effectiveness of the Copermittees' urban runoff management programs;
   3. Assess the chemical, physical, and biological impacts to receiving waters resulting from urban runoff discharges;
   4. Characterize urban runoff discharges;
   5. Identify sources of specific pollutants;
   6. Prioritize drainage and sub-drainage areas that need management actions;
   7. Detect and eliminate illicit discharges and illicit connections to the MS4; and
   8. Assess the overall health of receiving waters.

B. In addition, this Receiving Waters and Urban Runoff Discharge Monitoring and Reporting Program is designed to answer the following core management questions:

   1. Are conditions in receiving waters protective, or likely to be protective, of beneficial uses?
   2. What is the extent and magnitude of the current or potential receiving water problems?
   3. What is the relative urban runoff contribution to the receiving water problem(s)?
   4. What are the sources of urban runoff that contribute to receiving water problem(s)?
   5. Are conditions in receiving waters getting better or worse?

II. WATERSHED BASED MONITORING PROGRAMS

Each Copermittee shall collaborate with the other Copermittees to develop, conduct, and report on a year round watershed based Receiving Waters and Urban Runoff Monitoring Program. The monitoring program design, implementation, analysis, assessment, and reporting shall be conducted on a watershed basis for each of the hydrologic units. The monitoring program shall be designed to meet the goals and answer the questions listed in Section I above. The monitoring program shall include the following components:

A. RECEIVING WATERS MONITORING PROGRAM

1. MASS LOADING STATION (MLS) MONITORING

a) The following existing mass loading stations shall continue to be monitored: Santa Margarita River, San Luis Rey River, Agua Hedionda Creek, Escondido Creek, San Dieguito River, Penasquitos, Tecolote Creek, San Diego River, Chollas Creek, Sweetwater River, and Tijuana River.

The mass loading stations shall be monitored at the frequency identified in Table 1.

b) Each mass loading station to be monitored in a given year shall be monitored twice during wet weather events and twice during dry weather flow events. The exception is the 2008-2009 monitoring year, which shall include monitoring of all mass loading stations for one dry weather flow event only if the Copermittees participate in Bight '08.

c) Each mass loading station shall be monitored for the first wet weather event of the season which meets the USEPA's criteria as described in 40 CFR 122.21(g)(7). Monitoring of the second wet weather event shall be conducted after February 1. Dry weather mass loading monitoring events shall be sampled in October prior to the start of the wet weather season and in May after the end of the wet weather season. If flows are not evident in October, then sampling shall be conducted during non-rain events in the wet weather season.

d) Mass loading sampling and analysis protocols shall be consistent with 40 CFR 122.21(g)(7)(ii) and with the USEPA Storm Water Sampling Guidance Document (EPA 833-B-92-001). Wet weather samples shall be flow-weighted composites, collected for the duration of the entire runoff event, where practical. Where such monitoring is not practical, such as for large watersheds with significant groundwater recharge flows, composites shall be collected at a minimum during the first 3 hours of flow. Dry weather event samples shall be flow-weighted composites, collected for a time duration adequate to be representative of changes in pollutant concentrations and runoff flows which may occur over a typical 24 hour period. A minimum of 3 sample aliquots, separated by a minimum of 15 minutes, shall be taken for each hour of monitoring, unless the Regional Board Executive Officer approves an alternate protocol. Automatic samplers shall be used to collect samples from mass loading stations. Grab samples shall be taken for temperature, pH, specific conductance, biochemical oxygen demand, oil and grease, total coliform, fecal coliform, and Enterococcus.

e) Copermittees shall measure or estimate flow rates and volumes for each mass loading station sampling event in order to determine mass loadings of pollutants. Data from nearby USGS gauging stations may be utilized, or flow rates may be estimated in accordance with the USEPA Storm Water Sampling Guidance Document (EPA-833-B-92-001), Section 3.2.1.

f) In the event that the required number of events are not sampled during one monitoring year at any given station, the Copermittees shall submit, with the subsequent Receiving Waters Monitoring Annual Report, a written explanation for a lack of sampling data, including streamflow data from the nearest USGS gauging station.

g) The following constituents shall be analyzed for each monitoring event at each station:

Table 2. Analytical Testing for Mass Loading and Temporary Watershed Assessment Stations

Conventionals, Nutrients, Hydrocarbons	**Pesticides**	**Metals (Total and Dissolved)**	**Bacteriological**
Total Dissolved Solids	Diazinon	Antimony	Total Coliform
Total Suspended Solids	Chlorpyrifos	Arsenic	Fecal Coliform
Turbidity	Malathion	Cadmium	Enterococcus
Total Hardness	Pyrethroids*	Chromium	
PH		Copper	
Specific Conductance		Lead	
Temperature		Nickel	
Dissolved Phosphorus		Selenium	
Nitrite		Zinc	
Nitrate			
Total Kjeldahl Nitrogen			
Ammonia			
Biological Oxygen Demand, 5-day			
Chemical Oxygen Demand			
Total Organic Carbon			
Dissolved Organic Carbon			
Methylene Blue Active Substances			
Oil and Grease			

* Pyrethroid monitoring will begin in the 2007-2008 season.

h) In addition to the constituents listed in Table 2 above, monitoring stations in the Chollas Creek watershed shall also analyze samples for polychlorinated biphenyls (PCBs), Chlordane, and polycyclic aromatic hydrocarbons (PAHs) for each monitoring event.

i) The following toxicity testing shall be conducted for each monitoring event at each station as follows:
   (1) 7-day chronic test with the cladoceran Ceriodaphnia dubia (USEPA protocol EPA-821-R-02-013).
   (2) Chronic test with the freshwater algae Selenastrum capricornutum (USEPA protocol EPA-821-R-02-013).
   (3) Acute survival test with amphipod Hyalella azteca (USEPA protocol EPA-821-R-02-012).

j) The presence of acute toxicity shall be determined in accordance with USEPA protocol (EPA-821-R-02-012). The presence of chronic toxicity shall be determined in accordance with USEPA protocol (EPA-821-R-02-013).

k) Assessments of the presence of trash (anthropogenic litter) in receiving waters. Copermittees shall ensure that the monitoring sites provide adequate spatial coverage for receiving waters. Copermittees shall also ensure that trash data is collected and evaluated in conjunction with analytical data, where applicable. This monitoring program shall be implemented within each watershed and shall begin no later than 2007-2008 monitoring year.

   (1) Assessments of trash shall provide information on the spatial extent and nature of the types of trash present.

2. TEMPORARY WATERSHED ASSESSMENT STATION (TWAS) MONITORING

NO PROPOSED REORGANIZATION FOR SECTIONS 3, 4, AND 5. SEE DETAILED COMMENTS FOR SECTIONS 4 AND 5.

6. COASTAL STORM DRAIN MONITORING
The Copermittees shall collaborate to develop and implement a coastal storm drain monitoring program. The monitoring program shall include:

a) Identification of coastal storm drains which discharge to coastal waters.

b) Monthly sampling of all flowing coastal storm drains identified in section II.A.6.a for total coliform, fecal coliform, and enterococcus[7]. Where flowing coastal storm drains are discharging to coastal waters, paired

[7] Coastal storm drains where sampler safety, habitat impacts from sampling, or inaccessibility are issues need not be sampled. Such coastal storm drains shall be added to the Copermittee's dry weather field screening and analytical monitoring program where feasible

samples from the storm drain discharge and coastal water (25 yards down current of the discharge) shall be collected. If flowing coastal storm drains are not discharging to coastal waters, only the storm drain discharge needs to be sampled.

(1) Frequency of sampling of coastal storm drains may be reduced to every other month if the paired coastal storm drain data:
   (a) Exhibits three consecutive storm drain samples with all bacterial indicators below the Copermittees' sampling frequency reduction criteria, as the sampling frequency reduction criteria was developed under Order No. 2001-01.
   (b) Exhibits that the three consecutive samples discussed in (a) above are paired with receiving water samples that do not exceed Assembly Bill (AB) 411 or Basin Plan standards.
   (c) Exhibits that less than 20% of the storm drain samples were above any of the sampling frequency reduction criteria during the previous year.

(2) The Copermittees shall notify the Regional Board of any coastal storm drains eligible for sampling frequency reduction prior to October 1 of each year. Sampling frequency reduction shall not occur prior to Regional Board notification.

(3) Where applicable and feasible, re-sampling shall be implemented within one business day of receipt of analytical results for coastal storm drains where:
   (a) Both storm drain and receiving water samples exceed AB 411 or Basin Plan standards for any bacterial indicator.
   (b) The storm drain sample exceeds 95th percentile observations of the previous year's data for any bacterial indicator.

(4) If re-sampling cannot be conducted within one business day, it must be implemented at the next feasible opportunity and written justification as to the delay in re-sampling must be submitted in the appropriate Copermittee Report.

(5) If re-sampling conducted under section (3) above exhibits continued exceedances of a AB 411 or Basin Plan standards in the receiving water, or exceedances of 95th percentile in the storm drain, investigations of sources of bacterial contamination shall commence within 24 hours of receipt of analytical results where applicable and feasible. If investigations cannot be performed within 24 hours, or one business day, the investigation must commence at the next feasible opportunity and written justification as to the delay in source investigation must be submitted with the Annual CSDM Report.

(6) Investigations of sources of bacterial contamination shall occur immediately if evidence of abnormally high flows, sewage releases, restaurant discharges, and/or similar evidence is observed during sampling.

(7) Exceedances of public health standards for bacterial indicators shall be reported to the County Department of Public health as soon as possible.

B. URBAN RUNOFF DISCHARGE MONITORING

The Urban Runoff Discharge Monitoring Program shall be designed to meet the goals and answer the core management questions listed in Section I above. The monitoring shall be reviewed annually and modified as needed to include pollutants of concern identified through the Receiving Waters Monitoring Program, Section II.A. The Urban Runoff Discharge Monitoring Program shall include the following components:

1. COMPLETE MS4 MAP

Each Copermittee shall create a map of its Urban Runoff Discharge Monitoring sites. The map should clearly identify all MS4 Discharge Monitoring sites contained in Section II.B.2.a, b, c, and all IC/ID Field Screening sites. It is preferred that the map be created as either a separate GIS layer or a map overlay on its MS4 Map, hereafter referred to as the Urban Runoff Discharge Monitoring Map. Each Copermittee shall confirm that each drainage area within its jurisdiction contains at least one monitoring station.

2. MS4 DISCHARGE MONITORING

a) MS4 OUTFALLS:

The Copermittees shall develop and implement monitoring to monitor pollutant discharges from MS4 outfalls in each watershed during wet and dry weather. The monitoring program design, implementation, analysis, assessment, and reporting shall be designed with a watershed focus for each of the hydrologic units. The program shall include rationale and criteria for selection of outfalls to be monitored. Monitoring shall, at a minimum, include collection of samples for those pollutants causing or contributing to violations of water quality standards within the watershed. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year.

b) UPSTREAM MS4 MONITORING:

Site selection for dry weather MS4 discharge monitoring shall at a minimum follow the analytical requirements from the previous Permit (2001-01) which required sample collection for laboratory analytes for at least 25% of the 2001-01 Dry Weather program stations. Upstream MS4 monitoring locations shall be guided by watershed priorities and coordinated to best represent the needs of the watershed. The use of existing sites shall be evaluated prior to initiating the program to ensure that there is flow at the selected sites. New sites may be substituted provided that they 1) have adequate flow, 2) provide an equal or better assessment of high priority watershed problems.

(1) At a minimum, collect samples for analytical laboratory analysis of the following constituents:

(a) Total Hardness
(b) Oil and Grease
(c) Diazinon and Chlorpyrifos
(d) Cadmium (Dissolved) or field test kit
(e) Copper (Dissolved) or field test kit
(f) Lead (Dissolved) or field test kit
(g) Zinc (Dissolved) or field test kit
(h) Enterococcus bacteria[8]
(i) Total Coliform bacteria[8]
(j) Fecal Coliform bacteria[9]
(k) Additional Constituents identified to be causing impairment or that have been identified as high priority watershed pollutants.

c) SOURCE IDENTIFICATION MONITORING

The Copermittees shall identify areas within the watershed where additional source identification monitoring is required. The monitoring shall include focused monitoring on those specific pollutants that have been identified through MLS/TWAS, TIEs, MS4, and other existing programs. The monitoring should be developed to identify sources of discharges of pollutants causing the high priority water quality problems within each watershed. The monitoring should be designed to move upstream into each watershed as necessary to identify sources. The monitoring program shall use source inventories and "Threat to Water Quality" analysis to guide monitoring efforts. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year.

3. ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING

Each Copermittee shall conduct field screening designed to randomly detect and eliminate illicit connections and illegal discharges to the MS4 using frequent, geographically widespread discharge monitoring and follow-up investigations. Each Copermittee shall conduct the following Illegal Discharge / Illicit Connection field screening tasks: At a minimum, the procedures must meet the following guidelines and criteria:

a) SELECT ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING STATIONS

Based upon a review of its past Dry Weather Monitoring Program, each Copermittee shall select stations to detect illicit connections and illegal discharges to the MS4 within its jurisdiction. Stations shall be either major outfalls or other outfall points (or any other point of access such as manholes)

[8] Colilert and Enterolert may be used as alternative methods for Total Coliform and Enterococcus.
[9] Fecal coliform is determined by calculation.

randomly located throughout the MS4 by either (a) randomly placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the MS4 or major outfall; or, (b) stations may be selected non-randomly provided adequate coverage of the entire MS4 system is ensured. The illicit connection/illegal discharge field screening stations shall be established considering the following guidelines:

(1) A grid system consisting of perpendicular north-south and east-west lines spaced ¼ mile apart shall be overlayed on a map of the MS4, creating a series of cells;

(2) All cells that contain a segment of the MS4 shall be identified and one dry weather analytical monitoring station shall be selected in each cell;

(3) Stations should be located downstream of any sources of suspected illegal or illicit activity;

(4) Stations shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system within each cell;

(5) Hydrological conditions, total drainage area of the site, traffic density, age of the structures or buildings in the area, history of the area, and land use types shall be considered in locating stations;

(6) Determining Number of Stations: Based upon review of previous Dry Weather Monitoring Programs, each Copermittee shall determine a minimum number of stations to be sampled each year with provisions for alternate stations to be sampled in place of selected stations that do not have flow.

b) DEVELOP ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING PROCEDURES

Each Copermittee shall develop and/or update written procedures for IC/ID field screening, including field observations, monitoring, and analyses to be conducted. At a minimum, the procedures must meet the following guidelines and criteria:

(1) Sampling Frequency: Illegal Discharge / Illicit Connection field screening shall be conducted at each identified station at least once between May 1st and September 30th of each year or as often as the Copermittee determines is necessary to comply with the requirements of section D.4 of Order No. R9-2006-0011.

(2) If flow or ponded runoff is observed at a Illegal Discharge / Illicit Connection field screening station and there has been at least seventy-two (72) hours of dry weather, make observations and collect at least one (1) grab sample. Record general information such as time since last rain, quantity of last rain, site descriptions (i.e., conveyance type, dominant watershed land uses), flow estimation (i.e., width of water surface, approximate depth of water, approximate flow velocity, flow rate), and visual

observations (i.e., odor, color, clarity, floatables, deposits/stains, vegetation condition, structural condition, and biology).

(3) At a minimum, conduct field screening analysis of the following constituents at all stations where water is present:

(a) Specific conductance (calculate estimated Total Dissolved Solids).
(b) Turbidity
(c) pH
(d) Reactive Phosphorous
(e) Nitrate Nitrogen
(f) Ammonia Nitrogen
(g) Surfactants (MBAS)

(4) If the station is dry (no flowing or ponded runoff), make and record all applicable observations and select another station from the list of alternate stations for monitoring.

(5) Develop and/or update criteria for field screening results whereby exceedance of the criteria will require follow-up investigations to be conducted to identify and eliminate the source causing the exceedance of the criteria.

(6) When possible, Copermittees shall coordinate with the requirements in Sections II.C.2.a and II.C.2.b above, to provide a complete field screening and analytical assessment during dry weather.

(7) Assess the presence of trash (anthropogenic litter) in urban runoff and receiving waters. Copermittees shall ensure that the field screening stations provide adequate spatial coverage for MS4 discharges within each watershed. Copermittees shall also ensure that trash data is collected and evaluated in conjunction with other field screening and/or analytical data, when applicable.

(a) Assessments of trash shall provide information on the spatial extent and nature of the types of trash present.

(8) Field screening stations identified to exceed monitoring criteria for any constituents shall continue to be screened in subsequent years.

(9) Develop and/or update procedures to eliminate detected illicit discharges and connections. These procedures shall be consistent with each Copermittees Illicit Discharge and Elimination component of its Jurisdictional Urban Runoff Management Plan as discussed in section D.4 of Order No. R9-2006-0011.

c) CONDUCT ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING

The Copermittees shall commence implementation of IC/ID field screening and under the requirements of this Order by May 1, 2007. Each Copermittee shall conduct field screening monitoring in accordance with its storm water conveyance system map and field screening monitoring procedures as described in section II.B.3.c above. If monitoring indicates an illicit connection or illegal discharge, conduct the follow-up investigation and elimination activities as described in the procedures and sections D.4.d and D.4.e of Order No. R9-2006-0011. Until the IC/ID field screening program is implemented under the requirements of this Order, each Copermittee shall continue to implement dry weather field screening and analytical monitoring as it was most recently implemented pursuant to Order No. 2001-01.

III. Regional Monitoring Program

A. The Copermittees shall participate and coordinate with federal, state, and local agencies and other dischargers in development and implementation of a regional watershed monitoring program as directed by the Executive Officer.

B. Bight '08

1. During the 2008-2009 monitoring year (Permit Year 3), the Copermittees may participate in the Bight '08 study. The Copermittees shall ensure that such participation results in collection and analysis of data useful in addressing the goals and management questions of the Receiving Waters Monitoring Program. Any participation shall include the contribution of all funds not otherwise spent on full implementation of mass loading station, temporary watershed assessment station, ambient bay and lagoon, and bioassessment monitoring. All other monitoring shall continue during the 2008-2009 monitoring year (Permit Year 3) as required.

2. If the Copermittees do not participate in Bight '08, mass loading station, temporary watershed assessment station, ambient bay an lagoon, and bioassessment monitoring shall be conducted as follows:

a) Permit Year 4 (2009-2010) monitoring shall be conducted in Permit Year 3 (2008-2009) (see Table 1).
b) (2) Permit Year 5 (2010-2011) monitoring shall be conducted in Permit Year 4 (2009-2010) (see Table 1).
c) (3) Permit Year 4 (2009-2010) monitoring shall be conducted in Permit Year 5 (2010-2011).

3. If the Copermittees partially participate in Bight '08, monitoring shall be conducted as described in section II.B.2.b above, with the exception of any monitoring offset by the contribution of funds to Bight '08.

IV. SPECIAL STUDIES

A. TMDL MONITORING

1. All monitoring shall be conducted as required in Investigation Order No. R9-2004-0277 for Chollas Creek.

B. Regional Harbor Monitoring – The Copermittees which discharge to harbors shall participate in the development and implementation of the Regional Harbor Monitoring Program.

C. The Copermittees shall conduct special studies as directed by the Executive Officer.

V. MONITORING PROVISIONS

NO CHANGES PROPOSED FOR THIS SECTION

Supplement to Attachment D

Comments on Reorganization of Tentative Receiving Waters Monitoring and Reporting Program

Item No.	Section	Modification	Rationale
1	Title or lines 3 and 16	Change "Tentative Receiving Waters Monitoring...." to "Tentative Receiving Waters and Urban Runoff Discharge Monitoring..."	The monitoring program requires programs that monitor receiving waters and programs that monitor urban runoff discharges. Re-naming this part of the Draft Tentative Order will provide clarity to what is required.
2	II.A & II.B or lines 3, 16, 27, 30 & 37	Modify the main monitoring program names to become: II. Watershed Based Monitoring Program; II.A the Receiving Waters Monitoring Program; and II.B the Urban Runoff Discharge Monitoring Program. Move new components that are focused on monitoring urban runoff discharges to II.B	Separating the core programs into a Receiving Waters Monitoring component and an Urban Runoff Discharge Monitoring component is an appropriate way to structure the new Permit, given that several new monitoring requirements have been added. There are inherent differences to what each core program should be designed to accomplish. Receiving water monitoring should be focused on assessing large-scale pollutant loading, ambient conditions, trends, water quality improvements/degradations, impacts to beneficial uses, and identifying high priority areas/pollutants to guide urban runoff monitoring. Urban runoff monitoring is better focused on sources of pollutants, characterizations of watershed areas/land-uses, drainage basin specific conditions, and providing a more focused assessment of watershed pollutants based upon what is identified in the receiving waters. Additionally, separating the program components allows for better correlation with the goals and core management questions identified in Section I.A and I.B. Many of the core questions are strictly specific to either Receiving Waters (I.A.3, I.A.8, I.B.1, I.B.2, I.B.5) or Urban Runoff (I.A.4, I.A.5, I.A.7, I.B.3, I.B.4). Dividing the Draft Permit into these core programs will facilitate the development and assessment of the program's effectiveness. It will also make it easier to determine on what scale (regional, watershed, jurisdictional) the programs should be designed and implemented.
3	II.A.1 Table 2 or line 99	Add Pyrethroids to the list of monitoring constituents for MLS/TWAS.	Adding pyrethroids to the list of monitoring constituents required for MLS and Temporary Watershed Assessment Stations (Table 2) would be the most effective way to assess the presence of pyrethroids in the

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		Remove the requirement, II.A.8, as a stand-alone program.	watershed. In doing so, pyrethroids would be monitored in both wet and dry weather and the data would be consistent with, and comparable to, other constituent data that is generated for each watershed. The RWQCB fact sheet (p97) states that pyrethroids are the leading household pesticide (replacing diazinon) and monitoring is required because its use is "...likely to increase as diazinon use decreases." Because the MLS program was effectively used to evaluate diazinon during the previous Permit, it is anticipated that the same approach, coupled with the additional Copermittee improvements to the monitoring program (use of wet and dry events and addition of TWAS) would be acceptable.
4	II.A.1.k or line 118	Add a requirement to assess trash during MLS and TWAS monitoring as Section II.A.1.k. Remove the requirement, II.A.9 as a stand-alone program. The wording has changed slightly from the original Draft Permit text. The modification supports the Copermittee rationale presented at the workshop and is consistent with other Copermittee comments on trash. Please note that other program elements will also incorporate trash monitoring as identified below.	Incorporating trash assessment tools similar to those used in Forester Creek and/or Chollas Creek will address the RWQCB requirement. These currently accepted methods have been used within the San Diego region as part of elevated regulatory compliance for areas with known trash problems (Forester Creek and Chollas Creek). The Copermittees believe that a more quantitative in depth assessment is not warranted. While several watersheds have identified trash as a concern, it is not a regional Tier 1 (LTEA) pollutant. Conducting an assessment similar to that described herein adequately meets the RWQCB intent, provides adequate spatial and temporal coverage of the region, will provide a good baseline of trash throughout the watersheds, and will enable watersheds to prioritize and develop activities to address areas of greatest importance.
5	II.B or begins line 299	Add a section titled "Urban Runoff Discharge Monitoring".	This monitoring program and the individual components within it should be driven by, and used in conjunction with, the Receiving Waters Monitoring information. Monitoring within the Urban Runoff Discharge

		Please note that much of the language within this section has been moved from its placement in the original draft Permit without any modifications. Any language that has been modified or added has been identified as red text.	Monitoring program is best designed to be adaptive, responding to conditions in the receiving waters and high priority sources and/or pollutants. To provide the most effective overall watershed assessments, these program components must react to new sources and changes in receiving water conditions, while being still being able to easily feed into and supplement the receiving water data in a manner that produces comprehensive watershed water quality assessments. It is anticipated that the design and implementation of the Urban Runoff Discharge Monitoring program will differ from the receiving waters program. This is primarily because the programs will need to be reviewed and updated to reflect the receiving water program findings. It is also understood that the urban runoff components will address different goals and core management questions, such as I.A.4, I.A.5, I.A.7, I.B.3, and I.B.4.
6	II.B & II.B.2.a or line 301	Propose to add sentences (red text) to these two sections to clarify the involvement of watersheds and require their participation in developing and/or implementing the monitoring program. II.B: Add, "The monitoring shall be reviewed annually and modified as needed to include pollutants of concern identified through the Receiving Waters Monitoring Program, Section II.A." II.B.2.a: Add, "The monitoring program design, implementation, analysis, assessment, and reporting shall be designed with a watershed focus for each of the hydrologic units".	The need for watershed participation in monitoring program design is essential to develop programs that can meet all the goals identified in the watershed and monitoring sections of this Permit. It should be required with an understanding that the Copermittees would be allowed to determine the mechanism to achieve this. An annual review of monitoring data, particularly from MS4s would allow Copermittees to modify or adjust their programs to best meet the watershed needs, while not sacrificing the prescriptiveness of the Permit requirement. Adding the sentences as proposed would assist in proper program development and facilitate Copermittee compliance while creating a program best designed to show changes in water quality conditions.
7	II.B.1 or line 321	Place the requirement previously identified as II.D.2, "Complete MS4 Map", into this new section. Move this requirement from the original placement within the dry weather program.	It makes sense to have all urban runoff discharge monitoring locations mapped, not just the dry weather stations. It will assist in evaluating monitoring information from a spatial perspective. The text changes identified in this section (red text) simply clarify this request. They do not alter the intent of the initial requirement.

