

Attachment 1: City of San Diego Comment Table Regarding September 18, 2014 Revisions to Order No. R9-2013-0001  
November 19, 2014

Permit Section	Permit Page (Original)	Section Title	Reason for Proposed Changes/Comments	Proposed Changes
General Comment	NA	NA	NA	The proposed amendments do not address any of the issues raised in the City’s Petition for Review of San Diego Regional Water Quality Control Board (Regional Board) Order No. R9-2013-0001, filed on June 7, 2013. The City does not waive any of those arguments, and urges the Regional Board to address those issues as part of this permit amendment.
<b>A. Prohibitions and Limitations</b>				
A	13-16	Prohibitions and Limitations	<p>Current permit language lacks linkage between Water Quality Improvement Plans (WQIPs) and compliance. Problems caused by current language: (1) it undermines the stated intent of the Regional Board to encourage prioritization of pollutants; (2) it requires resource-intensive watershed planning efforts that have no benefit to the Copermittees’ ability to comply with the Receiving Water Limitations and Discharge Prohibitions; and (3) it calls into question whether WQIPs are properly required under the MS4 Permit.</p> <p>The City envisions WQIPs as the foundation for a BMP-based compliance approach for the Discharge Prohibitions and Receiving Water Limitations. However, the language in Provision A does not clearly link compliance with the iterative process set forth in the WQIPs. In essence, the language suggests that even if Copermittees expend significant resources to develop and fully implement WQIPs that are progressing toward attainment of water quality standards, they may still be found to be out of compliance for single exceedances.</p> <p>The iterative process is a fundamental aspect of MS4 programs, as envisioned by State Water Board Order 99-05 and later reconfirmed in Order WQ 2001-15 (BIA Order), and is the mechanism by which MS4 Copermittees should <u>demonstrate</u> compliance (i.e., implementation of the iterative process equals compliance). The WQIPs now provide a mechanism to “raise the bar” with regard to the detail and quantitative analyses used to identify pollutant sources, implement BMPs to address those sources, and increase the number or size of BMPs until water quality standards are attained.</p> <p>However, as Provision A.4 is written, the envisioned strategic compliance process falls short, and the WQIPs are simply documents that do not appear to have a meaningful linkage to MS4 compliance. An unintended but potentially significant consequence of this compliance uncertainty is that the City and other Copermittees may experience increased difficulty securing program funding because even substantial increases in funding would not lead to achieving</p>	Revise Provision A to allow implementation of WQIPs to demonstrate compliance with Receiving Water Limitations and Discharge Prohibitions.

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			compliance.	
<b>B. Water Quality Improvement Plans</b>				
B.1	17	Watershed Management Areas	This NPDES Permit is applicable to discharges from Copermittee MS4s as stated in Section A.1. Discharges from other NPDES permits are governed by requirements within those permits.	Modify Section B.1 as follows:  The Copermittees must develop a WQIP <u>for their MS4 discharges within</u> each of the Watershed Management Areas in Table B-1.
<b>E. Jurisdictional Runoff Management Programs</b>				
E	93	Structural BMP Approval and Verification Process	A definition of “prior lawful approval” is necessary. Regional Board counsel has indicated that “prior lawful approval” was intended to refer to an approval that conferred a vested right to proceed without complying with the new development requirements of the 2013 MS4 Permit. However, some stakeholders have argued that any approval is sufficient. The current permit language is unclear. A definition is necessary to ensure that the standard the Copermittees will be held to by the Regional Board is expressed in the permit language. Permit language should address the following: <ol style="list-style-type: none"> <li>1. Provide a clear, bright line of what constitutes prior lawful approval;</li> <li>2. Provide a back stop to ensure that projects with older approvals that do not confer vested rights comply with new requirements;</li> <li>3. Protect vested rights; and,</li> <li>4. Preserve Copermittees’ land use authority.</li> </ol>	Define “prior lawful approval.” This could be done in a footnote.
E	93	Structural BMP Approval and Verification Process	Including the date the BMP Design Manual will be updated would provide additional clarity and avoid having to read multiple sections of the Permit to determine the referenced date.	(a) Each Copermittee must require and confirm that, for all Priority Development Project applications that have not received prior lawful approval by the Copermittee by <del>the time the BMP Design Manual is implemented</del> <u>updated pursuant to Provision E.3.dDecember 24, 2015</u> , the requirements of Provision E.3 are implemented. For project applications that have received prior lawful approval before <del>the BMP Design Manual is implemented</del> <u>updated pursuant to Provision E.3.dDecember 24, 2015</u> , the Copermittee may allow previous land development requirements to apply.
<b>Attachment A. Discharge Prohibitions and Special Protections</b>				
A	A-5 to A-6	Compliance Plans for Inclusion in Storm Water Management Plans	The redline strikeout version of draft amendment indicates that the entire Area of Special Biological Significance (ASBS) section has been changed, but the proposed resolution indicates that the only change that was made was to reflect State Board Resolution 2012-0031, which changed the deadline for certain provisions from 4 to 6 years.	Support change to Attachment A, section 2.A.2.d.2.