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8	II.B.2.a II.B.2.b or line 319	Move the requirement for MS4 Discharge Monitoring to this section. Remove the requirement, II.A.10, as a stand-alone program.	Using a similar logic as applied to the Receiving Waters Program design, this component of the Urban Runoff Discharge Monitoring Program would be the basis for identifying watershed problems attributable to urban runoff. By adding the component for MS4 outfall monitoring along with the previous requirement to conduct dry weather laboratory monitoring, the characterization of urban runoff becomes much more complete. The additional monitoring within section II.C.2.b and II.C.2.c would be designed appropriately to enhance the findings of this program, resulting in a comprehensive approach to evaluating urban runoff discharges and identifying sources of priority pollutants. The Permit allows one year to develop this program. As this is a new Permit requirement, it is anticipated that Copermittees will need time to fully develop the appropriate design, sample locations and sample frequencies.
9	II.B.2.a or line 319	Clarify that this new section (previously II.A.10) only pertains to MS4 outfalls, not the entire MS4 system.	Through much regional discussion, it is unclear whether the existing Draft Permit requirement (II.A.10) pertains only to MS4 outfalls or the entire MS4 system. As such it is recommended that the program name be changed to clearly identify that it is for outfalls only.
10	II.B.2.b or line 346	Move the 2001-01 Dry Weather Monitoring Program laboratory analytical requirements to this section. The text within this section has been modified from the original draft Permit text. However, the intent of the requirement, the frequency, and the number of sites required remain the same.	As stated during earlier Copermittee comments, follow-up investigations for analytical constituents rarely result in the elimination of an illegal discharge. Usually laboratory results take from 1-2 weeks to obtain, making it difficult to track the problem upstream. Typically the pollutants evaluated through laboratory analysis are widespread pollutants, rarely associated with random illegal discharges. They are more pointed to ongoing pollution problems with facilities or homeowner practices (improper storage, misuse of pesticides, improper cleaning methods, etc). However, they are important in determining areas that may be of elevated concern within the watershed. The importance of this monitoring is better situated toward finding areas/sources of concern and developing activities (both watershed and jurisdictional) such as BMP implementation to reduce loads of the problem pollutant(s).

11	II.B.2.c or line 362	Move the requirement for Source Identification Monitoring here. Remove Section II.A.11 as a stand-alone program. Two sentences have been added or modified slightly from what was in the original draft Permit: " The Copermittees shall identify areas within the watershed where additional source identification monitoring is required. The monitoring shall include focused monitoring on those specific pollutants that have been identified through MLS/TWAS, TIEs, MS4, and other existing programs."	With the proper design and placement of stations from all of the Urban Runoff Discharge Monitoring program components (II.B.3a, b, & II.B.3) coupled with the addition receiving water stations (TWAS) the amount of data collected and the extent of coverage within the watersheds will be greatly expanded. As such, it is anticipated that the new programs will improve the overall identification of areas of concern. Once coupled with source inventory information from the LTEA, Copermittees may be able to determine sources and identify activities to address those sources. The intent of the modification is to clarify that source ID monitoring will occur in response to previously identified watershed problems where source have not been determined. In those instances when data and inventory information does not clearly identify sources, Copermittees will be required to conduct additional monitoring to better identify sources. This program will be an as-needed approach and will be designed to supplement the base information that is provided by the Urban Runoff Discharge Monitoring Program.
12	II.B.3 or begin in line 376	Move the 2001-01 Dry Weather Monitoring Program field screening requirements to this section. Rename the program "Illegal Discharge / Illicit Connection Field Screening". Modify all text within this section to replace the term "Dry Weather Monitoring Program" with Illegal Discharge / Illicit Connection Field Screening". Modify text slightly to allow for either the use of a random grid system or station placement based upon prior knowledge of watershed and/or jurisdictional considerations.	The placement of this program in the context of the entire Urban Runoff Discharge Monitoring Program provides a logical means to keep the old Permit's prescriptiveness (prompt attention to follow-ups) while restructuring all programs in a manner that will provide the most effective assessment of watershed water quality. This program would be designed to detect IC/IDs throughout the watershed. The program is intended to be identical to the field screening required in the previous Permit, with the addition of MBAS to the field screening analyte list. It is expected that the same requirement for prompt follow-ups (two business days) will still apply.
13	II.B.3.b.(6) or line 460	Add the following text as a new requirement: "When possible, Copermittees shall coordinate with the requirements in Sections II.C.2.a and II.C.2.b	The suggested modification provides the Copermittees a mechanism to simultaneously meet multiple programs requirements with a single field effort. Conducting several analyses at a given location and time, provides a better understanding of water quality conditions and potential

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		above, to provide a complete field screening and analytical assessment during dry weather."	sources. In addition it is a cost effective way to comply with new Permit requirements. It is not anticipated that this will be able to occur for every sampling location and Copermittees understand that a reduction in sampling sites is not anticipated. While there is implicit understanding that this can occur within the existing Permit language, its addition to the Permit memorializes that both RWQCB and Copermittee staff agree with this approach.
17	II.B.3.b.(7) or line 470	Add a requirement to assess trash during IC/ID Field Screening. Remove the requirement, II.A.9 as a stand-alone program. See item 4, above.	Currently the existing dry weather IC/ID program provides a general assessment of the presence of trash near the MS4 monitoring locations and when applicable, in the nearby receiving waters (for MS4s with direct discharges). With some modifications and improvements to the current visual assessments, a portion of the trash monitoring requirement could be incorporated into the existing programs. The dry weather IC/ID monitoring locations provide an adequate assessment of the Copermittee's MS4 and to some extent receiving waters (for those MS4 sites directly discharging to a receiving water. Sites are visited and visual observations recorded even when there is no presence of flow. It is anticipated that the trash assessment conducted within this program will utilize a similar approach to the recommendation from Item 4 above.
18	Section IV or line 532	Previously identified as Section C "Special Studies", the modification would only be a re-numerating of the sections based on the additions discussed above.	As stated above, it is recommended that two new sections be incorporated into the Permit; Urban Runoff Discharge Monitoring (Section C) and TMDL Monitoring (Section D). It is not recommended that any of the language contained in this section be modified. We believe that adding the new permit sections 1) will initiate the appropriate Permit framework from which to develop new programs best addressing Permit goals and core management questions, 2) will facilitate Copermittee program development, and 3) will facilitate reporting, assessment, and compliance.

18	Section IV	Move "TMDL Monitoring" into the Special Studies Section from its previous placement as II.A.12 in the Receiving Waters Monitoring Program.	TMDL monitoring requires a somewhat unique and more focused monitoring approach than typical receiving waters or urban runoff programs. TMDLs are also unique because they may have both receiving water and urban runoff monitoring requirements. Additionally, TMDL monitoring focuses specifically on addressing the pollutant(s) associated with the impairment and ensuring load reductions are being met. As such, it may not follow the same design rationale required for receiving waters or urban runoff programs. Finally, it is anticipated that TMDLs will increase through the life of this Permit. As such, the concept of identifying TMDLs separate from the other core programs will make it easier to assess information and incorporate future TMDL requirements into the Permit.

June 21, 2006 Regional Board Meeting
Item 3, Supporting Document # 9

G. City of Escondido

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ESCONDIDO
City of Choice

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June 7, 2006

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Re: Comments on Tentative Order (TO) No. R9-2006-0011

Dear Mr. Robertus:

This letter contains the City of Escondido's comments on Tentative Order No. R9-2006-0011. The City's comments are intended to identify especially problematic permit requirements in the following sections: Development Planning; Existing Development; Watershed Urban Runoff Management Program (WURMP); and Fiscal Analysis. In addition, attached hereto as Exhibit A to this correspondence is a "Comment Letter Regarding Tentative Order No. R9-2006-0011," prepared by legal counsel for a number of the Copermittees, which is incorporated herein by this reference as though fully set forth at this point. Moreover, the City of Escondido joins in all of the comments and objections raised in the legal counsel's Comment Letter.

While the City appreciates the effort the Board and its staff have undertaken to develop the new permit, the City believes there are still elements of it that need to be reviewed and reconsidered in light of jurisdictions' ability to realistically meet the new requirements, especially in terms of effectively establishing a link between the permit's call for significantly increased program efforts, the increased expenditure of additional resources that those efforts will require, and improved water quality.

Development Planning--Page 24 of the Tentative Order, Section G

Each Copermittee shall collaborate with the other Copermittees to develop and implement a Hydromodification Plan (HMP) to manage increases in runoff discharge rates and durations from all Priority Development Projects, where such increased rates and durations are likely to cause increased erosion of channel beds and banks, sediment pollutant generation, or other impacts to beneficial uses and stream habitat due to increased erosive force.

Regarding this extensive requirement, the City, consistent with other Copermittees, recommends that the permit allow flexibility in selecting a Hydromodification Plan strategy that best addresses the number and magnitude of the region's watersheds. Also, because the effort to develop and implement an HMP strategy will be involved, the City requests that the Board offer a strategy development timeline that is similar to those time frames that have been allowed for other parts of the state, such as Santa Clara County. Although the Regional Board's staff insists the two-year strategy development timeline is adequate because San Diego agencies can take advantage of

other existing models, the City believes that each region is unique, and adequate timelines should be designated by the permitting process to allow Copermittees to effectively consider and respond to the new requirements.

Development Planning, Page 23, Section E

Each Copermittee shall develop and utilize a watershed-based database to track and inventory approved treatment control BMPs and treatment control BMP maintenance within its jurisdiction. At a minimum, the database shall include information on treatment control BMP type, location, watershed, date of construction, party responsible for maintenance, maintenance certifications or verifications, inspections, inspection findings, and corrective actions.

Each Coperrmittee shall develop and implement a program to ensure that approved treatment control BMPs are operating effectively and have been adequate maintained. At a minimum the program shall include the following: (a)-(d) An annual inventory of all approved treatment control BMPs within the Copermittee's jurisdiction...

The City recommends that in light of the resources which will be needed to meet the minimum inspection requirements for treatment control BMPs, that the Permit provide allowances for the Copermittees to determine baselines to better designate inspection frequencies that respond to actual need versus numerical permit requirements. Moreover, the City suggests that the Permit should require Copermittees to develop their inspection programs based on statistical analysis of inspection findings, verification forms, and any other appropriate data. Also, this section of the new Permit requires that all inspections be undertaken in the dry season. However, this direction eliminates the possibility of inspections during most rain episodes, when the majority of storm water issues can be more easily identified and resolved.

Existing Development/Municipal--Page 30, Section D

Each Copermittee shall implement a schedule of maintenance activities for the MS4. The *maintenance activities shall, at a minimum, include: (i) Inspection of all Copermittee catch basins and storm drain inlets at least once a year between May 1 and September 30 of each year. If accumulated waste (e.g., sediment, trash, debris, and other pollutants) is visible, the accumulated waste in the catch basin or storm drain shall be cleaned out. Additional cleaning shall be conducted as necessary; (ii) Inspection of all Copermittee open channels and removal of any observed anthropogenic litter from the open channels at least once a year between May 1 and September 30, with additional inspection and removal as necessary; (iii) Inspection, maintenance, and cleaning of other portions of the MS4 according to an established prioritized schedule.*

Over the last four years of the current permit, and even prior to the implementation of it, the City of Escondido has acquired significant knowledge of its MS4. Moreover, this knowledge would enable the City to prioritize its MS4 facilities for both inspection and cleaning versus inspecting all of its MS4 on an annual basis, which the Tentative Order

requires. The City suggests that copermittees be allowed to prioritize their facilities for inspection and cleaning based on their considerable experience with and knowledge of it. Such an allowance would enable jurisdictions to focus the majority of their resources on the most problematic MS4 areas. Therefore, high, medium and low inspection and cleaning designations could be based on traffic volume and/or on historical pollutant loading data, which would represent a measurable and informative rationale for determining MS4 maintenance schedules.

Existing Development/Municipal--Page 31, Section D.3.a.(5)

Each Copermittee shall implement a program to sweep municipal roads, streets, highways, and parking facilities. The program shall include the following measures: (a) Roads, streets, highways, and parking facilities identified as consistently generating the highest volumes of trash and/or debris shall be swept at least two times per month; (b) Roads, streets, highways, and parking facilities identified as consistently generating moderate volumes of trash and/or debris shall be swept at least monthly; (c) Roads, streets, highways, and parking facilities identified as generating low volumes of trash and/or debris shall be swept as necessary, but no less than once per year; (d) Roads, streets, highways, and parking facilities shall be swept following any special events (festivals, sporting events, etc.) at those locations.

While this section requires the sweeping of all roads, streets, highways and parking facilities and establishes numeric frequencies based on the volume of trash, it does not provide a rationale for the required cleaning schedules or explain any water quality benefits that may support them. Moreover, the City suggests that the frequencies should be based on past and current Copermittee efforts and their accumulated knowledge of what those efforts have achieved and where improvements can or need to be made in such municipal programs. Based on this accumulated knowledge, the City suggests that this section of the Tentative Order be reviewed and evaluated and that the Board consider designating a threshold (e.g. average daily traffic load) figure for the cleaning of roads, streets, and highways. Such a threshold would represent a baseline, above which high, medium and low cleaning frequencies would be triggered and below which cleaning would be conducted on an as-needed basis.

Existing Development/Industrial and Commercial--Page 34, Section 3.b.(2)©

Within the first year of implementation of the updated Jurisdictional Urban Runoff Management Program, each Copermittee shall notify the owner/operator of each inventoried industrial and commercial site/source of the BMP requirements applicable to site/source.

Many of the businesses designated by the Tentative Order to be notified regarding BMP requirements during the first year of JURMP implementation have already been provided with BMP requirements during the current Permit cycle. Because so many businesses have already been notified and since the Copermittees will be developing and updating their source inventories, mutually developing standards for various

business types, and creating notification materials during the first year, the City suggests that the notification timeline be changed from the first year to the first three years of the new Permit cycle.

Existing Development/Industrial and Commercial--Page 35, Section 3.b.(3)(b),(c), and (d)

(b) Each Copermittee shall annually inspect all sites determined to pose a high threat to water quality. In evaluating threat to water quality, each Copermittee shall address at a minimum the following: [List}. (c) At a minimum 40 percent of the sites inventoried as required in section D.3.b.(1) above (excluding mobile businesses) shall be inspected each year. (d) In addition to conducting inspections, each Copermittee shall develop and implement a program for verifying industrial and commercial site/source compliance with its ordinances, permits, and this Order, if determined to be necessary by the Copermittee. In developing the program, each Copermittee shall consider the use of: (i) Compliance certifications (including submitting monitoring results, if applicable); (ii) Third-party inspections; (iii) Facility- or industry-specific surveys; and (iv) other relevant factors.

The Copermittees' initial analysis of the Permit section indicates that 40 percent is generally above current inspection levels, and significant additional resources would be needed by many Copermittees to achieve compliance. The City of Escondido recommends that the Board reconsider the 40 percent threshold and consider the Copermittees particular and aggregate knowledge of their industrial/commercial facilities. Based on this experience acquired over the last four years of the current permit, site inspections do not always represent the most appropriate (i.e., businesses that have been verified over a multi-year period to be in compliance) or cost-effective way to determine compliance, especially for jurisdictions with significant business inventories. Therefore, the City recommends that the Board consider alternative compliance verification methods, such as self-certifications or third-party inspections, which could be employed within certain limitations, such as threat to water quality, business type, and compliance history.

Watershed Urban Runoff Management Program--Page C-11, Attachment C

Watershed Water Quality Activity – An activity (such as BMP implementation or a similar management measure), implemented as part of a larger watershed water quality protection strategy, which directly and significantly abates the source(s) and/or reduces the discharge of pollutants causing the high priority water quality problem(s) within a watershed. The activity must be newly implemented during the cycle of this Order. Jurisdictional activities which significantly exceed and are exhibited to be more protective of water quality than the baseline jurisdictional requirements of section D may be considered Watershed Water Quality Activities. This may include additional jurisdictional controls implemented in compliance with sections D.2.c(3), D.3.a(2)(e),

Watershed Urban Runoff Management Program--Page C-11, Attachment C

D.3.b(2)(e), and D.3.c(2)(f) of this Order, provided these jurisdictional additional controls meet all other requirements of this definition and this Order...

While the City of Escondido appreciates the effort that has gone into this section of the Tentative Order, we are concerned about some of the requirements included in it. For example, the requirement that specifies a watershed water quality activity must be newly implemented during the new Order's cycle negates the Copermittees' being able to continue and take credit for existing activities that demonstrate pollutant reduction and therefore could be included in the new Permit cycle's watershed strategy. Also, the definition of a watershed water quality activity specifies that only jurisdictional activities which significantly exceed the minimum Permit requirements can be considered water quality activities under the Watershed programs. However, because the jurisdictional requirements have been significantly elevated for the upcoming permit cycle, it will be difficult for many copermittees/watersheds to implement significant jurisdictionally-based watershed activities without compromising the finite resources needed to meet the augmented jurisdictional requirements proposed by the Tentative Order.

Watershed Urban Runoff Management Program, Page 44, Section E.2.i(1)

Short-term Water Quality Activity – At a minimum, each Copermittee shall implement two Watershed Water Quality Activities within its portion of each watershed annually.

While the City appreciates the Board's effort to develop a strategy to address persistent water quality problems within each watershed, we do not believe that the proposed requirement to introduce a minimum of two new water quality activities on an annual basis will achieve the Board's intent. Moreover, the overall strategy should focus on developing quality activities versus a relatively large quantity of activities that may have to be narrower in scope given the limited resources and time available to the copermittees. Therefore, short-term activities should mean those that will be completed during the life of the Order, as well as those that demonstrate progress on an annual basis.

Fiscal Analysis—Page 47, Section G3

The Fiscal Analysis shall identify the expenditures incurred by the Copermittees over the Annual Report's reporting period. (fourth sentence)

Although the City generally supports the Fiscal Analysis section as drafted, the fourth sentence of Section G.3 on page 47 of the Tentative Order would require that the Copermittees report on expenditures over the previous fiscal year. The City believes this new requirement is not feasible because it has limited value for assessing the Copermittees' compliance or overall effectiveness in implementing their programs. Moreover, since most Copermittees' storm water programs are broad-based in nature and therefore implemented by numerous departments and divisions, expenditures are

Fiscal Analysis—Page 47, Section G3

difficult if not impossible to track and must therefore be estimated based on a percentage of a department's or division's overall operation. While it is generally reasonable to use such methods for projecting costs during program planning and/or budgeting, it would be impossible to determine the actual expenditures associated with those estimates over the reporting period. Therefore, the City believes that using approximations as measures or indicators of program progress would not provide a substantial or consistent evaluation of program effectiveness or compliance.

Sincerely,

Patrick Thomas
Public Works Director

cc: Clay Phillips, City Manager
Jeffrey Epp, City Attorney
Charles Grimm, Deputy City Manager
Steve Nelson, Deputy City Attorney
Mary Ann Mann, Utilities Manager

Attachment: Exhibit A

COMMENT LETTER RE TENTATIVE ORDER NO. R9-2006-0011

I. INTRODUCTION

This letter is filed with the Regional Board to address some of the legal and fiscal impediments Tentative Order No. R9-2006-0011 ("Permit" or "Order"). It is written on behalf of the San Diego Copermittees and is intended to assist the Regional Board in understanding the perspective of the Copermittees who must raise the funds and implement the Programs required by this Permit.

II. UNFUNDED STATE MANDATES

A. Tentative Order No. R9-2006-0011 Mandates an Increased Level of Service for Local Governments

B. Local Governments Lack the Authority to Levy Service Charges, Fees or Assessment Sufficient to Pay for the Mandated Increased Level of Service

The State Mandates can be imposed on a local jurisdiction if fees can be raised to pay for the program. However, there are aspects of this Permit that cannot be paid for by fees. (*i.e.*, Watershed Management Program.) While the Permit requires a fixed number of activities take place in the Watershed, regardless of the size of the jurisdiction, the Permit does recognize the inability of the Copermittees to raise fees to pay for the Watershed activities.

A more significant problem for Copermittees is the open question regarding whether fees can be charged at all to support the Program. Currently, the City of Solana Beach is defending an action brought by the Howard Jarvis Taxpayers Association challenging a non-property related solid waste fee to recover a portion of the cost of the program. Previously, the City of Encinitas settled with the Jarvis group and repealed a water-based fee for its Stormwater Program.

In December 2005, the Regional Board received a memo addressing that issue. A copy of that memo is attached. It listed some of the problems local governments face in funding this mixed State and Federal mandate. We requested that the Board take action to assist in clarifying the fee issue. No action was taken and the Copermittees now face the possibility of having no fee source to pay for the Programs under the Permit if the most recent Jarvis case is successful. Even if the local jurisdictions have a fee source, there are aspects of the Permit, as demonstrated in December 2005 that cannot use fee to support the program mandated. This would include the Regional, Watershed and other programs discussed herein.

C. Tentative Order No. R9-2006-0011 Mandates Costs which Exceed the Mandate in the Federal Law

Tentative Order Finding E.9 recognizes that certain mandates in the Tentative Order exceed the requirements of federal law. Finding E.9 provides that "[r]equirements in this Order that are more explicit than the federal storm water regulations in 40 CFR 122.26 are prescribed in accordance with the CWA section 402(p)(3)(iii) and are necessary to meet the MEP standard."

Both the Tentative Order and Fact Sheet/Technical Report ("Technical Report") at various locations cite to the federal law that supports certain mandates in the Tentative Order. However, many mandates are not directly linked to the federal authority upon which they are based. The Copermittees must assume that, without a specific citation to federal authority, mandates in the Tentative Order are state mandates that exceed the mandates of federal law. (See Topanga Assn'n for a Scenic Community v. County of Los Angeles (1989) 214 Cal.App.3d 1348.) Please either confirm this assumption or, for each mandate in the Tentative Order, specify the federal authority that requires the mandate.

The Tentative Order and the Technical Report contain many examples of mandates for which no citation to legal authority is provided. Chief among these examples is the hydromodification mandate. The hydromodification mandate creates significant new requirements which will result is significant new, unfunded costs. However, neither the Tentative Order nor the Technical Report cite to federal authority for this new mandate. Consistent with Finding E.9, the Copermittees assume that the new hydromodification mandate is a state law requirement. Please either confirm this assumption or specify the federal authority that requires this mandate.

A second example of a mandate for which no citation to federal authority is required relates to the mandates which regulate the condition of water flowing "into" the MS4 rather than from the MS4. In State Water Resources Control Board Order WQ 2001-15, the State Board struck language in the prior permit which regulated under federal law the flow of water "into" the MS4. The State Board recognized that regulation of water "into" the MS4 was authorized by state law and certain specific provision of federal law. Therefore, the Copermittees must assume that, in the absence of a specific citation to federal authority, the mandates which regulate the flow of water "into" the MS4 are mandated by state law. Please either confirm this assumption or specify the federal authority that mandates each regulation of flows "into" the MS4.

In addition to these two examples, the following examples also lack a specific reference to federal authority:

- Annual Inspection and Cleaning of MS4s: This mandate appears to be based upon the prohibition under state law that waste may not enter the MS4. Please confirm this assumption or specify the federal law which requires this mandate.

- Street Sweeping:

- General Plan/Land Use Review: Under Section D.(1)(a) of the Permit, the Copermittees are required to revise their General Plans "as needed". The Technical Report does not state the legal grounds for this requirement. We are unaware of any legal authority allowing the Regional Board to mandate a General Plan amendment under either Federal law or Port Cologne Act. In coastal cities, amending the General Plan will require Coastal Commission approval. While state law specifically delegates this authority to the Coastal Commission to oversee the Local Coastal Plan elements contained in a General Plan, there is nothing in either state or federal law giving this authority to the Regional Board. Exclusive General Plan authority is granted to each Copermittee pursuant to the

Planning and Zoning law found in the Government Code. (Government Code Section 65000 *et. seq.*, Technical Report pp. 49-50).

- Environmental Review: The permit also contains a requirement that the Copermittees revise their environmental review process on an "as needed" basis to reflect storm water issues. (Permit, D.(1)(b); Technical Report, pp. 49-50.) It is unclear what is required of this Section. The California Environmental Quality Act (Public Resources Code Section 20000 *et.seq.*) already requires that local jurisdictions environmentally assess issues related to stormwater in the same manner as other significant environmental impacts. This provision adds a redundant requirement that already exists in State law.

- Regional Monitoring:

- Watershed Program:

- Additional Monitoring:

The Copermittees' request that the Board specify the legal authority (federal or state) for the new mandates of the Tentative Order is important for several reasons. First, mandates required by state law which exceed the requirements of federal law potentially constitute unfunded state mandates. It is the Copermittees' intent to pursue an unfunded state mandate test case in order to help fund the increased costs of the Tentative Order which exceed the requirements of federal law. It is therefore imperative that the Board specify the basis for each mandate.

Second, to the extent mandates in the Tentative Order are based upon state law, they are subject to the accompanying requirements of state law. For example, Water Code section 13360 restricts the ability of the Regional Board to dictate the manner of compliance with requirements imposed under state law. Many of the mandates of the Tentative Order are highly prescriptive and, if based upon state law, inconsistent with Water Code section 13360.

Third, the legal authority for the mandates in the Tentative Order is important because the Copermittees must make sure that they have the legal authority to pass the mandates onto users of the MS4s through local laws and regulations. If the source of the legal authority for the mandate is unclear, the Copermittees' authority to regulate on a local level will also be unclear. Similarly, without a legal basis clearly shown, the Copermittees will have difficulty bringing enforcement actions. Finally, it will be difficult for the legal counsels of Copermittees to make the certification required by Section C.2 unless there is a clear delineation of the source of the mandate.

In essence, the Copermittees are merely requesting that the Regional Board specify its legal authority for the mandates in the same manner that it is asking the Copermittees to certify their legal authority for the mandates imposed by the Tentative Order.

III. THE SCOPE OF THE MS4 AND RECEIVING WATERS

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IV. OVER BREADTH AND VAGUENESS

A. Overreaching and Overbreadth

1. Overreaching Under Requirements under 40 C.F.R. 122.26 (d)(2)

Section C.2 of the Draft Permit (page 15) requires a "statement certified by its chief legal counsel that the Copermittee *has taken the necessary steps to obtain and maintain full legal authority to implement and enforce* each of the requirements contained in 40 C.F.R. 122.26(d)(2)(i)(A-F) and this Order." (emphasis added). In particular, the statement shall include a "finding of adequacy of enforcement tools to ensure compliance with this Order." Section C.2 of the Draft Permit (page 15).

A reading of 40 C.F.R. 122.26(d) does not impose the type of certification required in the Draft Permit. In fact, 40 C.F.R. 122.26(d)(i) simply states in relevant part that the permittee must demonstrate that it "can operate pursuant to legal authority established by statute, ordinance or series of contracts. . . ." 40 C.F.R. 123.25, which imposes the requirements on all state programs, provides no greater authority than is contained in 40 C.F.R. 122.26(d). Therefore, Section C.2 should be amended to require a certification by the copermittees chief legal counsel that the copermittee has the legal authority to implement and enforce the requirements under 40 C.F.R. 122.26(d)(i) and the Order.

2. Infringement upon the Attorney Client Relationship

As drafted, section C.2 of the Draft Permit infringes upon the attorney client relationship. In accordance with California Rules of Professional Conduct, Rule 3-100(A), "[a] member shall not reveal information protected from disclosure by Business and Profession Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule." It is also the duty of an attorney to counsel or maintain those actions or proceedings only as appear to him or her legal or just. Business and Professions Code section 6068(c). An attorney must employ, for the purpose of maintaining the causes confided to him or her, those means only as are consistent with truth, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law. Business and Professions Code section 6068(d).

By requiring the chief legal counsel to state that his or her client has taken the "necessary steps to obtain and maintain full legal authority to implement and enforce each of the requirements contained in 40 C.F.R. 122.26(d)(2)(i)(A-F) and the Order", potentially places counsel at odds with his or her client. It is not the obligation of Counsel to determine the necessary steps or actions to implement and enforce the requirements under the Permit, including allocation of resources and funding. Those decisions remain within the jurisdiction of the legislative body of each copermittee. Therefore, any opinions held by Counsel regarding the

level of adequacy of those decisions remain the work product of the attorney and the type of communication that stays between the attorney and the client.

As such, section C.2 should state that "[e]ach Permittee shall include as a part of its JURMP a statement certified by its chief legal counsel that the Copermittee has the legal authority to implement and enforce each of the requirements contained in 40 C.F.R. 122.26(d)(i) and this Order. Subsection d should also be deleted for the same reasons stated above.

B. Vagueness

The Permit contains many provisions that are vague. The Permit, therefore, could not be enforced nor can the Copermittees know how to comply with its terms. In certain circumstances, the Copermittees will not know whether their conduct is necessarily proscribed. In other instances, the terms of the Permit fail to provide an ascertainable standard of conduct. Given the vagueness of certain provisions, Copermittees could suffer arbitrary enforcement.

For example, section B.1 (page 12) of the Draft Permit states that "[e]ach Copermittee shall *effectively* prohibit all types of non-storm water discharges . . ." The intended import or meaning of using the term *effectively*, to modify prohibit, is unclear. It suggests that if a Copermittee *simply* prohibited all types of non-storm water discharges, such conduct would potentially constitute a violation of the Permit. Moreover, the second portion of the sentence, "or not prohibit in accordance with sections B.2 and B.3 below" does not include the term *effectively*, suggesting the drafters intended to distinguish between the two. It defies logic to suggest that someone could be ineffectively prohibited from discharging. The Copermittees are left guessing what conduct is proscribed.

Similarly, section E.1 (page 43) of the Draft Permit states in relevant part that "[e]ach Copermittee shall *fully* implement all requirements of section E of this Order no later than July 1, 2007 . . . ." The section goes on to state that ". . . . each Copermittee shall collaborate with the other Compermittees within its watershed(s) to *at a minimum fully* implement its Watershed URMP . . . ." *Implement* means to put into effect. Oxford American Dictionary, 1986. Absent the superfluousness of the term *fully*, the phrase "*fully* put into effect all the requirements of section E of the Order" is not an ascertainable standard of conduct. Moreover, the use of the terms *fully* in conjunction with *at a minimum* conveys contradictory requirements.

In addition to these two examples, the following examples also lack an ascertainable interpretation:

- Section B.2 (page 13): ". . . . identifies the discharge category as a *significant source of pollutants* to waters of the United States . . . ." This phrase is not defined and therefore is susceptible to different interpretations.

- Section D.3.a(1) (page 30): "The inventory shall include the name, address (if applicable), and a description of the area/activity, which pollutants are *potentially* generated by the area/activity. . . ." The use of the term potentially can lead to arbitrary enforcement.

- Section E.2.h (page 44): "Annually evaluate the pollutant reduction effectiveness of the *potential* . . . . activities . . . " How does a Copermittee ascertain whether it has properly evaluated the effectiveness of a *potential* activity?

- Section F (PAGE 46): use of the phrase *fully implement* in the first paragraph and implement in the second paragraph, all pertaining to the requirements under section F. See above discussion.

V. MISCELLANEOUS COMMENTS

- Section A.3.C of the Tentative Order permits the Board to take action to enforce any provision of the Order while the Copermittees prepare and implement the reports required by the iterative process in Section A.3.9. Please explain how this Section relates to 33 U.S.C. § 1342(k).

- Section E.2.i of the Fact Sheet/Technical Report for Tentative Order (page 76) misstates the facts. The first and second paragraph on page 76 reference findings by the Regional Board. However, no formal action was taken by the Regional Board resulting in findings. Rather, in June 2005, a Notice of Violation (NOV) Regional Board *staff* issued a Notice of Violation. Moreover, in their response to the NOV, the Copermittees never took issue with the lack of clarity or specificity in Order No. 2001-01. Rather, the NOV lacked the requisite specificity. This distinction is important as the Draft Fact Sheet/Technical Report justifies the additional WURMP requirements based on the misstatement of facts. The Copermittees have never alleged the WURMP requirements in the existing Permit are unclear or lack adequate specificity.

June 21, 2006 Regional Board Meeting
Item 3, Supporting Document # 9

H. City of Imperial Beach

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City of Imperial Beach, California

www.cityofib.com

OFFICE OF THE MAYOR

June 6, 2006

Mr. John Robertus
SDRWQCB
9174 Sky Park Court
San Diego, CA 92123

Via Fax: 858-571-6972

RE: Proposed Tentative Order #2006-0011 (Draft Municipal Stormwater Permit)

Dear Mr. Robertus:

As Mayor of a coastal city that is affected by pollution in the ocean and the San Diego Bay, I am very concerned that mitigating actions be taken to clean up our receiving waters, but I'm also concerned with three major aspects of the proposed stormwater permit.

First, the permit holds jurisdictions within the United States responsible for the Tijuana River watershed. This may be required by law, but it ignores the reality that the largest, fastest growing city in the region and greatest contributor to pollution in the Tijuana River Watershed is Tijuana. Therefore, I request that an allowance or waiver be granted to copermittees held responsible for the Tijuana River Watershed. Such a waiver or allowance would clearly recognize the impact made by the City of Tijuana and the futility of achieving our goals unless Tijuana takes much more aggressive actions to prevent pollution from entering the Watershed. Such efforts by Tijuana will also require major assistance from our federal government, NAD Bank, NGO's or other agencies outside of Tijuana. Without a comprehensive program, we will achieve little, if anything. If revisions are needed in federal and/or state legislation in order to grant such a waiver, I'd be happy to work with you to get them.

My second major concern is the cost of potential stormwater management requirements. These are tough fiscal times for cities, and our citizens appear unwilling to raise fees even though they may want clean water. We have service demands that exceed our revenues, and our City Council does its best to fund high priority, fundamental services such as public safety. Our limited resources provide only the bare minimum of services, and I can assure you that we have no extra frills. We even raised a fee through the sanitation bills, but it is getting more difficult to do this due to citizen dissatisfaction and pending litigation. I strongly request that you allow cities greater flexibility in methodologies and more time to implement necessary actions. Grant us more time over which to spread the costs of stormwater management.

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 423-8303 fax: (619) 628-1395

Thirdly, it is my understanding that some of your requirements are unfunded state mandates. Local elected officials worked hard for the passage of Prop 1A, and our constituents do not approve of State Government or its agencies passing the costs of good intentions down to local governments. Please carefully review the proposed permit and either eliminate unfunded state mandates or secure state funds to support them. It would be a shame to have to litigate this question if you can make appropriate changes now.

Thanks you for your consideration of my comments.

Sincerely,

Diane Rose

Diane Rose
Mayor

Cc: Senator Dianne Feinstein
Senator Barbara Boxer
Representative Susan Davis
State Senator Denise Ducheny
Assemblyman Juan Vargas

Phil Hammer ✓H

City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

May 18, 2006

2006 MAY 26 P 12:37

SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

Mr. John Robertus
San Diego Regional Water Quality Control Board
9174 Sky Park Court
San Diego, CA 92123

RE: TENTATIVE ORDER 2006-0011 (DRAFT MUNICIPAL STORWATER PERMIT)

Dear Mr. Robertus,

Thank you for the opportunity to comment on Tentative Order 2006-0011 – the Draft Municipal Stormwater Permit for the San Diego region. Enclosed with this letter is a set of comments and concerns based upon close review of the Draft Permit and its potential impact on the City of Imperial Beach. Comments range from requests for clarification to more extensive critiques of proposed requirements. In all cases, the City has endeavored to justify its comments with a sound rationale and to propose workable alternatives wherever possible. Despite some discomfort with a few of the Draft Permit's proposed changes, the City maintains its steadfast commitment to improving water quality and environmental health. Clean water is of vital importance to this City, and although we are proud of what has been accomplished to date, we recognize that more remains to be done. Unfortunately, like many other local governments, the City of Imperial Beach is faced with a multitude of worthwhile demands on its limited financial resources. Permit requirements should clearly demonstrate a nexus between further augmentation of local programs and likely improvements to water quality. It is the lack of such a nexus in the Draft Permit that drives many of the City's more significant comments.

The Draft Permit is logical in the way it balances jurisdictional, watershed, and regional levels of implementation; there are significant benefits to addressing different parts of the program at different scales. However, in too many instances, a "one-size-fits-all" approach has been favored over more flexible requirements that could be modified to fit individual circumstances at the jurisdictional and watershed levels. The reasoning for its support of "cookie cutter" requirements has been clearly articulated by Regional Board staff; a uniform Permit with minimum measurable outcomes facilitates enforcement of compliance with Permit mandates and assists in making cross-jurisdictional comparisons more meaningful. The upshot from our perspective, however, is that the Draft Permit would require the City to spend considerable energy satisfying requirements that are only marginally beneficial in the local circumstance.

825 Imperial Beach Boulevard • Imperial Beach, California • 91932 • (619) 423-8303 • Fax (619) 429-9770

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For example, strengthening controls on development may be appropriate in jurisdictions with considerable amounts of undeveloped land area, where erosion and increased imperviousness are real concerns. It is less beneficial in highly urbanized cities such as Imperial Beach where the capacity to infiltrate and treat runoff from development is significantly limited, and where watersheds are substantially built-out.

In some instances, the Draft Permit proposes requirements that are simply inequitable across jurisdictions. For example, the Draft Permit would require the County's five smallest cities, though they comprise only 1% of total land area and 3% of total population, to implement 20% of the required watershed-based activities over the course of the next five-year permit cycle. The Technical Report does not acknowledge the equity implications of the new watershed requirements, nor does it provide a sound justification for inequity based upon the need to improve water quality. To fully address the Draft Permit's intent, watershed-based activities will require significant expenditures above current levels. It is, therefore, extremely important that a more equitable and practical approach be identified.

Related to the above points, the Tijuana River Watershed presents a set of circumstances unique from other watersheds in the region. Most important of these is that 75% of the watershed falls within the jurisdiction of Mexico. Finding D.1.a in the Draft Permit states, "Absent evidence to the contrary, [the] continual assessment, revision, and improvement of urban runoff management program implementation is expected to ultimately achieve compliance with water quality standards." The Tijuana River Watershed is clearly an exception to this statement. Until long-term solutions can be found, larger cross-border water quality issues will continue to trump any measurable gains that can be achieved by implementing urban runoff management programs on this side of the border. Yet, the Draft Permit calls for Imperial Beach to continually augment its urban runoff management program until water quality standards are met. This is an unachievable goal.

We strongly urge the Regional Board to consider the attached comments submitted on behalf of the City of Imperial Beach City Council, and to make changes to the Draft Permit as necessary. We also encourage a close reading of the regional comments submitted on behalf of all Copermittees. Significant energy and dialogue have been devoted to formulating comments that are well supported by over 15 years of experience in implementing urban runoff management programs at the local level. Please contact Todd Snyder at (619) 628-1370 with any questions about the issues discussed above or in the attached set of comments.

Sincerely,

Gary Brown

Gary Brown
City Manager

Cc: Environmental Programs Manager

Attachment: Comments on Tentative Order R09-2006-0011

Comments on Tentative Order 2006-0011
Draft San Diego Region Municipal Stormwater Permit

Submitted by the City of Imperial Beach
May 18, 2006

General Comments

1. Interpretation of Tentative Order findings and requirements is, in many cases, dependent upon the definition of keywords and phrases in Attachment C. It would be helpful if the permit text called attention to keywords and phrases that are defined in Attachment C by using a different font (i.e., italics, bolded, or underlined text). This would indicate that additional detail must be referenced for a full understanding of the requirement. An alternative would be to footnote each defined term at first use.

Findings – Discharge Characteristics

2. Table 2 on Pages 3 and 4 of the Tentative Order lists all water quality impairments identified on the State Water Resources Control Board's most recent Clean Water Act Section 303(d) List of Water Quality Limited Segments. The listings are organized by watershed management area (WMA), but do not specify which particular receiving water segments the listings apply to. The table gives the false impression that water quality impairments apply to the entire WMA, rather than to specific segments of the receiving water. For example, Table 2 lists nine pollutants for the San Diego Bay WMA. In reality, most of these impairments affect only the northern portion of the WMA.

3. Finding C.8 on Page 4 of the Tentative Order states, "runoff leaving a developed urban area is significantly greater in runoff volume, velocity, peak flow rate, and duration than pre-development runoff from the same area." The Fact Sheet contains no justification for this statement with respect to increases in the duration of post-development runoff. Page 20 of the Fact Sheet actually asserts the contrary: "increases in population density and imperviousness result in changes to stream hydrology including ... decreased travel time to reach receiving water." The finding should be augmented if there is adequate evidence suggesting that development leads to flow durations that are significantly greater than those of pre-development. If there is no evidence to suggest that this is true, flow duration should not be regulated.

Findings – Urban Runoff Management Programs

4. In reference to the maximum extent practicable (MEP) performance standard, Finding D.1.a on Page 5 states, "as urban runoff management knowledge increases, the Copermittees' urban runoff management programs must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc." This language is inconsistent with Page 22 of the Fact Sheet, which suggests that, "Reducing the discharge of storm water pollutants to the MEP

requires Copermittees to assess each program component and revise activities, control measures, best management practices (BMPs), and measurable goals, as necessary to meet MEP." The latter statement conforms with federal law; the former does not. Program modification and assessment are not open-ended requirements as currently suggested in the draft permit text. Rather, they are constrained and governed by the MEP standard. That fact is crucial and must be acknowledged in the language of the Tentative Order.

Finding D.1.a also states, "Absent evidence to the contrary, [the] continual assessment, revision, and improvement of urban runoff management program implementation is expected to ultimately achieve compliance with water quality standards." This is certainly not the case for the Tijuana River Watershed, where approximately 75% of the watershed's total land area is beyond Copermittees' control. Until viable long-term solutions can be found, larger cross-border water quality issues will continue to trump any measurable gains that can be achieved by implementing urban runoff management programs on this side of the border. Yet, the Draft Permit calls for watershed Copermittees to continually augment their urban runoff management programs until water quality standards are met. This is an unachievable goal.

5. Page 25 of the Fact Sheet discusses Finding D.1.c on Page 6 of the Tentative Order. In part, the discussion states, "Rather than being substantive components of the Order itself, the Copermittees' urban runoff management plans are simply descriptions of their urban runoff management programs required under the Order ... In this manner, the plans are not functional equivalents of the Order. For these reasons, the Copermittees' urban runoff management plans need not be an enforceable part of the Order." The City strongly supports this language. In the past, Regional Board staff has indicated that anything written in a Copermittee plan is considered to be an enforceable extension of the Permit. The Fact Sheet correctly states the issue, but the language is important enough to be included in the text of the Order, rather than buried in a supporting technical document.

Findings – Statute and Regulatory Considerations

6. Section A.3.a.1 on Pages 11 and 12 states, "Upon a determination by either the Copermittee or the Regional Board that MS4 discharges are causing or contributing to an exceedance of an applicable water quality standard, the Copermittee shall promptly notify and thereafter submit a report to the Regional Board that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards ... The report shall include an implementation schedule." This requirement makes the assumption that all exceedances observed from the MS4 can be confidently traced to an identified source. This is not true in the majority of cases, especially for pollutants such as bacteria that are ubiquitous and diffuse. A source or sources of the pollutant in question must first be identified before additional BMPs can be appropriately selected and implemented. It is therefore recommended that the Draft Permit text be amended as follows: "Upon a determination by either the Copermittee or the Regional

Board that MS4 discharges are causing or contributing to an exceedance of an applicable water quality standard, *and where that discharge has been traced to an identified source or sources*, the Copermittee shall promptly notify and thereafter submit a report to the Regional Board that describes BMPs that are currently being implemented ..."

Development Planning Component

7. Section D.1.c on Page 16 would mandate that Copermittees require all development projects to implement "applicable and effective pollution prevention BMPs" as well as "site design BMPs where feasible which maximize infiltration, provide retention, slow runoff, minimize impervious footprint ..." Attachment C defines pollution prevention as "practices and processes that reduce or eliminate the generation of pollutants, in contrast to source control BMPs, treatment control BMPs, or disposal." It is the City's understanding that the Regional Board is using the terms pollution prevention BMPs and site design BMPs synonymously in this instance since all pollution prevention strategies would occur at the site design phase. If this is the case, there is no need for duplicative requirements. Further confusing the issue is the fact that pollution prevention BMPs are required "at a minimum" whereas site design BMPs are required "where feasible." This presents inconsistency. Subsequent sections of the Tentative Order (e.g. Commercial/Industrial Component, Residential Component) require the implementation of pollution prevention BMPs "where feasible". The latter is the more appropriate standard.

8. Section D.1.d.1 defines a Priority Development Project (i.e., SUSMP project) as "a) all new Development Projects, and b) those redevelopment projects that create, add or replace at least 5,000 square feet of impervious surfaces on an already developed site, that fall under the project categories or locations listed in section D.1.d.(2)." This statement is poorly worded. A literal interpretation would suggest that all new development projects, regardless of project category, would be considered a Priority Development Project. It is the City's understanding that this is not the intent of the requirement. As such, the following revised text is recommended: *Priority Development Projects are: a) all new Development Projects that fall under the project categories or locations listed in section D.1.d.(2), and b) those redevelopment projects that create, add or replace at least 5,000 square feet of impervious surfaces on an already developed site, and which fall under the project categories or locations listed in section D.1.d.(2).*

9. Section D.1.d.4 on Pages 18 and 19 would require every Priority Development Project (i.e., SUSMP project) to implement at least one BMP from each of two lists of site design BMPs. Compliance with the second of these lists (Section D.1.d.4.b) will often be infeasible for projects in substantially built-out areas. There are only three choices: 1) conserve natural areas, 2) construct streets, sidewalks, or parking lot aisles to the minimum widths necessary, provided that public safety and a walkable environment for pedestrians are not compromised, and 3) minimize the impervious footprint of the project. First, there are few, if any, natural areas to conserve in built-out areas. Second, most redevelopment projects make use of existing infrastructure, which makes construction of streets and sidewalks to the minimum widths necessary an irrelevant

option. A "minimum width necessary" standard is also unenforceable given its many potential interpretations. Third, minimization of the impervious footprint is an overly subjective standard. There is no reasonable way for a Copermittee to be assured that a project's impervious footprint has been "minimized" by the project proponent. The Fact Sheet does not adequately explain the rationale for dividing site design BMPs into two lists. It simply states that BMPs from the first list have not been commonly implemented by Priority Development Projects in the past. That is not the case in the City of Imperial Beach, where all development projects subject to public improvements, regardless of priority status or SUSMP coverage, are required to drain rooftops into pervious areas prior to discharge to the MS4. The Regional Board has not adequately justified how separating minimum site design BMP requirements into two artificial groupings would benefit water quality. At the very least, priority development projects should be given the discretion to choose two site design BMPs from either of the lists in D.1.d.4.a and D.1.d.4.b.

10. Section D.1.g.3 on Page 25 would exempt certain priority development projects from implementing hydrologic control measures under the Hydromodification Management Plan (HMP) where the potential for erosion or other impacts to beneficial uses is minimal. One such exemption is "construction of projects in highly impervious (e.g., >70%) watersheds." It is unclear whether minimum impervious area would apply to the watershed as a whole (i.e., Tijuana River Watershed in its entirety), or only to smaller sub-basins. This should be clarified. The City's understanding is that all priority development projects within its jurisdiction would be exempt from implementing hydrologic control measures under the HMP since the City is substantially built-out and the impact of any single project on downstream erosion or hydromodification would be minimal. SUSMP requirements would, of course, continue to be applied for all applicable projects.

Construction Component

11. Section D.2.c.1.a on Page 27 would require each Copermittee to designate pollution prevention BMPs for all construction sites. Existing regulations require pollution prevention BMPs "where feasible" and the Fact Sheet contains no rationale for this change.

12. The City seeks clarification on Section D.2.d.6.f on Page 29, which would require the creation of a written inspection record for each construction inspection performed. It is the City's understanding that written documentation logged into an electronic tracking database immediately following an inspection would satisfy this requirement. If the requirement is to document each inspection on a hard copy "field sheet", the City would argue that this contributes to the creation and maintenance of unnecessary paperwork.

Existing Development Component

No Comments

Illicit Discharge Detection and Elimination Component

13. Section D.4.g on Page 39 would require Copermittees to prevent, respond to, contain, and clean up all sewage and other spills that may discharge into its MS4 from any source (including private laterals and failing septic systems). With respect to sewage spills, this requirement is redundant with other State mandates issued under separate regulatory programs. As such, its inclusion is unnecessary in this Order.

Education Component

14. D.5.b.3 on Page 42 would require each Copermittee to participate in the development and implementation of a plan to educate residential, general public, and school children target communities. The feasibility of educating school children is contingent upon obtaining authorization from local school districts and classrooms to conduct such activities. It should, therefore, be encouraged in the Permit, but not required.

Watershed Urban Runoff Management Program

15. The watershed activity requirements in Sections E.2.i.1 and E.2.k.1 on Page 44 are inequitable and impracticable for many jurisdictions. For example, the Cities of Imperial Beach, Solana Beach, and Del Mar, because they contain land area in multiple watershed management areas (WMAs), would each be required to annually implement two "watershed water quality activities" and two "watershed education activities" in each WMA, for a total of eight activities per year per jurisdiction. This requirement is disproportionate to the level of activity required of many larger jurisdictions, which boast greater populations, more developed land area, and consequently, more potential pollutant sources. For example, Imperial Beach, Solana Beach, and Del Mar collectively comprise 1.6% of the total regional population and 0.4% of total developed land area[1]. They would, however, be required to implement 14% of the total watershed activities in the region. This inequity is significant because of the considerable additional expenditures that would be required to comply with the Draft Permit's proposed watershed activity requirements. Regional Board staff has on numerous occasions provided examples of what it considers to be potential watershed water quality activities. The following is a partial list that draws upon examples given during Regional Board staff's April 26, 2006 public workshop on Tentative Order 2006-0011:

- Install treatment control BMPs
- Conduct a source identification study
- Conduct a BMP pilot study
- Increase inspections of construction sites or commercial businesses
- Increase cleaning of storm water conveyance systems

[1] Data obtained from www.sandag.org, based on figures from the 2000 Census.

Each of these activities would necessitate additional expenditures and/or staffing increases that significantly exceed current levels. The impracticability of such requirements is compounded by the fact that the Draft Permit is proposing to increase baseline implementation in virtually every component of the JURMP. As a result, potential watershed activities that "significantly exceed" JURMP implementation will be increasingly more difficult to identify and achieve.

Over the course of the five year permit cycle, a jurisdiction with land area in two watersheds would be required to implement 20 watershed water quality activities that 1) are newly implemented under the new permit, 2) abate the watershed's high priority water quality problems and pollutant sources, 3) significantly exceed the level of implementation required under the jurisdictional program, and 4) conform to a watershed strategy collectively developed by the Copermittees in the watershed. Monitoring, planning, and other activities that do not directly abate pollutants would not be considered qualifying activities under this definition. For some jurisdictions, the Draft Permit's watershed requirements are simply impracticable when added on top of already extensive jurisdictional implementation.

The proposed watershed activity requirements are in direct conflict with Finding C.9 on Page 5 of the Tentative Order, which suggests that there is a proportional relationship between the extent of urban development and resulting pollutant loads. The table below illustrates the disproportionate activity burden on certain jurisdictions in terms of their population and developed land area.