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<b>Attachment E. Specific Provisions for Total Maximum Daily Loads Applicable to Order No. R9-2015-0001</b>				
Attachment E, Sections 1.b(3)(d) 1.b(3)(d)(iv) 1.b(3)(d)(v) 2.b(3)(d)(iv) 2.b(3)(d)(v) 3.b(3)(d)(iv) 3.b(3)(d)(v) 4.b(3)(d) 4.b(3)(d)(iv) 4.b(3)(d)(v) 5.b(1)(a) 5.b(3)(d) 5.b(3)(e) 5.b(3)(f) 4.b(3)(g) 4.b(3)(g)(iv) 4.b(3)(g)(v) 5.c(1)(b)(iv) 5.c(1)(b)(v) 5.c(1)(b)(vi) 5.c(1)(b)(vii) 5.c(1)(b)(viii) 6.b(2)(b)(ii) 6.b(3)(d) 6.b(3)(e) 6.b(3)(f) 6.b(3)(f)(iv) 6.b(3)(f)(v) 6.c(2)(a)(i) 6.c(2)(a)(ii) 6.c(3)(d) 6.c(3)(e) 6.c(3)(f) 6.c(3)(g) 6.c(3)(h)	E-4 E-8 E-11 E-16 E-19 E-23 E-24 E-25 E-34 E-36 E-37 E-41 E-42 E-47	Final TMDL Compliance Determination	Compliance language requires all Copermittees to implement a WQIP for any of the Copermittees to utilize the WQIP based compliance approach for TMDLs. Copermittees have no authority to compel other Copermittees to implement BMPs and should not be held liable for the actions or inactions of others. Under 40 C.F.R. §§ 122.26(a)(3)(vi) and 122.26(b)(1), a Copermittee is responsible only for conditions relating to the discharges for which it is the operator.	Revise Attachment E Provisions to allow independent jurisdictional compliance.  For example, revise Provisions E.1.b(3)(d) as follows:  (d) The Responsible <del>Copermittees</del> <u>Copermittee</u> <del>develop</del> <u>develops</u> and <del>implement</del> <u>implements</u> the Water Quality Improvement Plan as follows: ..... (iv) The Responsible <del>Copermittees</del> <u>Copermittee</u> <del>continue</del> <u>continues</u> to implement the BMPs required under Specific Provision 1.b.(2)(c), AND  (v) The Responsible <del>Copermittees</del> <u>Copermittee</u> <del>continue</del> <u>continues</u> to perform the specific monitoring and assessments specified in Specific Provision 1.d, to demonstrate compliance with Specific Provisions 1.b.(3)(a), 1.b.(3)(b) and/or 1.b.(3)(c).
Attachment E, 7.b.2	N/A	Final Effluent Limitations	The Waste Load Allocation is incorrectly stated as an annual load. Instead, the Waste Load Allocation was calculated as loading from the critical wet period of Oct. 1 to Apr. 30, not the entire year. (TMDL Staff Report, Table 6). This error in the MS4 permit makes the Waste Load Allocation, and consequently, the	Modify Table 7.1 heading as follows:  Final Effluent Limitations as Expressed as <u>Wet Season (October 1 to April 30) Loads</u>