Jurisdiction	# Watersheds	# WURMP Activities/ Year	# WURMP Activities Per Permit Cycle	Total Population*	Total Developed Acres*	Population Per Activity	Developed Acres Per Activity
Carlsbad	1	4	20	78,247	16,777	19,562	4,194
Chula Vista	1	4	20	173,556	19,679	43,389	4,920
Coronado	1	4	20	24,100	8,675	6,025	2,169
Del Mar	2	8	40	4,389	1,084	549	135
El Cajon	1	4	20	94,869	8,646	23,717	2,161
Encinitas	1	4	20	58,014	10,846	14,504	2,711
Escondido	3	12	60	133,559	19,244	11,130	1,604
Imperial Beach	2	8	40	26,992	2,828	3,374	353
La Mesa	2	8	40	54,749	5,451	6,844	681
Lemon Grove	1	4	20	24,918	2,369	6,230	592
National City	1	4	20	54,260	5,709	13,565	1,427
Oceanside	2	8	40	161,029	21,940	20,129	2,743
Poway	3	12	60	48,044	14,212	4,004	1,184
San Diego	5	20	100	1,223,400	195,881	61,170	9,794
San Marcos	1	4	20	54,977	8,345	13,744	2,086
Santee	1	4	20	52,975	5,597	13,244	1,399
Solana Beach	2	8	40	12,979	2,136	1,622	267
Vista	2	8	40	89,857	10,307	11,232	1,288

Jurisdiction	# Watersheds	# WURMP Activities/ Year	# WURMP Activities Per Permit Cycle	Total Population*	Total Developed Acres*	Population Per Activity	Developed Acres Per Activity
County of SD	8	32	160	442,919	1,316,994	13,841	41,156
Port of SD	1	4	20	N/A	N/A	N/A	N/A
Airport Auth.	1	4	20	N/A	N/A	N/A	N/A
Totals		**168**	**840**	**2,813,833**	**1,676,719**		

* Figures taken from 2000 census data posted at www.sandag.org

Program Effectiveness Assessment

16. Sections I.1.b, I.2.b, and I.3.b on Pages 49, 50, and 51 would require each Copermittee to utilize results from its effectiveness assessment to modify activities and BMPs in order to maximize urban runoff management program effectiveness. This statement needs a qualifier such as "to the maximum extent practicable", "within reason", "taking into account cost considerations", etc. Otherwise, maximizing urban runoff management program effectiveness is a boundless goal with no limitations.

Reporting

17. Sections J.1.a, J.2.a, and J.3.a on Pages 53 and 55 would require updated JURMPs, WURMPs, and RURMPs to describe all activities that "have been undertaken" or "are being undertaken" to implement requirements of the permit. The Copermittees have invested countless hours developing comprehensive annual reports over the course of the current permit cycle. Requiring historical information to be regurgitated in the updated plans would be superfluous. The language should be changed to include only those activities that a Copermittee "will undertake". These are intended as plans, not activity summaries.

I. City of Lemon Grove

CITY OF LEMON GROVE

"Best Climate On Earth"

Office of the Mayor

June 7, 2006

Mr. John Robertus
Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court
San Diego, CA 92123

SUBJECT: Proposed Tentative Order # R9-2006-0011 (Draft Municipal Stormwater Permit)

Dear Mr. Robertus:

I appreciate the opportunity to provide written comments regarding the draft municipal stormwater Permit. I request that this letter be forwarded to members of the San Diego Regional Water Quality Control Board as part of the June 21, 2006 Board package for the draft Permit public hearing.

The City of Lemon Grove is committed to improving the region's quality of water through its storm water program and is proactively complying with the Federal and State clean water legislation (Clean Water Act and NPDES Permit Order 2001-01). In fact, the City has provided perhaps a greater share of leadership in this area than expected or required. Our program and leadership efforts have come at a significant cost—especially in light of State funding cuts and the escalating cost to provide the same level of municipal services. The cost of our storm water program has dramatically increased the level of Permit awareness in staff, elected officials and the public.

The City has concerns with the draft Permit and believes that aspects of the draft Permit constitute an unfunded mandate because they exceed the requirements defined by the Federal Clean Water Act. The California State constitution requires that State mandates (which include aspects of the draft Permit) are required to be funded by the State. Lemon Grove requests that the Board consider the State constitutional ramifications of the draft Permit.

Given its tight supply of resources, Lemon Grove has made difficult decisions and tradeoffs in order to comply with the expectations of the current Permit. First, for the past few fiscal years, the City Council has cut back on highly demanded services (including law enforcement staff) in order to fund the storm water program. Second, it has introduced an unpopular fee for both residents and businesses for storm water services—similar fees established by neighboring communities are currently being challenged legally. The repeal of these fees in Lemon Grove would be detrimental to the storm water program or would cause additional cuts in City services. Additional cuts to municipal services would be in the areas of code enforcement, public safety and park/recreation services, as other department budgets are already at a minimum.

Lemon Grove has worked closely with the other Copermittees to create a set of concise comments and equitable solutions. We support the analysis of the Copermittees and hope that the Board will give these comments serious consideration.

We would appreciate the Board and Board staff's providing written responses to the Copermittees' concerns to the draft Permit. The City believes this exchange of ideas and options opens the doors for continued collaboration between the Board and the Copermittees.

We thank the Board for its time and consideration to the concerns being presented by the Copermittees and other interested parties.

Sincerely,

Mary Teresa Sessom, Mayor
City of Lemon Grove

cc: Lemon Grove City Council
State Senator Christine Kehoe
Assemblywoman Shirley Horton

J. City of Poway

J

CITY OF POWAY

April 17, 2006

John H. Robertus
California RWQCB, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: Comments on Tentative Order No. R9-2006-0011

Dear Mr. Robertus:

Pursuant to Tentative Order No. R9-2006-0011, the City of Poway has two preliminary comments.

The first is that the City of Poway is requesting to be removed from its responsibility for the San Diego River Watershed. The justification for this request is that the City occupies only 120 acres of this watershed, all of which is protected habitat. This area is located on the top of Iron Mountain, as shown on the enclosed map. Because this land is zoned as Open Space – Resource Management, it can never be developed. This small area will remain in a natural state and does not have the potential to discharge pollutants to the watershed.

The City would prefer to concentrate its resources on the Peñasquitos and San Dieguito Watersheds, where it has developed and developable land. Your response to this request during the comment period will be appreciated.

On another matter, the City has previously requested to be the Lead Agency for the Peñasquitos Watershed during the current permit cycle, and is requesting to keep that authority under the new permit. The list of Watershed Lead Agencies in the Tentative Order has reverted to listing the City of Del Mar as the Lead Agency for the Peñasquitos Watershed. Please accept this letter as the City of Poway's formal request to remain the Lead Agency for this watershed.

The City of Poway will provide additional comments on the permit as part of the submittal from the Copermittees Group.

If you have any questions regarding these matters or require any additional information, please contact Danis Bechter, Engineering Inspection Supervisor/NPDES Coordinator, at (858) 668-4630.

Sincerely,

Rod Gould
City Manager

Enclosure

cc: Lauraine Brekke-Esparza, City Manager, Del Mar
Niall Fritz, Director of Development Services

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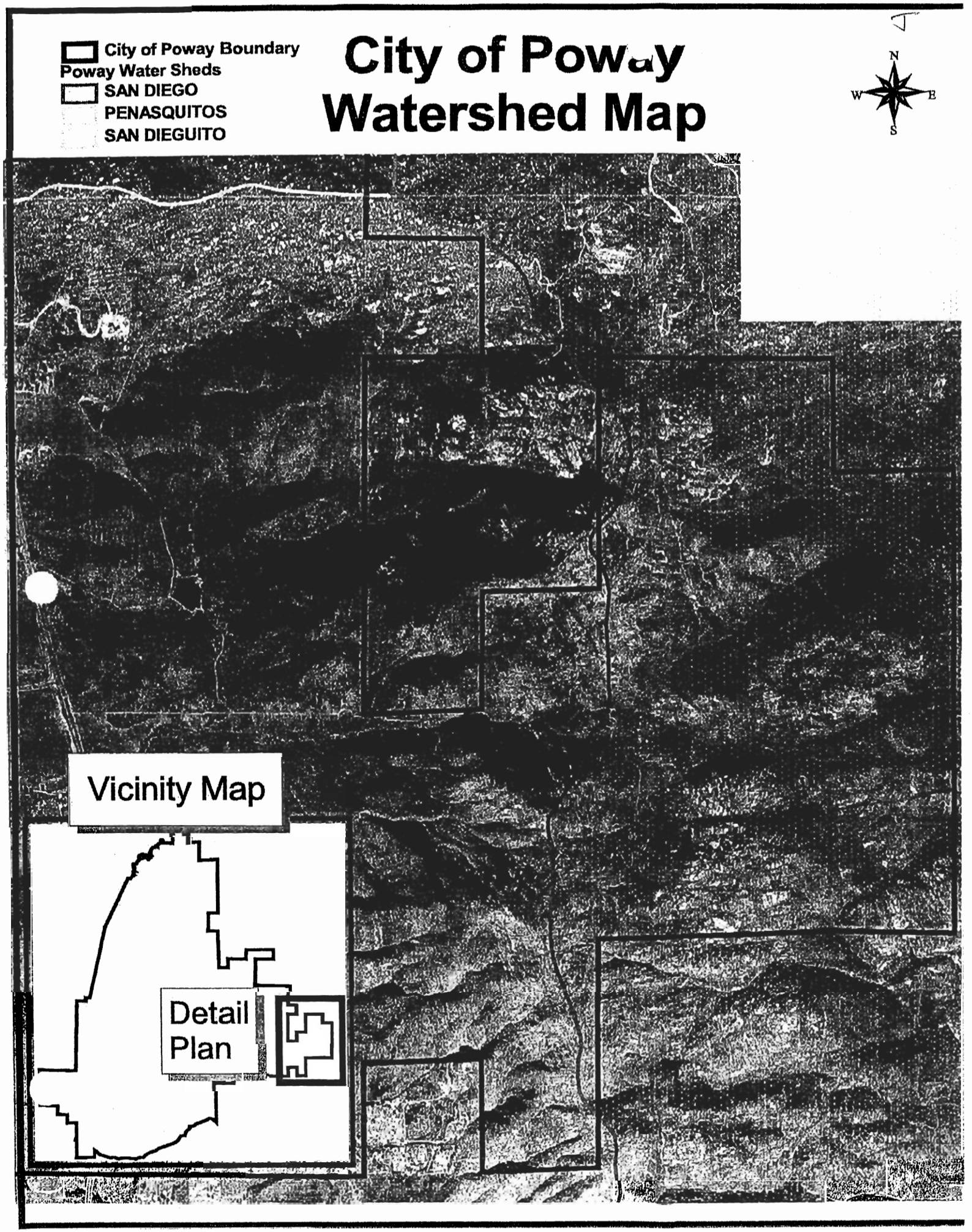
City of Poway Boundary
Poway Water Sheds
SAN DIEGO
PENASQUITOS
SAN DIEGUITO
City of Poway
Watershed Map
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Vicinity Map
Detail
Plan

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From: "Roger Morrison" <rmorrison@ci.poway.ca.us>
To: <phammer@waterboards.ca.gov>
Date: 5/2/2006 11:08:30 AM
Subject: Comments on Tentative Order No. R9-2006-0011

Phil,

As you discussed with Danis, here is a copy of the letter that our City Manager sent to John Robertus on April 17. Please let Danis know if you need anything else.

Thanks,

Roger

Roger D. Morrison
Management Assistant
City of Poway, Development Services Department
13325 Civic Center Dr
Poway, CA 92064
rmorrison@ci.poway.ca.us
(858) 668-4636
Fax: (858) 668-1212

City of Poway - Incorporated December 1, 1980 - Celebrating 25 Years of Service

Official City Correspondence

CC: "Danis Bechter" <dbechter@ci.poway.ca.us>

June 21, 2006 Regional Board Meeting
Item 3, Supporting Document # 9

K. City of San Diego

THE CITY OF SAN DIEGO

June 7, 2006

Mr. John Robertus
Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Subject: Review of Tentative Order No. R9-2006-0011

Dear Mr. Robertus:

Thank you for the opportunity to comment on the Regional Water Quality Control Board's Draft San Diego County Municipal Storm Water Permit (Tentative Order No. R9-2006-0011, hereinafter referred to as "Draft Permit") dated March 10, 2006. The City remains committed to protecting and improving water quality in our region, and we also agree with and support the intent of the Draft Permit. Simultaneously, the City recognizes our obligation to our citizens to maximize water quality efforts in the most efficient manner possible. To that end, the City remains committed to continuing work with the Regional Board to improve the efficiency and effectiveness of the Draft Permit. Therefore, the City's comments provided with this letter focus principally on identifying more efficient, cost effective ways to achieve the regulatory intent of various Draft Permit programs.

The City generated comments on the Draft Permit through two efforts. First, the City's Storm Water Pollution Prevention Division participated with the other Copermittees in recommending improvements to a handful of more broad, far-reaching issues. These comments were discussed during two public workshops held by the Regional Board (April 26 and May 24, 2006). Final Copermittee comments are being provided via the County of San Diego as the Principal Permittee. Second, the City's Storm Water Pollution Prevention Division led an internal City-wide assessment of the Draft Permit and prepared the attached table for the Regional Board's consideration and review (see Attachment). Due to the extensive level of detail and the inclusion of specific recommended strikeout/underline changes to the Draft Permit in the Copermittee comment letter, the attached City comment table supports and in some cases clarifies the City's position on various issues. Collectively, the two letters comprise the City's comments on the Draft Permit.

The most significant issues identified in the City's comment table are summarized below.

- Method and schedule for Hydromodification Management Plan development;
- Treatment control BMP maintenance tracking inspection frequencies & schedules;
- Construction sites inspection frequencies;
- Municipal separate storm sewer system maintenance priorities and frequencies;
- Municipal areas (streets, parking areas) sweeping frequencies & approaches;
- Structure/requirements of WURMP activities;
- Industrial and commercial facility inspection programs;
- Follow up procedures for investigations & inspections.

We appreciate this opportunity to share our comments, and look forward to continued open discussions with your Board Members and staff in finding ways to improve and protect water quality. If you have any questions please contact me at, (619) 525-8647, or Storm Water Specialist Drew Kleis at, (619) 525-8623.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sincerely,

Chris Zirkle
Deputy Director

CZ:dk

Attachment

CITY OF SAN DIEGO COMMENTS ON TENTATIVE ORDER NO. R9-2006-0011

Permit Section	Permit Page	Section Title/Topic	Reason for Proposed Changes/Comments	Comments/Proposed Changes
Numerous	15, et al	Use of the word "ensure"	The Permit uses the word "ensure" inappropriately in at least 38 locations throughout Section D of the Permit. For example, Section D., page 15, states that "Each Copermittee shall... ensure that urban runoff discharges do not cause or contribute to a violation of water quality standards." This restatement of the Prohibitions modifies the meaning of Discharge Prohibition A.3 to make Copermittees responsible for ensuring that discharges do not cause or contribute to a violation of water quality standards, rather than simply prohibiting such discharges from the City's storm drain. In the context of the City's role in implementing oversight programs for industries, such as commercial and industrial businesses, it is not feasible nor within the MEP standard to expect that the City can ensure that private entities will not discharge pollutants that cause or contribute to a violation of water quality standards.	Recommend that each of the sections using the term "ensure" in the Tentative Order be thoroughly reviewed for potential inconsistencies with the language in Sections A and B. To avoid ambiguity and potential internal conflicts, we recommend that they be removed from any sections other than A or B of the Tentative Order.
FINDINGS				
C – Discharge Characteristics				
C.9	5	Discharge Characteristics	This section (C.9.) attributes urban storm water pollution on development.	Finding should acknowledge that urban redevelopment many times eliminates sources of pollution by elimination of surface parking lots, elimination of impervious surfaces, etc.
D.1 – Development Planning				
D.1.d(7)	20	Site Design BMP Substitution Program	Streets exclusion would preclude the possibility of applying this approach to parkways with significant amounts of landscaping where highly effective site design could be applied. Granted, the approach should not be applicable to all roadway types, but criteria could be developed as part of the program to eliminate inappropriate application of the program.	Recommend that streets, roads, highways and freeways not be excluded in this program, if developed.

CITY OF SAN DIEGO COMMENTS ON TENTATIVE ORDER NO. R9-2006-0011

Permit Section	Permit Page	Section Title/Topic	Reason for Proposed Changes/Comments	Comments/Proposed Changes
D.1.d.(12)	22	Infiltration restrictions	Language in subsections supercedes last sentence in introductory paragraph, which gives Copermittees the authority to change the restrictions. This would not be possible as worded.	Recommend clarifying section so that restrictions can be modified.
D.1.e.	23	Treatment Control BMP Maintenance Tracking	Inspections are only one aspect of this program, which includes annual maintenance verification, maintenance agreements, and enforcement mechanisms. In addition, the threat of inspection serves as an effective tool to help ensure proper maintenance. Additionally, no other Permits in the State prescribe minimum inspection frequencies, and most have no requirement for this program whatsoever. The City's research into comparable programs outside of storm water reveals that the City's Industrial Pretreatment Program, a similar program regulated by the Regional Board, requires much lower inspection frequencies. Requiring inspections only during the dry season would preclude the possibility of identifying maintenance issues (violations) during the most critical time of year- the Winter when the BMPs will be performing. Allowing year-round inspections would also apply additional pressure to maintenance entities because the threat of inspection would be present every day. This is especially crucial during the Winter when maintenance is critical. Allowing year-round inspections would also reduce seasonal spikes in staffing needs. Program does not anticipate the continual growth in the program's BMP inventory, which would necessitate an ever increasing amount of inspections. Even at lower inspection frequencies, the City would required additional staff and resources each year.	Recommend inspection frequencies appropriate for a "spot check" program. Recommend allowing year-round inspections to allow for verification of maintenance during rain events. Recommend including an eventual limit to the total number of inspections required per year.

CITY OF SAN DIEGO COMMENTS ON TENTATIVE ORDER NO. R9-2006-0011				
Permit Section	**Permit Page**	**Section Title/Topic**	**Reason for Proposed Changes/Comments**	**Comments/Proposed Changes**
D.1.g	24-26	Hydromodification Management Plan	Massive regional effort would require analysis of specific stream segments in all 9 watersheds draining to the Pacific Ocean by July 15, 2008. Volume of work indicates proposed timeline would be insufficient to develop a comprehensive plan and allow for meaningful stakeholder participation. Draft language steers analysis towards specific methodology for determining when hydromodification would occur. May be inappropriate if research reveals other approaches are more effective/appropriate for the San Diego Region.	Recommend that the Permit allow adequate time to develop the HMP. Recommend allowing Permit flexibility so that the Copermittees can select approaches that best fit the region's large characteristics.
D.1.g.(3)	25	Exemption clause for projects that would not be subject to Hydromodification Management Plan requirements	The intent of the impervious criteria should be to exempt projects in already developed locations where downstream channels are already concrete lined or significantly hydraulically modified and would be unaffected by the project. The impervious criteria could potentially require "developed" (i.e., land that is either not susceptible to future development, such as open space parks, and developed areas) to still be required to implement HMP requirements on projects where the impervious criteria is not met. For example, the City's portion of the San Diego River watershed, that has a large amount of pervious open space (Mission Trails Regional Park), would likely not qualify for this exemption, even though the intent of the exemption would be met – the City's developable portion of the watershed is already built out and additional modification of the watersheds creeks/river is not expected with redevelopment.	Recommend modifying exemption language to consider a watershed's percent of land area susceptible to future development ("developability") rather than percent imperviousness.
D.1.g(6)	26	Interim Standards for Projects Disturbing 50 Acres or More	Interim projects in this category would be required to conduct site-specific hydraulic analysis of project's erosion impacts downstream, and recommend controls, when needed. Detailed analysis would result in additional cost for both public and private projects. In addition, subjective analysis would be difficult to plan check.	Recommend that the Permit allow the Copermittees to develop interim criteria (i.e., a range of rainfall event to be controlled) for projects to meet without conducting site-specific analysis.
D.2 – Construction				

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D.2.b.	27	Source Identification	Watershed based inventory is not used by the City because the City prioritizes and manages workload via other means (the City manages inspections based on geographic sectors and the water quality priority of each site, in addition to calls for inspections). Therefore, this requirement has little utility in the City's inspection processes. It would also not help improve our processes to prepare the inventory on a monthly basis. While it is appropriate for the Permit to mandate a level of effort in implementing major program areas (e.g., number of construction site inspections), the City should maintain the autonomy to manage it's databases in the most efficient manner possible.	Please clarify the intent of this permit section. If it was intended to be a tool used by the City, recommend deleting this section entirely and allowing Copermittees the flexibility to use database management tools/methods of choice.
D.2.c.(1)	27	BMP Implementation	The list is extensive and not all items would be applicable to all sites. The list would be more beneficial if presented as a suite of BMPs to consider as they are applicable to each individual project rather than a mandatory minimum. Additionally, construction BMPs are dynamic and change as construction progresses. This method does not seem to have the flexibility that is necessary for construction.	Recommend modifying second sentence to: "The designated minimum set of BMPs to be considered shall include:" Additionally, suggest moving item (k) into item (3) since treatment control is an elaborate construction BMP vs. a minimum.
D.2.c.(1)(c)	27	BMP Implementation	Sediment controls are not appropriate at all construction sites. Although minor in nature, you may have an indoor project but you have materials stored outdoors. Simply having it elevated or out of a flow path and then tarped would be a form of erosion control w/out a need for sediment control.	Recommend revising to state that erosion controls shall never be used as the single method where other measures are required or appropriate.
D.2.c.(1)(d)	27	BMP Implementation	There are projects that do not require erosion control, such as linear projects in the r-o-w.	There are projects that do not require erosion control, such as linear projects in the r-o-w. Recommend revising to state that sediment control cannot be used as the single or primary method where erosion control or other measures are required or appropriate.

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D.2.d.	28	Construction Site Inspection Frequencies	Many sites undergo periods of inactivity. These sites should not need to be inspected at the required frequency because the site in inactive. Increased inspection frequencies would require significant additional staff.	Recommend reducing required inspection frequencies if sites are inactive for more than 7 days.
D.2.e.	29	Enforcement of Construction Sites	There are potential legal ramifications of taking "immediate" action (e.g., wrongful issuance). This City initiates its process immediately, but the actual stop work issuance must occur after reviewing the site's history. The City first considers the notices issued to date for the site, historical cooperation of the contractor, and any other extenuating circumstances. Final decision is made with management to ensure the appropriateness of the decision. If there is an actual discharge, it is documented and referred to Storm Water Code Compliance for issuance of a NOV and a potential fine. Our process has been effective to date.	Recommend striking or clarifying "immediate."
D.3.a – Municipal Activities				

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Permit Section	Permit Page	Section Title/Topic	Reason for Proposed Changes/Comments	Comments/Proposed Changes
D.3.a.(3)(b)i. & ii.	30-31	Operation & Maintenance of Municipal Separate Storm Sewer System	Requirement to inspect and clean all inlets, catch basins and channels every year would "flatten" the City's prioritized maintenance schedule and redirect resources and cleaning efforts away from the most critical areas into areas that the City knows contain little/no trash. Would require significant additional staff and resources. May – Sep time frame is in conflict with other environmental regulatory requirements that prohibit activities during the summer breeding season within environmentally sensitive lands. Some cleaning may not be possible due to the need for environmental permits/clearances. 5-month window would also cause inefficient seasonal peaks in staffing needs.	Recommend proposing alternative strategy using a prioritized schedule of maintenance that addresses critical high volume structures first. With this prioritized strategy, "high-need" areas would be cleaned more often instead of ensuring all areas are cleaned at least once annually. With this more efficient approach, more total tons of trash/debris can be removed from our storm drain system. Recommend that the Permit allow inspection & cleaning year-round in accordance with the strategy proposed by the Copermittees.
D.3.a.(5)	31	Sweeping of Municipal Areas	Not all unimproved streets (paved streets without curb and gutter) are swept at least once annually, because they do not have a curb to collect litter and debris. Sweeping these streets would be highly ineffective, and would require additional staff and resources. In addition, this section requires sweeping after special events as the only option to prevent discharges, when other equally effective BMPs may be available.	Recommend modifying the Permit to clarify unimproved streets can be swept "as needed." Recommend allowing other BMP options after special events.
D.3.a.(7) (vii)	32	Inspection of Municipal Areas and Activities	City has one of the more comprehensive Special Event permit processes in the country with 60 reviewing steps. As proposed, City staffing may not be sufficient. Post-event clean up currently occurs ad hoc by residents and City responds when clean-up is poor. City then makes permit for future events more difficult to get. Inspection of each activity occurrence (each power washing event) is not practical or likely intended by the Board, but the Permit language is unclear.	Propose a spot check program for Special Events for the first year or two to gather data to see if existing permit program is effective. Use data to propose improvements/modifications. Propose language that would require the Copermittees to inspect at least one occurrence of each activity, or sub-sets of activities at least once annually.

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D.3.b – Industrial/Commercial				
D.3.b	33	Industrial and Commercial	It may be interpreted from this paragraph that the City would be responsible for implementing BMPs at private industrial and commercial facilities.	Recommend that the paragraph be modified to clarify that the City is responsible for implementing a program that requires the business to implement BMPs.
D.3.b.(1)	33	Source Identification	This section specifies in too great of detail what information must be captured in facility inventories. While it may be appropriate for the Permit to mandate a level of effort in implementing major program areas (e.g., number of site inspections), the City should maintain the autonomy to manage it's databases in the most efficient manner possible.	Recommend revising the Permit to require that the Copermittee shall develop a database to adequately manage/inspect facilities.
D.3.b.(2)	34	BMP Implementation	Per conversation with Regional Board staff, this section requires the City to require industrial and commercial facilities to implement an effective combination of non-treatment BMPs (e.g., good housekeeping, trash control, container coverage, etc.). The language however, does not specifically say that only non-treatment control BMPs would be required.	Recommend that the Permit language clarity that only non-treatment control BMPs would be required.
D.3.b.(2)(d), (e)	34	BMP Implementation	This section seems to suggest that the City would have to implement BMPs at these sites if an owner/operator fails to implement adequate BMPs.	Recommend deleting the Permit language that would require the City to implement BMPs, and leave language that directs the City to require industrial and commercial sites to implement BMPs.
D 3 b (3)(a)vii.	35	Education of Industrial and Commercial Sites	More time is required to continue to build a comprehensive database of commercial and industrial businesses (the list is now fragmented, and likely lacks some facilities, such as mobile businesses). Regional Coordination is also required to create a mechanism to identify, locate and provide compliance information to mobile businesses and independent often unlicensed businesses. This will take time to create.	Instead of notification during inspection, which may occur as frequently as once/year, education & outreach notification should be required once during the life of the permit (5 years), so that we have 100% notification of all sites by the end of the permit. This will allow time to develop a comprehensive database.

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D 3 b (3)(c)	35	Inspection of Industrial and Commercial Sites	The Regional Board staff's conclusion that Copermittees are inspecting 40% of their sites is inaccurate; the Copermittee-wide average is around 26%. The City's average is below 26%. Would require significant additional staff and resources to inspect at a rate similar to Copermittee average.	Recommend phasing the program over 3 years to allow programs to ramp up. Recommend inspection frequencies commensurate with current inspection frequencies. Recommend that alternative inspection methods (such as 3rd party inspections) be allowed to fulfill the inspection requirements.
D 3 b (4)	36	Regulation of Mobile Businesses	There is currently no mechanism to even identify mobile businesses that operate within the City. There is not enough information about the number of mobile businesses to make a meaningful assessment of how much or long it will take to implement this program. In addition, because mobile businesses often operate in many cities, program should be developed regionally for consistency.	Recommend extending the due date for this program until July 1, 2009 to allow time for development of a regionally-coordinated program.
D.4 – Illicit Discharge Detection & Elimination				
D 4 b	38	Develop/Maintain MS4 Map	Additional staff would be required to complete the mapping update and manage future updates. Because of the backlog of unmapped portions of the City's storm drain, this requirement is not achievable within a year.	Recommend the Board phase this requirement: Phase 1: inventory of only storm drain construction activities (repair vs. new construction) by July 2007. Phase 2: inventory of 50% of MS4 by July 08. Phase 3: inventory of the remainder of the MS4 by July 09.
D 4 d (1)	39	Investigations/ Inspections and Follow Up	The second sentence requires the use of numeric criteria when some indictors are non-quantifiable (e.g., visual and/or odor observations).	Recommend that the second sentence be modified to: "Each Copermittee shall develop/update and utilize numeric criteria action levels or best professional judgment standards.

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D 4 d (2)	39	Investigations/ Inspections and Follow Up	This requires conducting follow up investigations with in 48 hours of receiving results. This would require having enough personnel to conduct up to 23 investigations a day plus continue required routine monitoring. If this permit condition is adopted as is, a significant increase in staffing and water quality testing resources would be required. The justification for this tiered approach is to maximize the efficiency with which we eliminate illicit discharges by prioritizing efforts towards human sources that can be abated. Based on past experience obvious discharges, tier 1, can be determined visually and are easily tracked to a source. These cases should be a top priority. The subsequent tiers require laboratory analysis in order to determine if action levels have been exceeded, thus requiring more time before follow up efforts can be initiated. Results that fall into tier 2 in the past have been discharges that were caused by human action or inaction. Responsible parties are able to be identified and enforcement action taken. An example of this type of discharge would be a broken/leaking sewer lateral. Tier 3 investigations have typically been of a more chronic nature and although they exceed accepted standards due to the nature of the pollutant and warrant investigation, these should not be considered as high of a priority as "one time" Tier 1 discharges because the ability to determine the source of the exceedance does not drastically diminish over time. In addition, Tier 3 exceedances typically are the result of chronic and pervasive sources that would not be easily abated via an ICID program. An example of this would be copper exceedances in Chollas Creek. This is a chronic problem and has exceeded CTR levels in the past, a single point source has yet to identified, hence the metals TMDL for Chollas. Clearly, ICID programs are not the most appropriate program for abating pervasive metals exceedances in Chollas Creek. The final (4th) tier is typically characterized by either natural sources or by exempted sources. These would include ground water seeps, irrigation runoff, or permitted dewatering. Because these sources are generally not directly from human activities (and thus difficult or impossible to abate), these exceedances should be given the lowest prioritization.	We recommend the permit allow for a tiered approach to response times. This approach would be dependent upon the prioritized impact to the environment based upon visual observations, pollutant type and its laboratory analytical results. Suggested text follows: "Follow up investigations shall be responded to based on the following criteria: 1. Obvious illicit discharges shall be investigated immediately. 2. Follow up investigations shall be initiated within two business days, where results indicate a discharge that is a serious threat to human health and the environment. Example of this would include, but not be limited to, pH results of >=12.5 or <= 2, bacteria results where the total coliform and fecal coliform are equal and 50,000 MPN/CFU or greater, or where the ratio of total coliform: fecal coliform is 10:1, or MBAS results of 1.0 mg/L or greater. 3. Investigations shall be initiated within two weeks for results that indicate a potential discharge that poses a moderate threat to human health or the environment. Examples would include bacteria results that exceed established action levels for 2 or more indicator bacteria, metals or pesticides results that exceed California Toxic Rules standards, or any combination of results that indicate the likelihood of an illegal discharge (i.e. Ammonia and Phosphate both exceed action levels). 4. Investigations shall be initiated within 30 days where applicable and feasible for those results that indicate a discharge that poses a low threat to human health or the environment. Examples include high conductivity reading, nutrient results that are at the established action levels for one constituent only. For results that indicate an illicit discharge that is also accompanied by a separate report that a discharge that would account for the results occurred and was addressed."

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D.4.g.	39	Prevent And Respond To Sewage Spills (Including From Private Laterals And Failing Septic Systems) and Other Spills	Would require the City to clean private sewer lateral spills in storm drains, including open space canyons that convey storm water runoff. If it is a private SSO (sanitary sewer overflow), the sewer lateral owner would either have to pay a private contractor to do this work, or the city would bill them for similar services.	Please clarify whether and under what circumstances potable water can be used to clean sewage from the MS4.
D.5 – Education				
D.5. a. (2)	41	Emphasize Education of Mobile Sources	Mobile businesses are hard to reach and collectively permit. County does not currently permit them.	Recommend moving section to Regional Urban Runoff Management Program. Notification should be allowed to occur over the life of the permit, so that we have 100% notification by the end of the permit. This will allow for the reality that many businesses are difficult to locate.
D.5.b.(1).(b) & D.5.b.(2)	42	Education – Specific Requirements	It is not necessary to adequately implement BMPs, to require that "all" construction workers in the field be educated on all aspects of regulations/requirements. A laborer, for example, does not need to know details of the State Construction NPDES process/requirements, just how to adequately install and maintain BMPs and practice good housekeeping. Field Engineering also has a single point of contact with contractors on CIP projects for efficient communication. This requirement could create confusion.	Recommend requiring education of appropriate personnel of aspects/regulations germane to their work.
D.6 – Public Participation – No comments				
E. – Watershed Urban Runoff Management Plan				

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E.2.i(1), E.2.k(1)	44, 45	Short-Term Watershed Activities	Budgetary limitations, approvals processes, permitting and design processes make it difficult to develop and implement new water quality activities annually. To control costs, it is likely the previous year's activity would be terminated, even if effective, to allow for adequate funding to start a new activity.	Recommend changing Permit's definition of a short term activity and discussion in Section E.2.i(1) and Section E.2.k(1) from 1 to 2 years. Recommend allowing up to 2 continued activities to continue to count as activities in future years if demonstrated to be effective.
E.2.i(1), E.2.k(1), Attach. C	44, 45, C-11, C-12	Short-Term Watershed Activity Requirements & Definitions	The City would not receive credit for activities addressing second-tier water quality problems (constituents of concern) that are still of concern and showing "hits" in the monitoring results. This is a significant disincentive for the City, which is spread across 6 watersheds, to conduct larger activities that span across watersheds unless a particular pollutant is a high priority in every watershed. It is also an disincentive for implementing activities to address pollutants BEFORE they become major problems.	Recommend changing Permit so that if Copermittee implements watershed activity (water quality or education) in more than one watershed simultaneously (a regional activity), number of watershed activities required of Copermittee is reduced by one in each watershed where watershed activity addresses either primary or secondary water quality problem (high priority pollutant or COC), provided at least one primary water quality is addressed in any one of the impacted watersheds.
E.2.k(2)	45	Watershed Concept-Based Watershed Education Activities	Would require City to coordinate with other jurisdictions to implement 1 watershed concept-based education activity annually in each of the City's six watersheds. Would require increased staff by requiring 6 messages instead of one. Furthermore, this may reduce the effectiveness of the education because watershed concepts, such as educating the public on what a watershed is, should be done with consistent messaging. Watershed concept-based education activities are non-watershed specific and thus best implemented as regional activities to ensure unity/effectiveness of message and minimize conflicting and/or confusing statements.	Recommend this section be moved from WURMP program to the regional urban runoff management program (RURMP) section and require 1 activity regionally.
Attach. C	C-11	Definition of Watershed Water Quality Activity	Would disqualify continued watershed water quality activities first implemented in current Permit from meeting the 2 activities per watershed requirement of the draft Permit.	Recommend allowing watershed water quality activities first implemented in the current Permit to count towards the 2 projects per watershed requirement in the new draft Permit, if demonstrated to be effective. The allowance recognizes progress already made by Copermittees in improving water quality and discourages discontinuance of effective activities simply because of a change in permits.

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F. – Regional Urban Runoff Management Plan				
F.4.	46	Regional Urban Runoff Management Plan – TMDL management and Implementation	Requires implementation of TMDLs on a regional basis, as needed. This would potentially complicate TMDL development and implementation because they are essentially watershed based. TMDL requirements extend to the sources of the pollution-upstream watersheds. Therefore, TMDLs would be best developed and implemented in the watershed programs.	Recommend moving this permit condition into the Watershed Urban Runoff Management Plan Component.
G. – Fiscal Analysis				
G	47	Fiscal Analysis	Requires that the City report its City-wide storm water-related expenditures annually. However, many expenditures address multiple objectives. For example, trash cleanup or household hazardous waste collection efforts achieve multiple objectives. Should be able to assign percentages of expenditures to storm water.	Recommend that the Permit language clarify that the City may assign percentages of expenditures that address multiple programs, including storm water. Alternatively, clarify what percentage of expenditures the Regional Board would allow the City to claim.
G.2.b	47	Fiscal Analysis	Would require the City to distinguish between expenditures attributable solely to permit compliance and expenditures that were in existence prior to implementation of the Urban Runoff Management Program (URMP) that addressed water quality.	Recommend that the Permit state which year would be considered the first year of implementation of the URMP to benchmark the initiation of expenditures.
H. – Total Maximum Daily Loads				
H	47	TMDL (Total Maximum Daily Load)	Incorporates TMDL requirements from the Chollas Creek Diazinon and Shelter Island Yacht Basin TMDLs into the Permit as a stand-alone section. Could lead to conflicts with future Regional Board approved individual TMDL Implementation Plans if those plans are modified. The section is in conformance with 40CFR. However, TMDL implementation plans may be modified, making them inconsistent with the Permit.	Recommend that language be added that clarifies Copermittees shall comply with TMDL requirements, and subsequent updates to allow for potential changes.

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H	47	TMDL (Total Maximum Daily Load)	Currently, the Regional Board is developing TMDLs on a pollutant by pollutant basis without consideration of multiple pollutants within a watershed. This makes BMP development difficult as jurisdictions must anticipate ALL pollutants when identifying BMPs and watershed-wide strategies. Additionally, this section is not incorporated into the Watershed Urban Runoff Management Program section, which is the scale at which the TMDLs will be developed. The US Environmental Protection Agency supports watershed-based, multiple pollutant approaches. The EPA's Compendium of Tools for Watershed Assessment and TMDL Development (EPA841-B-97-006) , Page 2, Paragraph 2 states "By providing information on technical tools for developing and implementing watershed projects and TMDLs with a broader water quality-based management strategy, this documents supports state and federal agencies in establishing ecologically based controls on a watershed basis." In addition, when designing an implementation strategy, the City will need to anticipate and design for all pollutants comprehensively.	Recommend moving TMDL section to the WURMP section to address TMDLs on a watershed basis. Recommend addressing TMDL pollutants comprehensively (e.g., one multi-pollutant TMDL for each watershed).
I. – Program Effectiveness Assessment				
I.1.b.	49	Program Effectiveness Assessment – Jurisdictional	Would require modification of activities where persistent water quality problems are identified until the problem is corrected. Fails to consider "background noise" in water quality data; that sources could be upstream of the City or beyond the City's jurisdictional power to control (i.e., vehicle emissions).	Recommend modifying Permit language to allow the Copermittees to account for upstream or other factors beyond the City's jurisdictional authority.

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I.4.a.1	52	Assessment of TMDL BMP Implementation Plan	Requires annual effectiveness assessment of each TMDL-based BMP implemented. Currently, the TMDL Implementation Plans require water quality concentration measures to assess effectiveness as cited on pages 79 and 81 in the Findings. Assessing each BMP would be an inefficient use of resources, since groupings and generalizations could be made (e.g., evaluate one BMP out of a group) to save resources. The focus should be on prioritizing where the BMPs that need to be built, not monitoring & assessing each individual BMP.	Recommend changing annual assessment to once every 5-years in the permit condition. Recommend adding language to allow representative sampling and analysis.
I.4.a.3-6	52	Assessment of TMDL BMP Implementation Plan	Requires additional assessment levels that are beyond the approved Implementation Plan for the Chollas Creek Diazinon TMDL. Further, higher level analysis (5-6) is subject to background noise (see comment above), and therefore often inappropriate for conclusively assessing program effectiveness.	Recommend requiring levels 5-6 assessment only when "applicable and feasible."
J. – Reporting				
J., Monitoring and Reporting Program	53-56, RWMRP p. 15	Reporting requirements	The Permit lists reporting requirements in multiple locations and is unnecessarily confusing.	Recommend grouping all reporting requirements (i.e., submittal of re-written JURMPs, WURMPs & RURMPs required by section J, submittal of annual reports required by Section III of the Monitoring & Reporting Program, among others) in a consistent Permit location.
Receiving Waters Monitoring and Reporting Program	15-19	Annual report requirements	Would require submittal of Unified jurisdictional and watershed annual reports (summarizing what are essentially regional efforts), in addition to a Regional URMP annual report. Requiring Unified JURMP and Unified WURMP annual reports is redundant with the RURMP annual report.	Recommend that the Unified Annual Reports be omitted and included as a section, if necessary, in the RURMP Annual Report. Recommend that the Receiving Water Monitoring and Reporting Program should contain only monitoring requirements associated with the Monitoring Program annual report.
N. – Receiving Waters Monitoring and Reporting Program				

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Receiving Waters Monitoring and Reporting Program, II.A.1.h	4	Mass Loading Station Monitoring (h)	It appears to be inappropriate because it would require the Copermittees to provide additional analytical data for polychlorinated biphenyls (PCBs), Chlordane, and polycyclic aromatic hydrocarbons (PAHs) for tentative shipyard Cleanup and Abatement Order, before the draft technical report has been released for public review and comment. Would require additional costs for regional monitoring consultant to collect and analyzes these constituents.	Recommend removing this section from the permit as the CAO is not yet approved.
Receiving Waters Monitoring and Reporting Program, II.A.4.	6	Follow-Up Analysis and Actions	This permit condition requires Copermittees to implement measures to abate sources or build BMPs after a single Toxic Identification Evaluation is performed. This approach skips the source identification step and would require the allocation of resources to implement BMPs before the actual sources are identified.	Modify last sentence to read "Once the cause of toxicity has been identified by a TIE, *perform source identification projects as needed*, implement the measures to reduce the pollutant discharges and abate the sources causing toxicity."
Receiving Waters Monitoring and Reporting Program, II.A.6.b.4.	8	Coastal Storm Drain Monitoring	This section requires the investigation of the storm drain system when receiving water quality standards are exceeded. This appears to be a misapplication of receiving waters standards into the storm drain system.	We recommend that the sentence be changes to: " If re-sampling conducted under section (3) above exhibits continued exceedances of AB411 or Basin Plan standards in the receiving water, investigations of sources of bacterial contamination shall be initiated with one business day of receipt of analytical results when feasible.
Receiving Waters Monitoring and Reporting Program, II.A.6.b.4.	9	Coastal Storm Drain Monitoring	Analytical laboratory samples take 24-72 hours for results to be returned determining if the flow of water contained bacterial contamination. Requiring source investigation within 24 hours could result in requiring investigations on weekends and holidays.	We recommend that this section be changes to: Investigation of potential illegal discharges shall be initiated with one business day of receipt of analytical results.

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Receiving Waters Monitoring and Reporting Program, II.A.7.	9	Toxic Hot Spot Monitoring	This program is duplicative of the TMDL program. Toxic Hot Spots was a component of the Bay Protection Toxic Cleanup Program which ended in 2001. Regional Board moved the Toxic Hot Spot requirements into individual TMDL projects for implementation.	Recommend deleting this section.
Receiving Waters Monitoring and Reporting Program, II.A.9.	9	Trash Monitoring	Would require assessment of the amount of trash in urban runoff and receiving waters, as well as assessing the impacts of trash on beneficial uses. Would require additional staff and resources to conduct these studies. Identifying the impacts to beneficial uses is the responsibility of the Regional Board itself.	Recommend deleting "assess the impacts of trash on beneficial uses." Alternatively, the language could require the City to monitor trash only in the MS4 (not in receiving waters).
Receiving Waters Monitoring and Reporting Program, II.A.10.	9-13	MS4 Discharge Monitoring, et al -- Unnecessary redundancy	MS4 discharge monitoring would be a new program paralleling the dry weather monitoring program. It is estimated that the City has 10,000+ outfalls. New program requires sample collection during rain events and would require additional safety procedures to be followed because of sampling outfalls at swift flowing water and nighttime monitoring would be required. In combination with dry weather monitoring program, this would produce an unnecessary amount of redundancy in the data. This problem would be exacerbated if: – Section II.D.1. requires the use of the grid system in selecting dry weather sites, which could expand the City's dry weather sites by more than 300%; – Section II.D.3.d. would require dry weather analytical monitoring analysis at all locations with water present, and; – Section II.D.3.e. would require the City to identify alternative dry weather locations if stations are dry. In combination, these additional requirements would force the City to implement a redundant, inefficient program with little benefit to water quality in return for the additional expenditures.	Propose that the permit allow us to propose and the Regional Board to approve a program design based on a statistical analysis approach that would be used consistently by each watershed.

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Permit Section	Permit Page	Section Title/Topic	Reason for Proposed Changes/Comments	Comments/Proposed Changes
Tentative Receiving Waters Monitoring and Reporting Program, II.A.11.	9	Source Identification Studies	Requires independent studies in each watershed. Studies may not integrate with studies occurring in other watersheds, nor with similar source identification requirement in WURMP Section. Previous source identification studies have cost from $500,000 to $1,300,000. Conducting studies in each watershed will be costly and will need to be applicable to, and coordinated with, other watersheds to avoid duplication of effort.	Recommend modifying this permit requirement to Source Characterization Studies that focuses on the constituent of concern and source characterization, not identification. This recommendation follows the Long-term Effectiveness Assessment submitted to the Regional Board last fall and the Southern California Monitoring Coalition's recommendations. Recommend referencing this Permit Section as fulfilling the source identification requirements in the WURMP Section (E.2.e, p. 44).
Receiving Waters Monitoring and Reporting Program, II.D.	11	Dry Weather Field Screening and Analytical Monitoring	It is unclear if the section requires the analytical monitoring at all selected stations.	We recommend that Dry Weather analytical monitoring stations be changed to "Dry Weather monitoring stations."
Receiving Waters Monitoring and Reporting Program, II.D.1.	11	Select Dry Weather Field Screening and Analytical Monitoring Stations	This section blends together the grid system and its alternative method for the selection of station locations.	We recommend that the grid system and the alternate system be separated for clarity. See comment regarding Section II.A.10, above.
Receiving Waters Monitoring and Reporting Program, II.D.3.c.	12	Develop Dry Weather Analytical Monitoring Procedures	The requirement for at least 25% of the stations perform analytical laboratory analysis could cause unnecessary and inefficient repetition of work.	We recommend that the section be changes to: "At a minimum, collect samples for analytical laboratory analysis of the following constituents for 25% of the total number of sites where water is present."

CITY OF SAN DIEGO COMMENTS ON TENTATIVE ORDER NO. R9-2006-0011				
Permit Section	**Permit Page**	**Section Title/Topic**	**Reason for Proposed Changes/Comments**	**Comments/Proposed Changes**
Receiving Waters Monitoring and Reporting Program, II.D.3.d.	12	Develop Dry Weather Analytical Monitoring Procedures	The requirement for all dry weather stations to have field screening performed in a significant increase in effort.	We recommend that the section be changes to: "At a minimum, conduct field screening analysis of the following constituents for 50% of the total number of sites where water is present." See comment regarding Section II.A.10, above.
Receiving Waters Monitoring and Reporting Program, II.D.3.d.	12	Develop Dry Weather Analytical Monitoring Procedures	The dissolved copper field screening kits do not meet the California Toxics Rule detection level.	We recommend that dissolved copper be removed from the field screening analysis list and added to the laboratory analysis list found in II.D.3.d
Receiving Waters Monitoring and Reporting Program, II.D.3.e.	13	Develop Dry Weather Analytical Monitoring Procedures	The requirement to find alternate stations after visual observations have been documented is overly burdensome and potentially inefficient because it would require the collection of redundant information. Additional staff/resources would be required.	We recommend that the section be changed to: " If the station is dry (no flowing or ponded runoff), make and record all applicable observations. See comment regarding Section II.A.10, above.
Receiving Waters Monitoring and Reporting Program, II.E.	13	Monitoring Provisions	It appears as if this section is requiring the Dry Weather Monitoring Program in the storm drain system to comply with the Surface Water Ambient Monitoring Program. This program requires lower detection levels of some constituents because there are fauna and flora that live in those receiving waters. However, the storm drain system is not a receiving water should not be required to perform laboratory analytical methods to the lower detection limits.	Please clarify that SWAMP requirements is only for receiving waters and not the storm drain system.
K, L, M, O. – Modification of Programs, All Copermittee Collaboration, Principal Permittee Responsibilities, Standard Provisions – No Comments				
Attachments				

CITY OF SAN DIEGO COMMENTS ON TENTATIVE ORDER NO. R9-2006-0011

Permit Section	Permit Page	Section Title/Topic	Reason for Proposed Changes/Comments	Comments/Proposed Changes
Attach. C	C-2, C-12	Definitions for Dry Season and Wet Season	Extends definition for Wet Season by 30 days (start date would shift from October 1 to September 1). End date would remain April 30. This is in conflict with other portions of the permit: Section D.3.a.3 requires inspection and cleaning of the storm drain system during the current definition of the Dry Season – May 1 to September 30. Analysis of 92 years of monthly rainfall data shows that the month of September averages (mean) 0.18 inches of rain (source: http://www.wrcc.dri.edu/cgi-bin/cliMONtpre.pl?casand). This is lower than the month of May (0.21 inches), which is considered a dry season month, and significantly lower than other rainy season months, which generally average 1-2 inches of rain. This overly conservative approach would result in an inefficient application of resources and energy during a generally dry month.	Recommend that the Permit maintain the current Wet Season definition (October 1 through April 30).

S:\2150_ProgramImplementation_Watersheds\7_New Municipal Permit\Permit Comments\City's response\Citywide SW Comments Table 6-7-06.doc

June 21, 2006 Regional Board Meeting
Item 3, Supporting Document # 9

L. City of Santee

CH 6/6/06 L
Phil Hammer

CITY OF SANTEE

Pls include in agenda materials for 21 June mtg

June 2, 2006

Mr. J. Robertus
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court
Suite 100
San Diego, CA 92123-4353

Dear Mr. Robertus,

SUBJECT: Comments on Tentative Order Number R9-2006-0011 (Tentative Order) for Review by the Board

These comments have been prepared on behalf of the City of Santee (City) to address the requirements of the Tentative Order. These comments are supplemental to the comments prepared jointly by the copermittees and are intended to address issues of particular concern to the City.

Site Design BMP Requirements

On page 18 there are two lists of site design BMPs. The City requests that the two lists of BMPs be combined into one, with the minimum requirement of two to be implemented. This would provide more flexibility especially when projects are proposed on small lots where a limited range of site design options are available. In addition, subsection c should be deleted as it causes confusion and may result in a situation of either the City or the developer having to explain in detail why each option was discounted in each project.

Specific to the site BMPs listed in subsections a and b, the following are of concern:

"Construct a portion of walkways, trails, overflow parking lots, alleys, or other low traffic areas with permeable surfaces, such as pervious concrete, porous asphalt, unit pavers, and granular materials." This requirement is unclear; what does "a portion" represent?

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Source Control BMP Requirements

Among six mandatory requirements is a new one requiring storm drain system stenciling and signage. What is the distinction between stenciling and signage? Why are both required? It is suggested that *either* stenciling *or* signage be required.

Requirement for a Hydromodification Plan

General Comments

What is the basis for this requirement? This is a highly expensive and time-consuming requirement for a benefit that is not defined. Tentative order number R9-2006-0011 relates to the protection and improvement of water *quality*. How does this requirement to protect channels and creeks directly affect water quality? The San Diego River has been listed as being impaired for total dissolved solids (TDS), however sediment is only one *potential* source of TDS. There are other potential sources of TDS, including the high concentrations reported to naturally occur in groundwater. The RWQCB has not made a clear linkage between erosion of channels and creeks in the watersheds affected by the draft tentative order, a change in water quality and the need for a hydromodification plan.

This requirement has been implemented at other locations in California, has the RWQCB studied the effect of these plans? Has there been a net benefit to water quality? Has a cost-benefit analysis been completed for the development and implementation of hydromodification plans? Has it been shown that it has been worthwhile to implement these hydromodification requirements?