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			Final Effluent Limitation, inconsistent with the TMDL. Some sediment loading may occur during the dry season (May 1 to Sept. 30) for Los Penasquitos Creek (historically flows year round) and for other creeks during significant rainfall events.	<p><u>from Responsible Parties</u> to Los Peñasquitos Lagoon Constituent Effluent</p> <p>Regarding “Responsible Parties” above, see comment below.</p>
Attachment E, 7.b.2	E-53	Final Effluent Limitations	<p>It is not appropriate to express a Waste Load Allocation that applies to all responsible parties under the TMDL as a numeric effluent limitation that applies only to the Copermittees. The result is that the other responsible parties would have <b>zero</b> allocation of sediment, but the recently adopted Caltrans, Phase II, and Industrial storm water permits do not subject those responsible parties to any numeric effluent limitations:</p> <ul style="list-style-type: none"> <li>• The General Industrial Permit adopted by the State Board on April 1, 2014, includes the general statement that “discharges addressed by this General Permit are considered to be point source discharges, and therefore must comply with effluent limitations that are consistent with the assumptions and requirements of any available waste load allocation for the discharge prepared by the state and approved by USEPA.” However, the General Industrial Permit has not yet incorporated specific TMDL compliance provisions, let alone effluent limitations.</li> <li>• Similarly, the General Phase II Permit adopted by the State Board on February 5, 2013, states generally that “discharges from Small MS4s are point source discharges subject to TMDLs,” and further states that “this Order requires Permittees to comply with all applicable TMDLs.” However, the TMDL provisions in Attachment G of the Phase II Permit do not impose any effluent limitations on Phase II MS4s.</li> <li>• The Caltrans storm water permit amendments to incorporate TMDL requirements, dated July 1, 2014, allow for BMP-based compliance instead of imposing numeric effluent limitations.</li> </ul> <p>Because of the disparity in the TMDL provisions in these NPDES permits, it is important to separate allocations for Caltrans, Phase II, and Industrial storm water permits so that future revisions of those permits can responsibly address their portion of the Wasteload Allocation.</p>	<p>Two changes are necessary to acknowledge the sediment loading contributions of other Responsible Parties listed in the TMDL:</p> <ul style="list-style-type: none"> <li>• The sediment loads stated as the final effluent limitation in Table 7.1 should include only the load specific to storm water runoff from Copermittees, and should not include loads associated with runoff from other Responsible Parties with separate NPDES permits (Resolution No. R9-2012-0033, Attachment A, Page 5 lists the other Responsible Parties as Phase II MS4 permittees, Caltrans, and the General Construction and General Industrial Storm Water NPDES permittees). Similar to methods used by Regional Board staff in other TMDLs, this separation of load can be calculated based on land area of each Responsible Party in the watershed. The percentage of the entire watershed area associated each Responsible Party’s area can be used as a multiplier times the entire Wasteload Allocation to determine individual sub-allocations.</li> </ul> <p>AND</p> <ul style="list-style-type: none"> <li>• Table 7.1 should include the footnote: “Responsible Parties include the following: Phase I Municipal Separate Storm Sewer Systems (MS4s) Copermittees (the County of San Diego, City of San Diego, City of Del Mar, and the City of Poway), Phase II MS4 permittees, and general construction storm water NPDES permittees, and general industrial storm water NPDES</li> </ul>