An erosion potential (Ep) should be maintained "close to 1." Some channels will naturally be eroding or silting up even if there was no development in their vicinity. Does this requirement to meet a defined Ep take into account these natural processes? Would it be better to identify where those natural processes are occurring and allow them to continue?

It is the City's opinion that instead, the money would be better spent on implementing improved BMPs prior to the discharge of storm flows into creeks and channels.

In addition, based on a review of the technical basis for this requirement, we consider this to be a mis-application of hydraulic engineering. The requirement looks at channels, creeks and rivers as if they were continuously flowing (like, for example the Colorado

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River), however many of these features only flow on a *seasonal* basis. The application of this to a dry bed stream is inappropriate.

Specific Comments
The objective of the hydromodification plan, as presented on page 24 of the tentative order is to ensure that "post project discharge rates and durations will not exceed estimated pre-project rates where there is an impact on beneficial uses." Note that with development on a previously vacant property there will be either an increase in discharge rate and/or duration, as there will be an increased flow of water off of the development area. Some runoff may be redirected by infiltration, but this would not be physically possible for 100 percent of the runoff. Therefore either an increase in flow rate or duration would be inevitable. This text needs to be revised to take this into account.

On page 24 subsection (f), the copermittees are directed to include a review of "pertinent literature." What is the objective of this? A literature review may be appropriate for a research project, however it is not appropriate for taxpayers to be required to fund such an open-ended requirement which does not directly impact water quality in the region.

What is the technical basis for excluding "non-natural" hardscape materials to avoid adverse impacts on beneficial uses? If a "non-natural" hardscape material is available; its use is consistent with CEQA/NEPA requirements; it does not negatively impact water quality and is aesthetically acceptable; why would it be discounted on the basis that it is "non-natural?" This severely restricts the options available, particularly to provide a prompt response to a problem while permits and funds are sought for more aesthetic options (such as revegetation). Indeed, what other options are available?

The hydromodification plan will be unevenly applied across the region, as some jurisdictions use concrete channels and some are more intensively developed than others. This places some jurisdictions, such as City, in an unfair economic disadvantage, and will render some smaller properties undevelopable. It will place a massive burden on development within the City, compared to other jurisdictions which are exempt due to their use of concrete channels or more developed status. In addition, we will likely incur increased costs for monitoring the effectiveness of the HMP, compared to jurisdictions which do not have to implement the HMP to such an extent.

The introduction of an HMP actively discourages jurisdictions from removing concrete lining from channels and creeks. The removal of concrete lining is considered likely to result in a direct benefit to water quality. However, once a concrete lining is removed, the

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area draining to the channel or creek is now subject to the onerous requirements of the HMP. Why would any entity voluntarily undertake that burden? On balance, is this HMP going to benefit water quality in the region, or is it going to divert funds from activities that will directly benefit water quality?

Municipal Program

On page 30 of the tentative order all Copermittee catch basins and storm drain inlets are to be inspected once a year between May 1 and September 30 of each year. These dates are not consistent with the definition of the dry season given in Attachment C. Also, some of these features support habitat for all nesting birds, some of which are endangered, threatened or sensitive. How is the May through September inspection/clearing timeframe reconciled with the wildlife agency prohibition on disturbance/harassment during the bird breeding season that runs from February 15 through September 15? Have the resource agencies (for example, California Department of Fish and Game, and the Fish & Wildlife Service) been consulted on this? Would permits for channel maintenance address this?

Overall the City objects to the imposition of requirements for the provision of municipal services such as street sweeping and to a lesser extent MS4 because of the following:

- There is no justification for the basis on which these requirements are made. There may be some portions of the MS4 which need more frequent attention than once a year, and others which do not require any maintenance. It is more appropriate for effort to be expended in the areas of greater concern and for personnel responsible for maintaining the MS4 in their jurisdiction to determine where their priorities should be.
- The rationale for imposing certain sweeping rates in each jurisdiction is not justified. On what basis did the RWQCB staff arrive at these frequencies? Is there a study which demonstrates that it is better that certain portions of a jurisdiction should be swept at one frequency versus another? Has this study linked increased street sweeping to water quality?

Streets are swept to achieve a number of objectives and not solely to prevent discharges to storm drains. The funds for street sweeping are raised through taxes on the population, and the funds are spent through the direction of their elected representatives on the City Council. There is a clear connection between revenue generation and accountability. It is not appropriate for the RWQCB to insert itself into the daily management of the City's affairs without justifying its requirements and providing a funding mechanism for these requirements.

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Increased Inspection Requirements for the Industrial and Commercial Inventory.

The requirement on page 35 to inspect 40 percent of the combined industrial and commercial inventory is an unacceptably onerous requirement which is not consistent with rates achieved during the previous permit cycle. The reasoning for this is as follows:

- The rates cited in the factsheet (2002-03 and 2003-04) are for years which are not representative of the typical inspection rate conducted by jurisdictions. Based on a review of the records kept by the City and on discussions with other jurisdictions, there was an increased rate of inspection to assess what was out there and to appropriately prioritize future inspections. For example, the City of Santee prioritized all commercial facilities as "high" and inspected approximately 50 percent of its commercial inventory during the 2002-03 period. Approximately 50 percent of the previously uninspected commercial inventory was inspected during the 2003-04. It was not intended that this rate of inspection would be maintained, rather there would be a reduced level of inspection focused in areas where the level of effort would be most effective.
- The definition of commercial and industrial facilities has been expanded to include more facilities, therefore the total from which the 40 percent rate is calculated is higher.
- Previously the industrial and commercial inventories were separate and there was a requirement only to inspect certain high priority industrial facilities annually. Combining the two inventories once again increases the base number from which the 40 percent rate is calculated.
- The City recognizes that inspections can be beneficial in ensuring that BMPs are appropriately implemented at facilities. However, the benefit that can be made by an inspection at a high priority industrial facility where there are numerous potential sources of discharge to stormwater and a need for continuous reinforcement of the need to implement appropriate BMPS, is much greater than that which can be obtained from inspecting a commercial facility (such as a Seven Eleven store, or a hairdressing salon).
- Based on a preliminary calculation using the current commercial and industrial inventories, the inspection rate will increase the annual number of required industrial and commercial inspections by ***twelve*** times. This is a significant increase in the level of effort that will be expended in achieving compliance with one small component of the permit. The cost of achieving this inspection rate will result in the diversion of

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resources from other areas where a more direct positive impact on water quality may be achieved (such as the Forester Creek project).

- This inspection rate would be difficult to achieve annually and there would likely be a minimizing of follow up work after an inspection (such as reinspections to ensure compliance). This is not the most effective way to focus our efforts.

We consider that this requirement is not consistent with the situation presented in the factsheet and request that this be reduced.

Fiscal Analysis

The fiscal analysis requires that each copermittee reports on the annual expenditures for urban runoff management programs using a standardized method and format. The expenditures for jurisdictional, watershed and regional activities need to be presented. In addition, costs solely for permit compliance (for example staff specifically working on the urban runoff management program) need to be distinguished between related activities which cannot be solely attributed to the program (such as street sweeping). This requirement is not appropriate and should be removed for the following reasons:

First, aspects of the urban runoff management program have been integrated into all parts of the City's activities. Costs are incurred across all departments. This requirement would mean that the City would have to revise its financial management procedures, possibly making it consistent with other copermittees, so that reporting can be made in a similar format.

Second, it is not clear how this requirement would benefit water quality, and it would inevitably direct resources away from activities that can directly benefit water quality (for example through developing and implementing additional accounting procedures).

Third, it is inappropriate to measure compliance based on how much money has been spent, either on an individual basis, or compared to other copermittees. An organization such as the City does not have such large management structure as other copermittees, therefore personnel costs may be lower. However our expenses may be higher in other areas (for example, in contracting out services). The RWQCB should look at other measures (such as trends in water quality) to assess compliance with the permit.

As discussed in the section on municipal activities, it is not appropriate for the RWQCB to interpose itself into the running of City affairs which do not directly relate to water quality when there are accountable officials elected to fulfill this function.

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Minor Comments

Page 50, watershed water quality activities and watershed education activities should be modified and improved on "at least an annual basis to correct the water quality problems." It is unlikely to be possible to do an adequate review of the impact of any activities within a few months of implementation. This requirement should be removed.

Page 51 subsection (e). As the RWQCB does not provide funding for urban runoff management programs and as they have no accountability for the costs incurred for compliance with this program, it is not appropriate for them to require any assessment of cost-efficiency. Therefore "and cost-efficiency" should be deleted.

Suggestions for Edits to the Text

Page 17, subsection (1), the definition of Priority Development Projects is mis-leading. It is our understanding that it is not the RWQCB's intent that all new development projects are intended to be Priority Developments, therefore we suggest that the following text be inserted after a) all new Development Projects, "which are described in the Priority Development Project Categories below."
Page 25, reference to J.1.4. Does not exist. Do you mean J.4.b? If so, change.
Page 44, section d, last line, change "an" to "and."

Page 52, section 5b. Reference to section I.3.a(8) of this order, however it could not be found. Correct the reference.

Attachment C-1, definition of anthropogenic litter is too vague. It should be refined to include packaging waste, cigarette butts, and demolition or construction waste.
Attachment C-2, insert "velocity" after "Critical Channel Flow" and after "- The channel." Delete "flow" after "-The channel velocity."
Attachment C-2, change definition of dry season to May 1 through September 30 of each year.
Attachment C-3, definition of Erosion Potential (Ep), what is the source of this definition? Does it originate from a peer-reviewed scientific paper?
Attachment C-5, definition of flow duration. Delete. This is not applicable to the seasonal flows observed in the majority of "creeks and streams" in the San Diego region.
Definition of implementation assessment and integrated assessment are so similar that they are effectively duplicative. Delete one.
Attachment C-6, definition of Maximum Extent Practicable (MEP). Replace references to SWMP with JURMP.

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Attachment C-12 change definition of wet season to October 1 through April 30 of each year.

Thank you for your attention to these comments during your review of this tentative order. Please call me at (619) 258-4100 x226 with any questions regarding this matter.

Sincerely,

Keith Till
City Manager

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HMP

June 21, 2006 Regional Board Meeting
Item 3, Supporting Document # 9

M. San Diego Unified Port District

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Unified Port
of San Diego

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P.O. Box 120488, San Diego, CA 92112-0488
619.686.6200 www.portofsandiego.org

June 7, 2006

Via Hand Delivery

Mr. John Robertus
San Diego Regional water Quality Control Board
9174 Sky Park Court
San Diego, CA 92123

Re: Comments on Tentative Order No. R9-2006-011

Dear Mr. Robertus:

The San Diego Unified Port District (Port) appreciates the opportunity to comment on Tentative Order 2006-0011 – the Draft Municipal Stormwater Permit for the San Diego region (Draft Permit). The Port has carefully reviewed the Draft Permit and its potential impact on our jurisdiction and watershed both as an individual Copermittee and as the lead Copermittee for the San Diego Bay Watershed. Accompanying this letter is a set of comments ranging from language clarifications to more extensive critiques of proposed requirements. In all cases, the Port has made attempts to explain the reasoning behind the comments and suggest workable alternatives wherever possible.

The Port believes that Permit requirements should clearly demonstrate a nexus between program development and likely improvements to water quality. The Draft Permit attempts to balance jurisdictional, watershed, and regional levels of implementation. However, in too many instances, a "one-size-fits-all" approach has been favored over more flexible requirements that could be modified to fit individual circumstances at the jurisdictional and watershed levels. While it is acknowledged that the Regional Board needs to develop a Permit that contains measurable outcomes and facilitates enforcement of compliance, the downside is the inability of Copermittees to develop programs or strategies to best meet their watershed and/or jurisdictional problems. Furthermore, resources may be spent on programs that are only marginally effective and may not lead to water quality improvement.

The Permit's overarching goal should be to show improvements to water quality and protection of beneficial uses through whatever program levels necessary. It appears that while the Regional Board acknowledges the need for integration of jurisdictional and watershed programs, the manner in which the Draft Permit is written makes true integration difficult. The Port is concerned that the Regional Board's attempt to balance program requirements did not consider the increase of prescriptiveness in jurisdictional programs when requiring watershed activities above and beyond the jurisdictional requirements. With the increase in inspections and types of facilities inspected,

increased municipal requirements, and development BMPs, there are fewer activities to consider for watershed activities.

The Port is committed to its mission of being an environmental steward for San Diego Bay. We value clean water and enhancing natural resources and environmental health. We are proud of what we have accomplished to date; however, we recognize that more remains to be done. We emphasize the need to develop programs that are beneficial to water quality and the environment, yet remain cost effective.

We encourage the Regional Board to consider the comments submitted on behalf of the Port and to make changes to the Draft Permit as necessary. Additionally, the Port supports the Copermittee comments presented at the workshops on April 26, May 24, and in written comments submitted June 7, 2006 and encourages the Regional Board to thoroughly review and consider the regional comments as well. As a whole, the Copermittees, have devoted significant time and resources to developing recommendations for improving both the Permit and Copermittee programs. These improvements are well supported by over 15 years of experience in implementing urban runoff management programs at the local level.

The comments are separated into the following sections to assist in your review:

1. A general category with comments that are applicable throughout the document;
2. A specific sections category with comments specific to the language in the identified section, and;
3. Attachment 1: Proposed Permit Language and Summary Table for the Monitoring Section.

Please contact Karen (Helyer) Holman at 619-725-6073 with any questions about the issues discussed above or in the attached set of comments.

Sincerely,

David Merk, Director
Environmental Services

DM:KH:rg
Attachment
Docs #185089

GENERAL COMMENTS

1. Reporting requirements

Currently, the reporting requirements are located in several different areas of the Permit. This makes it extremely difficult to determine how and what must be reported, both in the program submittals and in the annual reports.

Recommendation:
Place reporting requirements in a single section (or attachment) only. Do not discuss reporting requirements in the individual program component requirements.

2. Achieving "to the MEP" and "ensuring no violation to WQO"

A conflict exists between achieving the standard of "MEP" and achieving a standard of "ensuring no violations to water quality objectives". The permit needs to be consistent, using one or the other standard, not both. The Copermittees previously have commented on the restatement of permit performance standards throughout the Permit.

Recommendation:
Use a single standard consistently throughout the permit.

3. Use of the term "effective" throughout the Permit

The Permit, as written, contains provisions requiring Copermittees to periodically assess the effectiveness of activities/controls. Copermittees also are required to modify and remove those activities/controls that do not appear effective. Requiring that they be effective at initial implementation would make lack of effectiveness a violation of the Permit.

Recommendation:
Remove the word 'effective' from sections D.3.a.2.(a), (b), and b.2.(b), (c).

SECTION-SPECIFIC COMMENTS

Findings

1. Table 2 (Pgs 3-4) – Discharge Characteristics

The Draft Permit includes the water quality impairments identified on the State Water Resources Control Board's most recent Clean Water Act Section 303(d) List of Water Quality Limited Segments (Table 2, Pgs 3 & 4). The listings are organized by watershed management area (WMA), but do not specify to which particular receiving water segments the listings apply to. The table is somewhat misleading in that it implies that water quality impairments impact the entire WMA, not just the specific segments of the receiving water. As an example, Table 2 for the San Diego Bay WMA identifies nine pollutants. However, most of these impairments occur in Chollas Creek and other areas of the Pueblo San Diego sub-watershed and do not apply to Sweetwater River or the Otay River sub-watersheds.

Recommendation:
Because these impairments may be used to establish water quality priorities and/or watershed activities, Table 2 should include the specific water quality limited segments along with the problem pollutant.

2. Section D.1.a (Pg 5) – Urban Runoff Management Programs

The finding states, "as urban runoff management knowledge increases, the Copermittees' urban runoff management programs must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc." Program modification and assessment are not open-ended requirements as currently suggested in the Draft Permit text. Rather, they are constrained and governed by the MEP standard.

The fact sheet (p 22) acknowledges that the MEP standard is an "...ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility". Further, the fact sheet states that to achieve MEP, "...municipalities must employ whatever BMPs are technically feasible and are not cost prohibitive." The fact sheet statements conform with federal law; the Draft Permit finding, as written, does not. This fact is crucial and must be acknowledged in the language of the Draft Permit.

Recommendation:
It is recommended that the finding in the draft Permit be modified to accurately reflect the fact sheet statements.

3. Section A.3.a.1 (Pgs 11-12) – Statute and Regulatory Considerations

The finding states, "Upon a determination by either the Copermittee or the Regional Board that MS4 discharges are causing or contributing to an exceedance of an applicable water quality standard, the Copermittee shall promptly notify and thereafter submit a report to the Regional Board that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards ... The report shall include an implementation schedule." This requirement makes the assumption that all exceedances observed from the MS4 can be confidently traced to an identified source. This is not true in the majority of cases, especially for pollutants such as bacteria that are ubiquitous and diffuse. A source or sources of the pollutant in question must first be identified before additional BMPs can be appropriately selected and implemented.

Recommendation:
Modify the Draft Permit text as follows: "Upon a determination by either the Copermittee or the Regional Board that MS4 discharges are causing or contributing to an exceedance of an applicable water quality standard, *and where that discharge has been traced to an identified source or sources*, the Copermittee shall promptly notify and thereafter submit a report to the Regional Board that describes BMPs that are currently being implemented ..."

Development Planning Component

4. Section D.c.4 – Buffer zones for natural water bodies where feasible.

The Draft Permit requires that "where buffer zones are infeasible, require project proponent to implement other buffers such as trees, access restriction, etc."

Comment:
This requirement is infeasible. Due to the close proximity of the Bay, most projects within Port jurisdiction will not meet this requirement.

5. Section D.d.6.d.i. – Use of high to medium removal treatment control BMPs.

BMPs with low efficiencies shall only be approved when analysis determines BMPs with high or medium removal efficiencies are infeasible.

Comment:
The ranking of BMPs efficiencies has not been verified and appropriately studied. The Regional Board should assist the copermittees by offering scientific evidence of the BMP efficiencies of at least the most common BMPs and a list of approved BMPs. The Regional Board should also provide a standard to reference.

6. Section D.1 – Hydromodification Plan and SUSMP general comment

Comment:
Flooding during heavy rain events is another significant issue impacting San Diego. The SUSMP and Hydromodification plans should provide a mechanism to assist copermittees in minimizing flooding. In jurisdictions along the coast, retention basins and other technologies are not practical due to proximity to the receiving water and space limitations. Slowing water runoff or retaining stormwater along the coast has the potential to increase flooding. Especially where water is discharged to reinforced channels then to the receiving water, a waiver should be included for water retention and infiltration at those locations.

7. Section D.1.d.1 – Priority Development Project (i.e., SUSMP project) definition

This Draft Permit section defines a Priority Development Project as "a) all new Development Projects, and b) those redevelopment projects that create, add or replace at least 5,000 square feet of impervious surfaces on an already developed site, that fall under the project categories or locations listed in section D.1.d.(2)." This statement is poorly worded. A literal interpretation would suggest that all new development projects, regardless of project size or category, would be considered a Priority Development Project. It is the Port's understanding that this is not the intent of the requirement.

Recommendation:
Revise the text as follows: Priority Development Projects are: a) all new Development Projects *that fall under the project categories or locations listed in section D.1.d.(2),* and b) those redevelopment projects that create, add or replace at least 5,000 square feet of impervious surfaces on an already developed site, *and which* fall under the project categories or locations listed in section D.1.d.(2).

8. Section D.1.d.4.b would require every Priority Development Project (i.e., SUSMP project) to implement at least one BMP from each of two lists of site design BMPs.

Site design BMPs should not be separated into two lists. This does not appear to be justified by the Regional Board and does not provide additional assurances of protecting water quality. Further, due to the proximity to the bay and the level of development that already exists on Port tidelands, integrating any of the site design BMPs from the second list may be infeasible.

Recommendation:
Amend the section by combining the list of site design BMPs and require the use of at least one BMP.

Construction Component

9. Section D.2.d.6.f (Pg 29) – Written inspection record requirement.

The Permit, as written, infers that a written record needs to be created for every construction inspection. The Port requests clarification to this statement. We understand this to mean documentation, which could include electronic logging into a database either during (via field computers) or immediately after the inspection is completed. The Port is striving to minimize its reliance on paper when technology is available to capture and track information electronically. Reports and records for inspections would be submitted in annual reports and available upon request.

Recommendation:
Clarify the Draft Permit text so that electronic documentation of inspection information would be acceptable.

Commercial / Industrial Component

10. Section D.3.b(3) (Pg 35) – Prioritization and inspection of commercial/industrial facilities

The Port seeks clarification in requirements to prioritize and inspect commercial/industrial facilities. The manner in which the list of minimum inventory requirements is described in the Draft Permit (D.3.b.(1).(a)), leaves it up to the Copermittees to identify which of the inventoried facilities are high priority. The Port further maintains that prioritization is site-specific using the criteria specified in Section D.3.b.(3).(b). For example, each restaurant will have its own prioritization rather than assigning a prioritization to the entire category of restaurants.

Recommendation:
Clarify the Permit language so it becomes clear that the prioritization is facility-specific, not category-specific. Each Copermittee shall annually inspect all sites determined to pose a high threat to water quality.

11. Section D.3.b(4) (Pg 36) – Mobile Business Regulation:

The current draft Permit language states "...Each Copermittee shall develop and implement a program to reduce the discharge of pollutants from mobile businesses to the MEP. Each Copermittee shall keep as part of their inventory a listing of mobile businesses known to operate within its jurisdiction". The Port believes that keeping an up-to-date list of mobile businesses known to operate on Tidelands would be an inefficient use of resources. This task would involve contacting every business within the tidelands and requesting a list of all of the mobile businesses they contract with.

Since contracts are continually changing, this task would have to be done several times a year.

Furthermore, each Copermittee may require different minimum standards and BMPs. It will be confusing for mobile businesses operating in multiple jurisdictions to interpret and/or comply with multiple lists of requirements and standards. In addition, by having mobile business regulation identified within jurisdictional programs, assessments would only show compliance and enforcement within individual jurisdictions. There would be little ability to show effectiveness or compliance on a regional scale. For example, a single mobile business could receive multiple NOVs from multiple jurisdictions, yet no increased enforcement would occur because the data is assessed individually. By requiring regional implementation, there could be mechanisms added so that escalating enforcement could occur through regional coordination.

Recommendation:

The regulation of Mobile Businesses should occur as one of the many items identified for regional standardization. Developing and maintaining a countywide mobile business database will provide the most benefit to the Copermittees. BMP development and/or outreach should also be conducted on a regional scale, enabling mobile businesses to implement the same BMPs within each jurisdiction. The Copermittees should also determine a mechanism to allow for escalated enforcement resulting from violations within multiple jurisdictions.

Education Component

12. Section D.5.b(1)(c) (Pg 42) – Staff training

The current Draft Permit language states, "Each Copermittee shall train staff responsible for conducting inspections and enforcement of industrial and commercial facilities at least once a year." Many cities have staff that conduct inspections for reasons other than stormwater compliance. It is unclear whether this refers to all staff, or only staff who conduct stormwater compliance inspections. More clarity is needed.

Recommendation:

Modify the language as follows: "Each Copermittee shall train staff responsible for conducting *stormwater compliance* inspections and enforcement of industrial and commercial facilities at least once a year."

13. D.5.b.3 (Pg 42) – Education for School Children

The Draft Permit requires each Copermittee to participate in the development and implementation of a plan to educate residential, general public, and school children

target communities. The feasibility of educating school children is contingent upon obtaining authorization from local school districts and classrooms to conduct such activities. While most Copermittees have been successful to date, new federal or state standardized education requirements are have been making it more difficult to work Copermittee environmental curricula into school programs.

Recommendation:
The education of school children should be encouraged in the Permit, but not required.

Reporting

14. Section J.2.a.(8) – Likely effectiveness of potential watershed water quality activities

Section J.2.a.(7) of the Draft Permit requires Copermittees to describe the strategy used to guide implementation of watershed activities and also requires that Copermittees include criteria for evaluating and identifying effective activities in. As such the criteria in J.2.a.(8) is redundant; the placement of activities into a watershed strategy will not occur unless the activities are likely to be effective. However, the Port emphasizes that the real effectiveness of the activity will not be able to be determined until the activity is implemented.

Recommendation:
Delete section J.2.a.(8).

17. Sections J.2.a.(9) and J.2.a.(12) – Identification of watershed water quality and education activities.

The current language for these sections state "Identification and description of the"…"to be implemented by each Copermittee for the first year of implementation, including justification for why the activities were chosen and **information exhibiting that the activities will directly"**…."discharges of pollutants causing the watershed's high priority water quality problems." The bold text, as written, puts unreasonable expectations on the Copermittees and requires Copermittees to know the results of the activity in advance of implementation. The statement leads to Copermittees potentially being out of compliance if activities do not have expected results.

Recommendation:
It is recommended that the portion of text reading **"…information exhibiting that the activities will directly…"** be modified to read, "…*how they are expected to"* …"reduce the discharge of pollutants/ target the sources and discharges of

18. Regional Program (RURMP) Requirements

The Regional Urban Runoff Management Program (RURMP) has been added to the Permit and requires that the Copermittees collaborate to develop and implement new programs on a regional level. It is believed that this component was intended to replace the requirement for the Unified JURMP and WURMP documents. However, the prescriptiveness of the RURMP is far greater that that required for developing the previous Unified documents.

The need for consistency and collaboration is essential to improve data sharing and should be orchestrated at the regional level. The goal of an effective regional component should be more of an oversight role; to develop standards to be implemented by Copermittees (on jurisdictional and/or watershed levels). Many of the RURMP requirements focus on standardization of programs, such as the requirement for fiscal analysis standardization (F.8), and/or development of one-time report submittals (LTEA, HMP, ROWD, etc). This is an appropriate role for regional components. Reporting and assessment of these regionally developed standards can be successfully accomplished through the incorporation of the standards into WURMP and/or JURMP reports. It is not believed that the Draft Permit requirement to form a new layer of prescriptive program development, management, assessment, and reporting is the most beneficial mechanism to achieve this.

Several other RURMP requirements place an unnecessary layer of reporting and assessment on the Copermittees with little to no direct link to water quality improvement. For example:

- Requirement F.2 to develop minimum standards for the JURMP, WURMP, and RURMP programs is not necessary. The Regional Board has written the Draft Permit to be very prescriptive and clearly sets forth the minimum standards for the jurisdictional and watershed programs. A regional effort to re-write these minimum standards is not needed.
- Requirement F.4 to facilitate TMDL management and implementation is not an effort that should be undertaken regionally. TMDLs are specific to watersheds and the stakeholders in the watersheds and no benefit would be gained by regional management of TMDLs.
- Requirement F-5 to assess effectiveness of all programs on a regional level is not beneficial to the Copermittees. Watershed assessments should incorporate the regional elements into their overall assessment, as a regional program may have different outcomes in each watershed.
- Requirement F.6 to facilitate the development of strategies for implementation of activities on a watershed level is not appropriate at a regional level. While regional Copermittee interaction is essential to allow sharing of successful watershed activities, the activities themselves must be designed appropriately to address the specific needs of each watershed-specific strategy.

The creation of the RURMP, with the requirements listed in Section F (Regional Urban Runoff Management Program), in Section I.3. (Program Effectiveness Assessment. Regional), and in Section J.3. (Reporting. Regional Urban Runoff Management Plan) will require Copermittees to divert much needed resources away from effective jurisdictional and watershed programs. The Regional Board needs to carefully consider at what level (jurisdictional, watershed, or regional) an assessment is most appropriate. The prescriptive requirements for RURMP reporting and assessment will provide little information of value to the Copermittees and will only serve to create more paperwork.

Recommendation:
In an effort to reduce the duplicative requirements of the tentative order, the Port respectfully requests that the Regional Board consider removing the requirements of the formation of a Regional Urban Runoff Management Program and all associated reporting and assessment. The Port feels that these requirements will not serve to improve water quality, and will divert the focus and funding necessary to implement effective watershed based urban runoff management programs. The RURMP requirements as written will not serve the goal of measurably improving water quality in the region.

General Monitoring Comments:

A. The Port fully supports the Draft Permit reorganization being submitted by the Regional Copermittee letter. The Port spent a considerable amount of time reviewing and developing the regional comments and has evaluated the reorganization both from a jurisdictional and watershed viewpoint. The points identified below are provided to further support the Regional Copermittee letter.

B. The Draft Permit is recommending the addition of several new monitoring programs. We believe each of these assessments will provide valuable information that can be used to improve decision-making and better address and abate priority pollutants throughout the region. We should caution, however, that the rush to fully implement new large-scale programs may not provide the most benefit to our watersheds. In addition, they could be very costly and duplicative of what currently exists.

C. Monitoring should be developed concurrently using an approach that is effective (having adequate spatial/temporal coverage and providing statistical significant findings) and efficient. Furthermore, new monitoring should be structured to address the Permit's core management questions. We recommend that additional monitoring be added in a manner that allows Copermittees to use their resources to focus on abating the sources. Additionally, we recommend that the new Permit elements (Items 8-11) be incorporated into existing programs in a manner that can enhance the current assessments.

D. The Port also recommends that monitoring programs be developed and/or implemented to respond to a watershed strategy. A "one size fits all" regional program development approach is not appropriate. It would be more effective if each watershed develop an appropriate monitoring strategy to address and abate its pollutants of concern. An adaptive approach could be used and modified to target watershed specific areas of concern and assess pollutant load reductions.

19. Section-specific monitoring comments

The Toxic Hot Spots (THS) are identified in the Permit as an ongoing program. Copermittees are required to submit data and develop a report on what is occurring for the THS Program. During the reporting for Order 2001-01, this program was addressed outside of the Regional Monitoring Program and only reported in the Regional Monitoring Annual Report as an attachment.

The following findings support the fact that the THS sites are being remediated through other existing regulatory programs:

1. The monitoring and assessment of the THS has been replaced by TMDL studies that are ongoing at each of the THS sites[1] (Table 1). Phase I and Phase II TMDL studies were conducted in the sediments of the THS areas during the last Permit cycle and were handled predominantly by the Regional Board and their consultants. Assessments of each site, including the identification of the potential pollutants causing toxicity, were also handled by Regional Board and their consultants.

Table 1 Toxic Hot Spots Identified in the 1999 THS Program*

Rank	Site Identification	Reason for Listing	
		Definition trigger	Pollutants
High	San Diego Bay - Seventh St. Channel Paleta Creek, Naval Station	Sediment toxicity and benthic community impacts	Chlordane, DDT, PAHs and Total Chemistry
Moderate	San Diego Bay - Between "B" Street & Broadway Piers	Benthic community impacts	PAHs, Total Chemistry
Moderate	San Diego Bay - Central Bay Switzer Creek	Sediment toxicity	Chlordane, Lindane, DDT, Total Chemistry
Moderate	San Diego Bay - Chollas Creek	Benthic community impacts	Chlordane, Total Chemistry
Moderate	San Diego Bay - Foot of Evans & Sampson Streets	Benthic Community Impacts	PCBs, Antimony, Copper, Total Chemistry

* State Water Resources Control Board Resolution No. 99-065: Adoption Of The Consolidated Toxic Hot Spots Cleanup Plan. June 1999. Volume i: policy, toxic hot spot list and findings.

2. The Permit fact sheet states that the need to include the THS in Order 2006-0011 is necessary to ensure consistency with the 1999 Consolidated Toxic Hotspot Cleanup Plan (THS Plan). As stated in the THS Plan, "In the process of developing and

[1] It should be noted that while there is a TMDL for San Diego Bay - Downtown Anchorages, this site was not identified as a Toxic Hot Spot in the 1999 RWQCB Order.

implementing strategies to remediate toxic hot spots related to both sediment and water, the Regional Boards shall focus on approaches that rely on existing State and federal programs to address identified toxic hot spots". The 1999 Plan also requires that the Regional Board, "...Consider use of any established prevention tools such as... total maximum daily load development...." to address the THS (SWRCB THS Plan, p9). As such, the Port believes that the developing TMDLs and Cleanup and Abatement Order are sufficient strategies to remediate the THS and satisfactorily meet this requirement.

3. Copermittees involved in the THS program (Port, Cities of San Diego, Lemon Grove, and La Mesa) met with Regional Board staff from both the TMDL and Stormwater Units on July 1, 2004. It was determined at that meeting that the studies being conducted (or proposed to be conducted) for the TMDLs would sufficiently address the concerns regarding upstream inputs into the THS. As such, it was stated at that meeting, that all Copermittee efforts to work with the Regional Board TMDL Unit would suffice for meeting the Permit requirement for THS.

4. The Regional Board and SCCWRP are leading the efforts to identify and model upstream inputs. They are also the primary parties responsible for assessing the results and preparing the reports. As such, it is redundant to require the Copermittees to receive this information from the Regional Board only to give it back in the Annual Monitoring Report submittal.

5. Currently there is a large scope of work in progress to evaluate upstream contributions at three of the five THS: Chollas, Paleta, and Switzer Creeks (all of which are being conducted through TMDL programs). These three sites were chosen because they exhibited some sediment toxicity as well as some elevated chemistry for certain constituents during the Phase I and Phase II TMDL Studies. The current upstream assessment and modeling project was developed and is being initiated by SCCWRP and led by the Regional Board. Sampling was conducted during this current 2005-06 wet season and modeling will continue throughout the year. Copermittees have been involved in the development of this study and will continue to participate through the TMDL process as required.

6. The fourth site, "Foot of Sampson and Evans St" is currently being addressed through the Regional Board Shipyard Sediment Site Cleanup Project and Tentative Cleanup and Abatement Order (No. R9-2005-0126) that was issued in 2005. This process is currently under litigation. Because this is a highly controversial issue, it is not possible for Copermittees to receive and/or share information pertinent to that site. Furthermore, it is anticipated that the Cleanup and Abatement Order, R9-2005-0126, once finalized will sufficiently address the contamination at this THS site

7. The fifth site, "Between B St and Broadway" ranked significantly lower in the presence of toxicity and elevated chemistry. It is planned to be addressed through

the TMDL process following the SCCWRP upstream assessment and modeling study at Chollas, Paleta, and Switzer Creeks.

Recommendation:
The Port requests that the THS program and all references to such program be removed from the Draft Permit since the studies and/or activities addressing these areas are being conducted through other regulatory processes; the several TMDLS and/or Cleanup Orders that are currently ongoing. The Port believes these current efforts comply with the requirements in the 1999 THS Plan and will sufficiently address the contamination issues occurring at the THS. Copermittees will continue to be involved in these studies to the extent possible, however, because these efforts are being led by groups other than the Copermittees, it is not logical to report on them in the Draft Permit.

San Diego Unified Port District – Comments on Tentative Order No. R9-2006-011
Attachment 1: Proposed Permit Language and Summary Table for the Monitoring Section

TENTATIVE RECEIVING WATERS AND URBAN RUNOFF DISCHARGE MONITORING AND REPORTING PROGRAM NO. R9-2006-0011

I. PURPOSE

A. This Receiving Waters and Urban Runoff Discharge Monitoring and Reporting Program is intended to meet the following goals:
   1. Assess compliance with Order No. R9-2006-0011;
   2. Measure and improve the effectiveness of the Copermittees' urban runoff management programs;
   3. Assess the chemical, physical, and biological impacts to receiving waters resulting from urban runoff discharges;
   4. Characterize urban runoff discharges;
   5. Identify sources of specific pollutants;
   6. Prioritize drainage and sub-drainage areas that need management actions;
   7. Detect and eliminate illicit discharges and illicit connections to the MS4; and
   8. Assess the overall health of receiving waters.

B. In addition, this Receiving Waters and Urban Runoff Discharge Monitoring and Reporting Program is designed to answer the following core management questions:

   1. Are conditions in receiving waters protective, or likely to be protective, of beneficial uses?
   2. What is the extent and magnitude of the current or potential receiving water problems?
   3. What is the relative urban runoff contribution to the receiving water problem(s)?
   4. What are the sources of urban runoff that contribute to receiving water problem(s)?
   5. Are conditions in receiving waters getting better or worse?

II. WATERSHED BASED MONITORING PROGRAMS

Each Copermittee shall collaborate with the other Copermittees to develop, conduct, and report on a year round watershed based Receiving Waters and Urban Runoff Monitoring Program. The monitoring program design, implementation, analysis, assessment, and reporting shall be conducted on a watershed basis for each of the hydrologic units. The monitoring program shall be designed to meet the goals and answer the questions listed in Section I above. The monitoring program shall include the following components:

A. RECEIVING WATERS MONITORING PROGRAM

1. MASS LOADING STATION (MLS) MONITORING

   a) The following existing mass loading stations shall continue to be monitored: Santa Margarita River, San Luis Rey River, Agua Hedionda Creek, Escondido Creek, San Dieguito River, Penasquitos, Tecolote Creek, San Diego River, Chollas Creek, Sweetwater River, and Tijuana River.

The mass loading stations shall be monitored at the frequency identified in Table 1.

b) Each mass loading station to be monitored in a given year shall be monitored twice during wet weather events and twice during dry weather flow events. The exception is the 2008-2009 monitoring year, which shall include monitoring of all mass loading stations for one dry weather flow event only if the Copermittees participate in Bight '08.

c) Each mass loading station shall be monitored for the first wet weather event of the season which meets the USEPA's criteria as described in 40 CFR 122.21(g)(7). Monitoring of the second wet weather event shall be conducted after February 1. Dry weather mass loading monitoring events shall be sampled in October prior to the start of the wet weather season and in May after the end of the wet weather season. If flows are not evident in October, then sampling shall be conducted during non-rain events in the wet weather season.

d) Mass loading sampling and analysis protocols shall be consistent with 40 CFR 122.21(g)(7)(ii) and with the USEPA Storm Water Sampling Guidance Document (EPA 833-B-92-001). Wet weather samples shall be flow-weighted composites, collected for the duration of the entire runoff event, where practical. Where such monitoring is not practical, such as for large watersheds with significant groundwater recharge flows, composites shall be collected at a minimum during the first 3 hours of flow. Dry weather event samples shall be flow-weighted composites, collected for a time duration adequate to be representative of changes in pollutant concentrations and runoff flows which may occur over a typical 24 hour period. A minimum of 3 sample aliquots, separated by a minimum of 15 minutes, shall be taken for each hour of monitoring, unless the Regional Board Executive Officer approves an alternate protocol. Automatic samplers shall be used to collect samples from mass loading stations. Grab samples shall be taken for temperature, pH, specific conductance, biochemical oxygen demand, oil and grease, total coliform, fecal coliform, and Enterococcus.

e) Copermittees shall measure or estimate flow rates and volumes for each mass loading station sampling event in order to determine mass loadings of pollutants. Data from nearby USGS gauging stations may be utilized, or flow rates may be estimated in accordance with the USEPA Storm Water Sampling Guidance Document (EPA-833-B-92-001), Section 3.2.1.

f) In the event that the required number of events are not sampled during one monitoring year at any given station, the Copermittees shall submit, with the subsequent Receiving Waters Monitoring Annual Report, a written explanation for a lack of sampling data, including streamflow data from the nearest USGS gauging station.

g) The following constituents shall be analyzed for each monitoring event at each station:

Table 2. Analytical Testing for Mass Loading and Temporary Watershed Assessment Stations

Conventionals, Nutrients, Hydrocarbons	**Pesticides**	**Metals (Total and Dissolved)**	**Bacteriological**
Total Dissolved Solids	Diazinon	Antimony	Total Coliform
Total Suspended Solids	Chlorpyrifos	Arsenic	Fecal Coliform
Turbidity	Malathion	Cadmium	Enterococcus
Total Hardness	Pyrethroids*	Chromium	
PH		Copper	
Specific Conductance		Lead	
Temperature		Nickel	
Dissolved Phosphorus		Selenium	
Nitrite		Zinc	
Nitrate			
Total Kjeldahl Nitrogen			
Ammonia			
Biological Oxygen Demand, 5-day			
Chemical Oxygen Demand			
Total Organic Carbon			
Dissolved Organic Carbon			
Methylene Blue Active Substances			
Oil and Grease			

* Pyrethroid monitoring will begin in the 2007-2008 season.

h) In addition to the constituents listed in Table 2 above, monitoring stations in the Chollas Creek watershed shall also analyze samples for polychlorinated biphenyls (PCBs), Chlordane, and polycyclic aromatic hydrocarbons (PAHs) for each monitoring event.

i) The following toxicity testing shall be conducted for each monitoring event at each station as follows:

(1) 7-day chronic test with the cladoceran Ceriodaphnia dubia (USEPA protocol EPA-821-R-02-013).

(2) Chronic test with the freshwater algae Selenastrum capricornutum (USEPA protocol EPA-821-R-02-013).

(3) Acute survival test with amphipod Hyalella azteca (USEPA protocol EPA-821-R-02-012).

j) The presence of acute toxicity shall be determined in accordance with USEPA protocol (EPA-821-R-02-012). The presence of chronic toxicity shall be determined in accordance with USEPA protocol (EPA-821-R-02-013).

k) Assessments of the presence of trash (anthropogenic litter) in receiving waters. Copermittees shall ensure that the monitoring sites provide adequate spatial coverage for receiving waters. Copermittees shall also ensure that trash data is collected and evaluated in conjunction with analytical data, where applicable. This monitoring program shall

be implemented within each watershed and shall begin no later than 2007-2008 monitoring year.

(1) Assessments of trash shall provide information on the spatial extent and nature of the types of trash present.

2. TEMPORARY WATERSHED ASSESSMENT STATION (TWAS) MONITORING

NO PROPOSED REORGANIZATION FOR SECTIONS 3, 4, AND 5. SEE DETAILED COMMENTS FOR SECTIONS 4 AND 5.

6. COASTAL STORM DRAIN MONITORING
The Copermittees shall collaborate to develop and implement a coastal storm drain monitoring program. The monitoring program shall include:

a) Identification of coastal storm drains which discharge to coastal waters.

b) Monthly sampling of all flowing coastal storm drains identified in section II.A.6.a for total coliform, fecal coliform, and enterococcus[7]. Where flowing coastal storm drains are discharging to coastal waters, paired samples from the storm drain discharge and coastal water (25 yards down current of the discharge) shall be collected. If flowing coastal storm drains are not discharging to coastal waters, only the storm drain discharge needs to be sampled.

[7] Coastal storm drains where sampler safety, habitat impacts from sampling, or inaccessibility are issues need not be sampled. Such coastal storm drains shall be added to the Copermittee's dry weather field screening and analytical monitoring program where feasible

(1) Frequency of sampling of coastal storm drains may be reduced to every other month if the paired coastal storm drain data:
   (a) Exhibits three consecutive storm drain samples with all bacterial indicators below the Copermittees' sampling frequency reduction criteria, as the sampling frequency reduction criteria was developed under Order No. 2001-01.
   (b) Exhibits that the three consecutive samples discussed in (a) above are paired with receiving water samples that do not exceed Assembly Bill (AB) 411 or Basin Plan standards.
   (c) Exhibits that less than 20% of the storm drain samples were above any of the sampling frequency reduction criteria during the previous year.

(2) The Copermittees shall notify the Regional Board of any coastal storm drains eligible for sampling frequency reduction prior to October 1 of each year. Sampling frequency reduction shall not occur prior to Regional Board notification.

(3) Where applicable and feasible, re-sampling shall be implemented within one business day of receipt of analytical results for coastal storm drains where:
   (a) Both storm drain and receiving water samples exceed AB 411 or Basin Plan standards for any bacterial indicator.
   (b) The storm drain sample exceeds 95th percentile observations of the previous year's data for any bacterial indicator.

(4) If re-sampling cannot be conducted within one business day, it must be implemented at the next feasible opportunity and written justification as to the delay in re-sampling must be submitted in the appropriate Copermittee Report.

(5) If re-sampling conducted under section (3) above exhibits continued exceedances of a AB 411 or Basin Plan standards in the receiving water, or exceedances of 95th percentile in the storm drain, investigations of sources of bacterial contamination shall commence within 24 hours of receipt of analytical results where applicable and feasible. If investigations cannot be performed within 24 hours, or one business day, the investigation must commence at the next feasible opportunity and written justification as to the delay in source investigation must be submitted with the Annual CSDM Report.

(6) Investigations of sources of bacterial contamination shall occur immediately if evidence of abnormally high flows, sewage releases, restaurant discharges, and/or similar evidence is observed during sampling.

(7) Exceedances of public health standards for bacterial indicators shall be reported to the County Department of Public health as soon as possible.

B. URBAN RUNOFF DISCHARGE MONITORING

The Urban Runoff Discharge Monitoring Program shall be designed to meet the goals and answer the core management questions listed in Section I above. The

monitoring shall be reviewed annually and modified as needed to include pollutants of concern identified through the Receiving Waters Monitoring Program, Section II.A. The Urban Runoff Discharge Monitoring Program shall include the following components:

1. COMPLETE MS4 MAP

Each Copermittee shall create a map of its Urban Runoff Discharge Monitoring sites. The map should clearly identify all MS4 Discharge Monitoring sites contained in Section II.B.2.a, b, c, and all IC/ID Field Screening sites. It is preferred that the map be created as either a separate GIS layer or a map overlay on its MS4 Map, hereafter referred to as the Urban Runoff Discharge Monitoring Map. Each Copermittee shall confirm that each drainage area within its jurisdiction contains at least one monitoring station.

2. MS4 DISCHARGE MONITORING

a) MS4 OUTFALLS:

The Copermittees shall develop and implement monitoring to monitor pollutant discharges from MS4 outfalls in each watershed during wet and dry weather. The monitoring program design, implementation, analysis, assessment, and reporting shall be designed with a watershed focus for each of the hydrologic units. ~~Outfalls to be monitored shall be representative of the outfalls within each watershed in terms of size, flow, drainage area conditions (such as land use), etc.~~ The program shall include rationale and criteria for selection of outfalls to be monitored. Monitoring shall, at a minimum, include collection of samples for those pollutants causing or contributing to violations of water quality standards within the watershed. ~~Frequency of monitoring and monitoring methods shall ensure monitoring which is representative of outfall discharge flow and pollutant conditions.~~ This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year.

b) UPSTREAM MS4 MONITORING:

Site selection for dry weather MS4 discharge monitoring shall at a minimum follow the analytical requirements from the previous Permit (2001-01) which required sample collection for laboratory analytes for at least 25% of the 2001-01 Dry Weather program stations. Upstream MS4 monitoring locations shall be guided by watershed priorities and coordinated to best represent the needs of the watershed. The use of existing sites shall be evaluated prior to initiating the program to ensure that there is flow at the selected sites. New sites may be substituted provided that they 1) have adequate flow, 2) provide an equal or better assessment of high priority watershed problems.

(1) At a minimum, collect samples for analytical laboratory analysis of the following constituents:

(a) Total Hardness
(b) Oil and Grease
(c) Diazinon and Chlorpyrifos
(d) Cadmium (Dissolved) or field test kit
(e) Copper (Dissolved) or field test kit
(f) Lead (Dissolved) or field test kit
(g) Zinc (Dissolved) or field test kit
(h) Enterococcus bacteria[8]
(i) Total Coliform bacteria[8]
(j) Fecal Coliform bacteria[9]
(k) Additional Constituents identified to be causing impairment or that have been identified as high priority watershed pollutants.

c) SOURCE IDENTIFICATION MONITORING

The Copermittees shall identify areas within the watershed where additional source identification monitoring is required. The monitoring shall include focused monitoring on those specific pollutants that have been identified through MLS/TWAS, TIEs, MS4, and other existing programs. The monitoring should be developed to identify sources of discharges of pollutants causing the high priority water quality problems within each watershed. The monitoring should be designed to move upstream into each watershed as necessary to identify sources. The monitoring program shall use source inventories and "Threat to Water Quality" analysis to guide monitoring efforts. This monitoring program shall be implemented within each watershed and shall begin no later than the 2007-2008 monitoring year.

3. ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING

Each Copermittee shall conduct field screening designed to randomly detect and eliminate illicit connections and illegal discharges to the MS4 using frequent, geographically widespread discharge monitoring and follow-up investigations. Each Copermittee shall conduct the following Illegal Discharge / Illicit Connection field screening tasks: At a minimum, the procedures must meet the following guidelines and criteria:

a) SELECT ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING STATIONS

Based upon a review of its past Dry Weather Monitoring Program, each Copermittee shall select stations to detect illicit connections and illegal discharges to the MS4 within its jurisdiction. Stations shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the MS4 by either (a) randomly placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the MS4 or major outfall; or, (b) stations may be selected non-randomly provided adequate coverage of the entire MS4

[8] Colilert and Enterolert may be used as alternative methods for Total Coliform and Enterococcus.
[9] Fecal coliform is determined by calculation.

system is ensured. The illicit connection/illegal discharge field screening stations shall be established considering the following guidelines:

(1) A grid system consisting of perpendicular north-south and east-west lines spaced ¼ mile apart shall be overlayed on a map of the MS4, creating a series of cells;

(2) All cells that contain a segment of the MS4 shall be identified and one dry weather analytical monitoring station shall be selected in each cell;

(3) Stations should be located downstream of any sources of suspected illegal or illicit activity;

(4) Stations shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system within each cell;

(5) Hydrological conditions, total drainage area of the site, traffic density, age of the structures or buildings in the area, history of the area, and land use types shall be considered in locating stations;

(6) Determining Number of Stations: Based upon review of previous Dry Weather Monitoring Programs, each Copermittee shall determine a minimum number of stations to be sampled each year with provisions for alternate stations to be sampled in place of selected stations that do not have flow.

b) DEVELOP ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING PROCEDURES

Each Copermittee shall develop and/or update written procedures for IC/ID field screening, including field observations, monitoring, and analyses to be conducted. At a minimum, the procedures must meet the following guidelines and criteria:

(1) Sampling Frequency: Illegal Discharge / Illicit Connection field screening shall be conducted at each identified station at least once between May 1st and September 30th of each year or as often as the Copermittee determines is necessary to comply with the requirements of section D.4 of Order No. R9-2006-0011.

(2) If flow or ponded runoff is observed at a Illegal Discharge / Illicit Connection field screening station and there has been at least seventy-two (72) hours of dry weather, make observations and collect at least one (1) grab sample. Record general information such as time since last rain, quantity of last rain, site descriptions (i.e., conveyance type, dominant watershed land uses), flow estimation (i.e., width of water surface, approximate depth of water, approximate flow velocity, flow rate), and visual observations (i.e., odor, color, clarity, floatables, deposits/stains, vegetation condition, structural condition, and biology).

(3) At a minimum, conduct field screening analysis of the following constituents at all stations where water is present:

(a) Specific conductance (calculate estimated Total Dissolved Solids).
(b) Turbidity
(c) pH
(d) Reactive Phosphorous
(e) Nitrate Nitrogen
(f) Ammonia Nitrogen
(g) Surfactants (MBAS)

(4) If the station is dry (no flowing or ponded runoff), make and record all applicable observations and select another station from the list of alternate stations for monitoring.

(5) Develop and/or update criteria for field screening results whereby exceedance of the criteria will require follow-up investigations to be conducted to identify and eliminate the source causing the exceedance of the criteria.

(6) When possible, Copermittees shall coordinate with the requirements in Sections II.C.2.a and II.C.2.b above, to provide a complete field screening and analytical assessment during dry weather.

(7) Assess the presence of trash (anthropogenic litter) in urban runoff and receiving waters. Copermittees shall ensure that the field screening stations provide adequate spatial coverage for MS4 discharges within each watershed. Copermittees shall also ensure that trash data is collected and evaluated in conjunction with other field screening and/or analytical data, when applicable.