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				<p>permittees as presented in Resolution No. R9-2012-0033 Attachment A, page A-5.””</p> <ul style="list-style-type: none"> <li>Modify Section 7.b.(2)(c) as follows:               <ul style="list-style-type: none"> <li>(ii) The Responsible Copermittees must implement BMPs to achieve the receiving water limitations under Specific Provision 7.b.(2)(a) <u>or the Copermittee portion of</u> effluent limitations under Specific Provision 7.b.(2)(b) for Los Peñasquitos Lagoon.</li> </ul> </li> </ul>
Attachment E, Section 7.b(3)(a)	E-54	Final TMDL Compliance Determination	<p>This provision is inconsistent with the TMDL for three reasons:            (1) It appears to hold the Phase I Copermittees wholly responsible for Lagoon restoration, instead of recognizing that the other Responsible Parties named in the TMDL are also responsible for meeting this goal. R9-2012-0033 and TMDL Staff Report state that all watershed dischargers are responsible for achieving the Lagoon restoration target.            (2) Restoration of 346 acres is not required under the TMDL. The requirement is to achieve 346 acres total of tidal and non-tidal salt marsh habitat. Based on the 2010 vegetation survey, there are currently 262 acres of salt marsh vegetation present, so 84 acres would need to be restored to achieve a total of 346 acres.            (3) Language for final compliance determination is not consistent with TMDL (see page A-16 and footnote 1 in Resolution. R9-2012-0033, Attachment A).</p>	<p>Modify Provision 7.b.(3) as follows:</p> <p>(3) Final TMDL Compliance Determination Compliance with the final WQBELs, on or after the final TMDL compliance date may be demonstrated via one of the following methods:</p> <p>(a) <u>Successful restoration of Demonstration that there are a combined total of 346 total acres of tidal and non-tidal salt marsh vegetation in Los Peñasquitos Lagoon or demonstration that implementation actions are active and/or affecting 346 acres with continued monitoring to ensure target achievement;</u> OR</p>
Attachment E, Section 7.b(3)(b)	E-54	Final TMDL Compliance Determination	<p>The WQIP-based compliance option appears to reference the wrong section in two places.</p>	<p>Modify Section 7.b(3)(b) as follows:</p> <p>(b) The Responsible Copermittees must develop and implement the Water Quality Improvement Plan as follows:</p> <p>...</p> <p>(ii) Include an analysis in the Water Quality Improvement Plan, utilizing a watershed model or other watershed analytical tools, to demonstrate that the implementation of the BMPs required under Provision 7.b.(2)(c)(ii) achieves compliance with Specific Provision 7.b.(32)(a),</p>

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				... (v) The Responsible Copermittees must continue to perform the specific monitoring and assessments specified in Specific Provision 7.d to demonstrate compliance with Specific Provision 2.b.(3)(a).
Attachment E, Section 7.b(3)(b)	E-54	Final TMDL Compliance Determination	Final compliance options should be consistent with other TMDLs incorporated into the MS4 Permit in Attachment E. The language as currently drafted omits several compliance options that should be included.	Modify Section 7.b.(3) as follows:  (b)(v) . . . : <u>OR</u> (c) <u>There is no direct or indirect discharge from the Responsible Copermittee's MS4 to the receiving water; OR</u>  (d) <u>The final receiving water limitation under Specific Provision 7.b.(2)(a) is met.</u>
Attachment E, Section 7.c	E-55	Interim TMDL Compliance Requirements	The interim compliance requirements are inconsistent with the TMDL, which allows MS4 Permittees to "show progress in improving Lagoon conditions consistent with the specified targets" as an alternative to sediment load reductions (see Los Peñasquitos Lagoon Sediment TMDL Implementation Compliance Schedule on pages A-17 to A-19 in Regional Board Resolution R9-2012-0033, Attachment A).	Modify Section 7.c. as follows:  c. INTERIM TMDL COMPLIANCE REQUIREMENTS  <u>Compliance with the interim WQBELs, on or after the interim TMDL compliance dates, may be demonstrated via one of the following methods:</u>  (a) <u>The Responsible Copermittee shows progress in improving the Lagoon conditions towards Specific Provision 7.b.(2)(a); OR</u>
Attachment E, Section 7.c	E-55	Interim TMDL Compliance Requirements	Interim compliance options should be consistent with other TMDLs incorporated into the MS4 Permit in Attachment E. The language as currently drafted omits several compliance options that should be included.	Further modify Section 7.c. as follows:  (b) <u>There is no direct or indirect discharge from the Responsible Copermittee's MS4 to the receiving water; OR</u>  (c) <u>The final receiving water limitation under Specific Provision 7.b.(2)(a) is met; OR</u>  (d) <del>The Responsible Copermittees must comply with the interim WQBELs, expressed as annual loads, by December 31 of the interim compliance year set forth in Table 7.2. There are no exceedances of the</del>

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				<p><u>Copermittee portion of interim effluent limitations under Table 7.2 at the Responsible Copermittee's MS4 outfalls; OR</u></p> <p><u>(e) The Responsible Copermittee has submitted and is fully implementing a Water Quality Improvement Plan, accepted by the Regional Board, which provides reasonable assurance that the Copermittee portion of interim TMDL compliance requirements will be achieved by the interim compliance date.</u></p>
Attachment E, Table 7.2	E-55	Interim TMDL Compliance Requirements	For consistency with the Table 7.1 final effluent limitation expressed as a load, "associated percentage of reduction" should be removed from Table 7.2 for interim WQBELs. The percentages in Table 7.2 are not total percent reductions expected of the existing load, but are instead percentages of attaining the 67% load reduction to meet the waste load allocation. Therefore, the percentages listed in Table 7.2 lack context and are misleading because they indicate that substantial load reductions are required to meet interim compliance dates.	Delete Table 7.2, third column.
Attachment E, Table 7.2	E-55	Interim TMDL Compliance Requirements	The interim WQBELs were incorrectly stated as annual loads. Instead, the Waste Load Allocation and associated interim load reductions were calculated as loading from the critical wet period of Oct. 1 to Apr. 30, not the entire year. (TMDL Staff Report, Table 6). This error in the MS4 permit makes the Waste Load Allocation, and consequently, the Interim Effluent Limitations, inconsistent with the TMDL.	<p>Modify Section 7.c as follows</p> <p>The heading on column 2 of Table 7.2 should be changed to "Interim Effluent Limitations (tons/year wet season)"</p>
Attachment E, Table 7.2	E-55	Interim TMDL Compliance Requirements	It is not appropriate to express interim loads that apply to all responsible parties under the TMDL as a numeric effluent limitation that applies only to the Phase I Copermittees. The result is that the other responsible parties would have <b>zero</b> allocation of sediment, but the recently adopted Caltrans, Phase II, and Industrial storm water permits do not subject those responsible parties to any numeric effluent limitations (see detailed summary of the TMDL provisions of these permits above). It is important to separate loads for Caltrans, Phase II, and the General Construction and Industrial storm water permits so that future revisions of those permits can responsibly address their portion of interim load reductions.	<p>Two changes are necessary to acknowledge the sediment load contributions of other Responsible Parties listed in the TMDL:</p> <ul style="list-style-type: none"> <li>The sediment loads stated as interim effluent limitations in Table 7.2 column 2 should include only loads specific to storm water runoff from Copermittees, and should not include loads associated with runoff from other Responsible Parties with separate NPDES permits (Resolution No. R9-2012-0033 lists these Responsible Parties as Phase II MS4 permittees, Caltrans, and the General Construction and General Industrial Storm Water NPDES permittees). Similar to methods used by Regional Board staff</li> </ul>

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				<p>in other TMDLs, this separation of load can be calculated based on land area of each Responsible Party in the watershed. The percentage of the entire watershed area associated each Responsible Party's area can be used as a multiplier times the entire Waste Load Allocation to determine individual sub-allocations.</p> <p>AND</p> <ul style="list-style-type: none"> <li>Table 7.2 should include the footnote: "Responsible Parties include the following: Phase I Municipal Separate Storm Sewer Systems (MS4s) Copermittees (the County of San Diego, City of San Diego, City of Del Mar, and the City of Poway), Phase II MS4 permittees, and general construction storm water NPDES permittees, and general industrial storm water NPDES permittees as presented in Resolution No. R9-2012-0033 Attachment A, page A-5."</li> </ul>
Attachment E, Section 7.d(3)(c)	E-56	Assessment and Reporting Requirements	Provision 7.d(3)(c) states that the first reported average shall be calculated using the data collected in years 2014-2015, 2015-2016, and 2016-2017. This would require Copermittees to start Sediment TMDL compliance monitoring before the WQIP is completed and accepted by the Regional Board. The Sediment TMDL Compliance Monitoring is part of the Los Peñasquitos Monitoring and Assessment Program because the WQIP is serving as the Sediment Load Reduction Plan. This provision should be modified to require monitoring to start the first full wet season after the WQIP is accepted by the Regional Board.	(c) For assessing and determining compliance with the final effluent limitations under Specific Provision 7.b.(2)(b), the Responsible Copermittees must use the data acquired under Specific Provision 7.d.(1) to estimate sediment loading into Los Peñasquitos Lagoon. Sediment loading must be evaluated using a 3-year, weighted rolling average. The first reported average shall be calculated using data collected in the <u>3 years</u> <del>2014-15, 2015-2016, and 2016-2017 wet seasons</del> <u>following Regional Board acceptance of the WQIP.</u>