(a) Assessments of trash shall provide information on the spatial extent and nature of the types of trash present.

(8) Field screening stations identified to exceed monitoring criteria for any constituents shall continue to be screened in subsequent years.

(9) Develop and/or update procedures to eliminate detected illicit discharges and connections. These procedures shall be consistent with each Copermittees Illicit Discharge and Elimination component of its Jurisdictional Urban Runoff Management Plan as discussed in section D.4 of Order No. R9-2006-0011.

c) CONDUCT ILLEGAL DISCHARGE / ILLICIT CONNECTION FIELD SCREENING

The Copermittees shall commence implementation of IC/ID field screening and under the requirements of this Order by May 1, 2007. Each Copermittee shall conduct field screening monitoring in accordance with its storm water conveyance system map and field screening monitoring procedures as described in section II.B.3.c above. If monitoring indicates an illicit connection or illegal discharge, conduct the follow-up investigation and elimination activities as described in the ~~submitted dry weather field screening and analytical monitoring~~ procedures and sections D.4.d and D.4.e of Order No. R9-2006-0011. Until the IC/ID field screening program is implemented under the requirements of this Order, each Copermittee shall continue to implement dry weather field screening and analytical monitoring as it was most recently implemented pursuant to Order No. 2001-01.

III. Regional Monitoring Program

A. The Copermittees shall participate and coordinate with federal, state, and local agencies and other dischargers in development and implementation of a regional watershed monitoring program as directed by the Executive Officer.

B. Bight '08

1. During the 2008-2009 monitoring year (Permit Year 3), the Copermittees may participate in the Bight '08 study. The Copermittees shall ensure that such participation results in collection and analysis of data useful in addressing the goals and management questions of the Receiving Waters Monitoring Program. Any participation shall include the contribution of all funds not otherwise spent on full implementation of mass loading station, temporary watershed assessment station, ambient bay and lagoon, and bioassessment monitoring. All other monitoring shall continue during the 2008-2009 monitoring year (Permit Year 3) as required.

2. If the Copermittees do not participate in Bight '08, mass loading station, temporary watershed assessment station, ambient bay an lagoon, and bioassessment monitoring shall be conducted as follows:

a) Permit Year 4 (2009-2010) monitoring shall be conducted in Permit Year 3 (2008-2009) (see Table 1).
b) (2) Permit Year 5 (2010-2011) monitoring shall be conducted in Permit Year 4 (2009-2010) (see Table 1).
c) (3) Permit Year 4 (2009-2010) monitoring shall be conducted in Permit Year 5 (2010-2011).

3. If the Copermittees partially participate in Bight '08, monitoring shall be conducted as described in section II.B.2.b above, with the exception of any monitoring offset by the contribution of funds to Bight '08.

IV. SPECIAL STUDIES

A. TMDL MONITORING

1. All monitoring shall be conducted as required in Investigation Order No. R9-2004-0277 for Chollas Creek.

B. Regional Harbor Monitoring – The Copermittees which discharge to harbors shall participate in the development and implementation of the Regional Harbor Monitoring Program.

C. The Copermittees shall conduct special studies as directed by the Executive Officer.

V. MONITORING PROVISIONS

NO CHANGES PROPOSED FOR THIS SECTION

San Diego Unified Port District – Comments on Tentative Order No. R9-2006-011
Attachment 1: Proposed Permit Language and Summary Table for the Monitoring Section

Table 1: Summary of Proposed Monitoring Modifications

Item No.	Section	Modification	Rationale
1	Title	Change "Tentative Receiving Waters Monitoring...." to "Tentative Receiving Waters and Urban Runoff Discharge Monitoring..."	The monitoring program requires programs that monitor receiving waters and programs that monitor urban runoff discharges. Re-naming this part of the Draft Tentative Order will provide clarity to what is required.
2	II.A & II.B	Modify the main monitoring program names to become: II. Watershed Based Monitoring Program; II.A the Receiving Waters Monitoring Program; and II.B the Urban Runoff Discharge Monitoring Program. Move new components that are focused on monitoring urban runoff discharges to II.B	Separating the core programs into a Receiving Waters Monitoring component and an Urban Runoff Discharge Monitoring component is an appropriate way to structure the new Permit, given that several new monitoring requirements have been added. There are inherent differences to what each core program should be designed to accomplish. Receiving water monitoring should be focused on assessing large-scale pollutant loading, ambient conditions, trends, water quality improvements/degradations, impacts to beneficial uses, and identifying high priority areas/pollutants to guide urban runoff monitoring. Urban runoff monitoring is better focused on sources of pollutants, characterizations of watershed areas/land-uses, drainage basin specific conditions, and providing a more focused assessment of watershed pollutants based upon what is identified in the receiving waters. Additionally, separating the program components allows for better correlation with the goals and core management questions identified in Section I.A and I.B. Many of the core questions are strictly specific to either Receiving Waters (I.A.3, I.A.8, I.B.1, I.B.2, I.B.5) or Urban Runoff (I.A.4, I.A.5, I.A.7, I.B.3, I.B.4). Dividing the Draft Permit into these core programs will facilitate the development and assessment of the program's effectiveness. It will also make it easier to determine on what scale (regional, watershed, jurisdictional) the programs should be designed and implemented.
3	II.A.1 Table 2	Add Pyrethroids to the list of monitoring constituents for MLS/TWAS. Remove the requirement, II.A.8, as a stand-alone	Adding pyrethroids to the list of monitoring constituents required for MLS and Temporary Watershed Assessment Stations (Table 2) would be the most effective way to assess the presence of pyrethroids in the watershed. In doing so, pyrethroids would be monitored in both wet and

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		program.	dry weather and the data would be consistent with, and comparable to, other constituent data that is generated for each watershed. The RWQCB fact sheet (p97) states that pyrethroids are the leading household pesticide (replacing diazinon) and monitoring is required because its use is "...likely to increase as diazinon use decreases." Because the MLS program was effectively used to evaluate diazinon during the previous Permit, it is anticipated that the same approach, coupled with the additional Copermittee improvements to the monitoring program (use of wet and dry events and addition of TWAS) would be acceptable.
4	II.A.1.k	Add a requirement to assess trash during MLS and TWAS monitoring as Section II.A.1.k. Remove the requirement, II.A.9 as a stand-alone program. The wording has changed slightly from the original Draft Permit text. The modification supports the Copermittee rationale presented at the workshop and is consistent with other Copermittee comments on trash. Please note that other program elements will also incorporate trash monitoring as identified below.	Incorporating trash assessment tools similar to those used in Forester Creek and/or Chollas Creek will address the RWQCB requirement. These currently accepted methods have been used within the San Diego region as part of elevated regulatory compliance for areas with known trash problems (Forester Creek and Chollas Creek). The Copermittees believe that a more quantitative in depth assessment is not warranted at this point. While several watersheds have identified trash as a concern, it is not a regional Tier 1 (LTEA) pollutant. Conducting an assessment similar to that described herein adequately meets the RWQCB intent, provides adequate spatial and temporal coverage of the region, will provide a good baseline of trash throughout the watersheds, will enable watersheds to prioritize and develop activities to address areas of greatest importance.
5	II.A.6.b.3	Modify Coastal Storm Drain Monitoring Program requirements as follows: (3) Where applicable and feasible, re-sampling shall be implemented within one business day of receipt of	Re-sampling under the Coastal Storm Drain Monitoring Program cannot always be conducted within a strict time frame (such as 24-hours). The following changes would provide the needed flexibility to take into consideration factors normally outside of Copermittee control (weather conditions, rain and/or wet periods when sampling cannot occur,

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		analytical results for coastal storm drains where… Add another requirement to read: (4) <u>If re-sampling cannot be conducted within one business day, it must be implemented at the next feasible opportunity and written justification as to the delay in re-sampling must be submitted in the appropriate Copermittee Report.</u> [RENUMBER REMAINING SECTIONS ACCORDINGLY]	laboratory staffing/hours, staff availability, or potential weekend/holiday work.
6	II.A.6.b.5	Add language as follows: If re-sampling conducted under section (3) above exhibits continued exceedances of AB411 or Basin Plan standards <u>in the receiving water, or exceedances of 95th percentile in the storm drain…</u> <u>If investigations cannot be performed within 24 hours, the investigation must commence at the next feasible opportunity and written justification as to the delay in source investigation must be submitted with the Annual CSDM Report.</u>	Copermittees should not be required commit resources to investigations of storm drains exceeding AB411 or Basin Plan standards. Upstream tracking of bacteria within the MS4 is nearly impossible when the concentrations of bacteria are relatively low. Mandatory investigations within 24 hours do not consider: weather conditions, staff availability, laboratory staffing/hours, or associated costs.
7	II.B	Add a section titled "Urban Runoff Discharge Monitoring". Please note that much of the language within this section has been moved from its placement in the original draft Permit without any modifications. Any language that has been modified or added has been identified as red text.	This monitoring program and the individual components within it should be driven by, and used in conjunction with, the Receiving Waters Monitoring information. Monitoring within the Urban Runoff Discharge Monitoring program is best designed to be adaptive, responding to conditions in the receiving waters and high priority sources and/or pollutants. To provide the most effective overall watershed assessments, these program components must react to new sources and changes in receiving water conditions, while being still being able to easily feed into and supplement the receiving water data in a manner that produces comprehensive watershed water quality assessments. It is anticipated that the design and implementation of the Urban Runoff Discharge Monitoring program will differ from the receiving waters program. This is primarily because the programs will need to be reviewed and updated to reflect the receiving water program findings. It is also understood that the

			urban runoff components will address different goals and core management questions, such as I.A.4, I.A.5, I.A.7, I.B.3, and I.B.4.
8	II.B & II.B.2.a	Propose to add sentences (red text) to these two sections to clarify the involvement of watersheds and require their participation in developing and/or implementing the monitoring program. II.B: Add, "The monitoring shall be reviewed annually and modified as needed to include pollutants of concern identified through the Receiving Waters Monitoring Program, Section II.A." II.B.2.a: Add, "The monitoring program design, implementation, analysis, assessment, and reporting shall be designed with a watershed focus for each of the hydrologic units".	The need for watershed participation in monitoring program design is essential to develop programs that can meet all the goals identified in the watershed and monitoring sections of this Permit. It should be required with an understanding that the Copermittees would be allowed to determine the mechanism to achieve this. An annual review of monitoring data, particularly from MS4s would allow Copermittees to modify or adjust their programs to best meet the watershed needs, while not sacrificing the prescriptiveness of the Permit requirement. Adding the sentences as proposed would assist in proper program development and facilitate Copermittee compliance while creating a program best designed to show changes in water quality conditions.
9	II.B.1	Place the requirement previously identified as II.D.2, "Complete MS4 Map", into this new section. Move this requirement from the original placement within the dry weather program.	It makes sense to have all urban runoff discharge monitoring locations mapped, not just the dry weather stations. It will assist in evaluating monitoring information from a spatial perspective. The text changes identified in this section (red text) simply clarify this request. They do not alter the intent of the initial requirement.
10	II.B.2.a II.B.2.b	Move the requirement for MS4 Discharge Monitoring to this section. Remove the requirement, II.A.10, as a stand-alone program.	Using a similar logic as applied to the Receiving Waters Program design, this component of the Urban Runoff Discharge Monitoring Program would be the basis for identifying watershed problems attributable to urban runoff. By adding the component for MS4 outfall monitoring along with the previous requirement to conduct dry weather laboratory monitoring, the characterization of urban runoff becomes much more complete. The additional monitoring within section II.C.2.b and II.C.2.c would be designed appropriately to enhance the findings of this program, resulting in a comprehensive approach to evaluating urban runoff discharges and identifying sources of priority pollutants.

			The Permit allows for one year to develop this program. As this is a new Permit requirement, it is anticipated that Copermittees will need time to fully develop the appropriate design, sample locations and sample frequencies.
11	II.B.2.a	Clarify that this new section (previously II.A.10) only pertains to MS4 outfalls, not the entire MS4 system.	Through much regional discussion, it is unclear whether the existing Draft Permit requirement (II.A.10) pertains only to MS4 outfalls or the entire MS4 system. As such it is recommended that the program name be changed to clearly identify that it is for outfalls only.
12	II.B.2.a	Remove the term "characterize". Remove the sentence reading "Outfalls to be monitored shall be representative of the outfalls within each watershed in terms of size, flow, drainage area conditions (such as land use), etc."	The terms *characterize* and *representative* infer that the program must use a statically rigorous approach to thoroughly evaluate MS4s. The Copermittee believe that the most appropriate use of this program is to meet the Core questions 3 and 4 from Section I.B and to find and eliminate sources. The use of characterization should occur in the receiving waters, which currently employ a statistically rigorous design.
13	II.B.2.b	Move the 2001-01 Dry Weather Monitoring Program laboratory analytical requirements to this section. The text within this section has been modified from the original draft Permit text. However, the intent of the requirement, the frequency, and the number of sites required remain the same.	As stated during earlier Copermittee comments, follow-up investigations for analytical constituents rarely result in the elimination of an illegal discharge. Usually laboratory results take from 1-2 weeks to obtain, making it difficult to track the problem upstream. Typically the pollutants evaluated through laboratory analysis are widespread pollutants, rarely associated with random illegal discharges. They are more pointed to ongoing pollution problems with facilities or homeowner practices (improper storage, misuse of pesticides, improper cleaning methods, etc). However, they are important in determining areas that may be of elevated concern within the watershed. The importance of this monitoring is better situated toward finding areas/sources of concern and developing activities (both watershed and jurisdictional) such as BMP implementation to reduce loads of the problem pollutant(s).

14	II.B.2.c	Move the requirement for Source Identification Monitoring here. Remove Section II.A.11 as a stand-alone program. Two sentences have been added or modified slightly from what was in the original draft Permit: " The Copermittees shall identify areas within the watershed where additional source identification monitoring is required. The monitoring shall include focused monitoring on those specific pollutants that have been identified through MLS/TWAS, TIEs, MS4, and other existing programs."	With the proper design and placement of stations from all of the Urban Runoff Discharge Monitoring program components (II.B.3a, b, & II.B.3) coupled with the addition receiving water stations (TWAS) the amount of data collected and the extent of coverage within the watersheds will be greatly expanded. As such, it is anticipated that the new programs will improve the overall identification of areas of concern. Once coupled with source inventory information from the LTEA, Copermittees should be able to determine sources and identify activities to address those sources. The intent of the modification is to clarify that source ID monitoring will occur as a response to previously identified watershed problems where source have not been determined. In those instances when data and inventory information does not clearly identify sources, Copermittees will be required to conduct additional monitoring to better identify sources. This program is suggested to be an as-needed approach, designed to supplement the base information that is provided by the Urban Runoff Discharge Monitoring Program.
15	II.B.3	Move the 2001-01 Dry Weather Monitoring Program field screening requirements to this section. Rename the program "Illegal Discharge / Illicit Connection Field Screening". Modify all text within this section to replace the term "Dry Weather Monitoring Program" with Illegal Discharge / Illicit Connection Field Screening". Modify text slightly to allow for either the use of a random grid system or station placement based upon prior knowledge of watershed and/or jurisdictional considerations.	The placement of this program in the context of the entire Urban Runoff Discharge Monitoring Program provides a logical means to keep the old Permit's prescriptiveness (prompt attention to follow-ups) while restructuring all programs in a manner that will provide the most effective assessment of watershed water quality. This program would be designed to detect IC/IDs throughout the watershed. The program is intended to be identical to the field screening required in the previous Permit, with the addition of MBAS to the field screening analyte list. It is expected that the same requirement for prompt follow-ups (two business days) will still apply.
16	II.B.3.b.(6)	Add the following text as a new requirement: "When possible, Copermittees shall coordinate with the requirements in Sections II.C.2.a and II.C.2.b above, to provide a complete field screening and	The suggested modification provides the Copermittees a mechanism to simultaneously meet multiple programs requirements with a single field effort. Conducting several analyses at a given location and time, provides a better understanding of water quality conditions and potential sources. In addition it is a cost effective way to comply with new Permit

		analytical assessment during dry weather."	requirements. It is not anticipated that this will be able to occur for every sampling location and Copermittees understand that a reduction in sampling sites will not be allowed, nor expected. While there is an implicit understanding that this can occur within the existing Permit language, its addition to the Permit memorializes that both RWQCB and Copermittee staff agree with this approach.
17	II.B.3.b.(7)	Add a requirement to assess trash during IC/ID Field Screening. Remove the requirement, II.A.9 as a stand-alone program. See item 4, above.	Currently the existing dry weather IC/ID program provides a general assessment of the presence of trash near the MS4 monitoring locations and when applicable, in the nearby receiving waters (for MS4s with direct discharges). With some modifications and improvements to the current visual assessments, a portion of the trash monitoring requirement could be incorporated into the existing programs. The dry weather IC/ID monitoring locations provide an adequate assessment of the Copermittee's MS4 and to some extent receiving waters (for those MS4 sites directly discharging to a receiving water. Sites are visited and visual observations recorded even when there is no presence of flow. It is anticipated that the trash assessment conducted within this program will utilize a similar approach to the recommendation from Item 4 above.
18	Section IV	Move "TMDL Monitoring" into the Special Studies Section from its previous placement as II.A.12 in the Receiving Waters Monitoring Program.	TMDL monitoring requires a somewhat unique and more focused monitoring approach than typical receiving waters or urban runoff programs. TMDLs are also unique because they may have both receiving water and urban runoff monitoring requirements. Additionally, TMDL monitoring focuses specifically on addressing the pollutant(s) associated with the impairment and ensuring load reductions are being met. As such, it may not follow the same design rationale required for receiving waters or urban runoff programs. Finally, it is anticipated that TMDLs will increase through the life of this Permit. As such, the concept of identifying TMDLs separate from the other core programs will make it easier to assess information and incorporate future TMDL requirements into the Permit.

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June 7, 2006

Via Hand Delivery

Mr. John H. Robertus, Executive Officer
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

SUBJECT: Watershed Comments on Tentative Order R9-2006-011

Dear Mr. Robertus:

The Port has invested significant time and resources toward watershed program development during Order 2001-01. We have been on the forefront of developing watershed-based approaches to address pollutants. We have also been integral in developing some of the reporting and assessment formats used during the most recent report submittals (which have received favorable response from Board staff).

For these reasons and others, we believe that we have made significant progress in developing a solid and effective watershed program with many innovative watershed activities for the San Diego Bay watershed. We strongly support the theory stated in the Draft Permit's Fact Sheet, Section IV Permitting Approach, which emphasizes 1) the use of a watershed strategy to address the high priority water quality problems, 2) implementing the strategy in the manner found to be most effective, and 3) integrating jurisdictional, watershed, and regional programs in the most effective manner possible. We agree that developing appropriate Permit language and Copermittee watershed programs will lead to water quality improvements.

The Port ultimately supports the RWQCB's intent of moving toward a watershed-based permit. However, while long-term water quality problems must be addressed at the watershed level, we are still limited by the fact that program components primarily are implemented at a jurisdictional level. We believe the watershed section of Order 2001-01 provided adequate structure and flexibility to work through these limitations and implement effective activities at the watershed level.

The Port is very concerned that the watershed requirements as contained in the Draft Permit could potentially set back the progress made during Order 2001-01. We feel the watershed language as written, is overly prescriptive and will inhibit the quality of watershed activities conducted by Copermittees. By relying on a stringent, set number of activities to be conducted in each WMA, rather than on the effectiveness of an overall pollutant strategy, we will be forced to implement activities for the mere sake of

meeting permit requirements rather than implementing an effective strategy that considers pollutant impacts at the watershed level.

There are several issues highlighted below that detail our concerns about Section E of the Permit and lead to our recommendation herein.

1. The Port wishes to remind the RWQCB that the watershed concept is relatively new. While we acknowledge that monitoring has been occurring for over 15 years within the region, the Copermittees have been implementing watershed-based programs only since 2002. As such, only recently have the monitoring approach and objectives been modified to better show changes on a watershed scale. Although there is room for improvement, the Copermittees have made significant progress in addressing priority pollutants at the watershed level in this short time frame. Each year, the Copermittees have improved the type of watershed activities conducted and the way in which the information is presented in the annual reports. We fully recognize that we need to continually improve and build upon our programs, and we feel that the watershed language in Order 2001-01 allowed us to do this.

2. The Fact Sheet is misleading when it states that Copermittees failed to respond to the RWQCB staff requests for program improvements. The amount of flexibility in Order 2001-01 was not a factor in the delayed Copermittee response and/or improvements to watershed programs. The development of the Copermittees WURMP programs was not fully completed until 2003 with the submittal of the WURMP program documents. Additionally, the first annual report was submitted in 2004 for the 2002-2003 reporting period. When the issue of non-compliance came before the Board in 2005, only two years of reporting had been completed. That, coupled with the fact that the RWQCB issues were raised <u>after</u> completion of the reporting periods, made it difficult for Copermittees to show timely response and/or program modifications in response to the RWQCB letters.

3. The Copermittees have been conducting effective watershed activities and demonstrating load reductions. For example, the 2004-2005 annual report for the San Diego Bay Watershed lists 21 water quality activities that were implemented during the reporting period. Six of those activities documented pollutant load reductions. It is believed that the reformatting of the annual report during this reporting process provided more clarity to the Copermittees' annual achievements.

4. As written, the WURMP requirements, Section E of the Draft Permit, are overly prescriptive and the wrong approach to address pollutants at the watershed level. From our perspective, the watershed strategy should dictate the type of activities to be conducted, not the need to meet prescriptive elements of the Draft Permit.

5. Based on the San Diego County Municipal Storm Water Permit Re-issuance Analysis Summary conducted by the RWQCB in 2004, it was the Copermittees' understanding that if WURMP requirements increased in the Draft Permit, then the JURMP requirements would be somewhat lessened to compensate for the increased WURMP requirements. As currently written, there are very substantial prescriptive increases in both the JURMP and WURMP components of the Draft Permit. The requirements imposed in the WURMP section will be difficult to meet due to the increased requirements of the JURMP, particularly since all WURMP activities must exceed baseline JURMP requirements. Further, if facility prioritization (under the JURMP requirements) is evaluated as required and Copermittees identify each facility's potential pollutants and pollutant generating activities, then watershed strategies are being applied at the jurisdictional level. As such, jurisdictional efforts that address pollutants are a significant part of an effective watershed strategy itself and should be able to be identified accordingly.

6. The Port continues to be very concerned that language in the Draft Permit and Draft Permit Fact Sheet, as well as statements made by RWQCB staff, suggest that our current WURMP activities have been ineffective and insufficient as evidenced by a lack of visible improvement in receiving water quality. These are seriously misleading statements. There are many factors that affect local water quality. Changes in water quality that occur as a result of our activities, or from sources outside our control, may not be realized on an annual or short-term basis. RWQCB staff has not provided sufficient evidence to demonstrate that Copermittee programs have been ineffective simply based on a lack of improvement in water quality.

7. The Port also believes that the Draft Permit language, as well as comments from RWQCB staff, fails to recognize that some improvements in water quality have been demonstrated. Within the San Diego Bay Watershed, for example, levels of diazinon in receiving waters have decreased dramatically in the last few years and lead levels are showing a decreasing trend. During 2004-2005, 16 water samples and four sediment samples were collected as part of the Receiving Waters Monitoring Program and Chollas Creek Diazinon TMDL monitoring. Diazinon was detected only in three of the water samples. None of the sediment samples had detectable levels of diazinon. This is a significant improvement from previous years when the majority of the samples had levels of diazinon that were above water quality objectives.

8. The Port believes that the Permitting Approach identified in the Fact Sheet (Section IV) greatly contradicts the Draft Permit language, based on the following reasons:

a. The Permit places less emphasis on watershed strategy and more on prescriptive minimum requirements. The Fact Sheet supported the development of a watershed strategy and its ability to lead to water quality improvements.

b. The Draft Permit allows for little integration due to prescriptive requirements placed on the jurisdictional, watershed, and regional programs. Especially concerning are the prescriptive reporting and assessing components, which essentially require the same prescriptive layer of assessment and reporting for every program. The Fact Sheet strongly emphasized the benefits and usefulness of integrating jurisdictional, watershed, and regional programs.

c. The Permit only directs those activities that are above and beyond jurisdictional requirements be noted as watershed activities, thereby placing restrictions on watershed activities. The Fact Sheet supports flexibility in determining the activities to be implemented in the watershed program.

9. The Port is extremely concerned that the Copermittees are being required to show annual load reductions from watershed activities that result in water quality improvements. Also of concern is the inference that an activity cannot be counted as a water quality activity unless a load reduction occurs during that current year. This supports the inaccurate perception that persistent water quality problems can be corrected annually or show changes in 5-year periods. In most cases, true load reductions may take several years to show water quality improvements. The requirement to show annual load reductions is in complete contradiction to the agreed upon approach and rationale for the long-term MLS monitoring. RWQCB staff accepted the proposed alternate-year MLS monitoring because of the scientific support showing that pollutant trends may take 20 years or longer to indicate change.

Recommendation:
The Port recommends a complete deletion of the text in Section E of the Draft Permit and requests that the section be replaced with the Copermittee Revised Language for Section E submitted by the County of San Diego. The revised language places a greater emphasis on an overall strategy to address pollutants with each watershed, while maintaining measures that allow the RWQCB to ensure compliance. Furthermore, we strongly encourage the RWQCB to consider focusing more of the minimum requirements on the watershed strategy and providing flexibility for the Copermittees to select the appropriate number and type of watershed water quality

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activities. We want to continue to work with RWQCB staff to improve our programs, and we feel the revised language will allow us to do that.

If you have any questions, please contact me at (619) 686-6254.

Sincerely,

David Merk, Director
Environmental Services

DM:KH:lg
Docs #185160