STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

TEST CLAIM FORM

For CSM Use Only	
Filing Date:	RECEIVED June 1, 2018 Commission on State Mandates
Test Claim #:	17-TC-28

Section 1

Proposed Test Claim Title: **(Revised)**

Santa Ana Water Quality Control Board Code Section 13383 Trash Order

Section 2

Local Government (Local Agency/School District) Name:

City of Rialto

Name and Title of Claimant's Authorized Official pursuant to CCR, tit.2, § 1183.1(a)(1-5):

Ahmad Ansari, City Administrator

Street Address, City, State, and Zip:

City of Rialto, 150 S. Palm Ave., Rialto, CA 92376

Telephone Number	Fax Number	Email Address
909-421-7246	**909-873-4814**	**aansari@rialtoca.gov**

Section 3

Claimant Representative: **Fred Galante** Title **City Attorney for City of Rialto**

Organization: **Aleshire & Wynder, LLP**

Street Address, City, State, Zip:

18881 Von Karman Ave., Ste. 1700, Irvine, CA 92612

Telephone Number	Fax Number	Email Address
949-223-1170	**949-223-1180**	**fgalante@awattorneys.com**

Section 4 – Please identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to Government Code section 17553 and don't forget to check whether the code section has since been amended or a regulation adopted to implement it (refer to your completed WORKSHEET on page 7 of this form):

Water Code Sec. 13383 Order to Submit Method to Comply with Statewide Trash Provisions; Requirements for Phase I Municipal Separate Storm Sewer (MS4) Co-permittees Within The Jurisdiction of The Santa Ana Regional Water Quality Control Board. Eff. 6/2/17

☒ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: **6/1/2018**

☒ A: Which is not later than 12 months following [insert the effective date of the test claim statute(s) or executive order(s)] **6/2/2017**, the effective date of the statute(s) or executive order(s) pled; or

☐ B: Which is within 12 months of [insert the date costs were *first* incurred to implement the alleged mandate] ___/___/_____, which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

(Gov. Code § 17551(c); Cal. Code Regs., tit. 2, §§ 1183.1(c) and 1187.5.)

Section 5 – Written Narrative:

☒ Includes a statement that actual and/or estimated costs exceed one thousand dollars ($1,000). (Gov. Code § 17564.)

☒ Includes all of the following elements for each statute or executive order alleged ***pursuant to Government Code section 17553(b)(1) (refer to your completed WORKSHEET on page 7 of this form)***:

☒ Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;

☒ Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;

☒ Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

☒ Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed; $9,941 (2017-18 City Costs), Exec. order; Following FY: **17** - **18** Total Costs: **$65,000,000 State Water Board Trash Provisions**

☒ Identifies all dedicated funding sources for this program; State: **Section XI - $0**

Federal: **Section XI - $0** Local agency's general purpose funds: **Section XI - $0**

Other nonlocal agency funds: **Section XI - $0**

Fee authority to offset costs: **Section XI - $0**

☒ Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate: **Sec. XII Municipal Stormwater & Urban Runoff Discharge Case Nos. 03-TC-04, 03-TC-19; 03-TC-20; Discharge of Stormwater Runoff Order No. R9-2007-0001, Case 07-TC-09**

☒ Identifies a legislatively determined mandate that is on the same statute or executive order: **Section XII**

Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to Government Code Section 17553(b)(2) and California Code of Regulations, title 2, section 1187.5, as follows (refer to your completed WORKSHEET on page 7 of this form):

☒ Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

☒ Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

☒ Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

N/A ☐ If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Government Code section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Government Code section 17574.

☒ The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to Government Code section 17553(b)(3) and California Code of Regulations, title 2, § 1187.5 (refer to your completed WORKSHEET on page 7 of this form):

☒ The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate. Pages **7-1-1** to **7-1-7**.

☒ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages 7-2-1 to 7-2-146.

☒ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages 7-3-1 to 7-3-281.

☒ Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.* (*Cal. Code Regs., tit. 2, § 1187.5*). Pages 6-1 to 7-1-1.

Section 8 –TEST CLAIM CERTIFICATION Pursuant to Government Code section 17553

☒ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to California Code of Regulations, title 2, section 1183.1(a)(1-5) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in section 1183.1(a)(1-5) of the Commission's regulations, and not by the representative.

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. (Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.)

Ahmad Ansari
Name of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

City Administrator
Print or Type Title

Signature of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

November 19, 2018
Date

Test Claim Form Sections 4-7 WORKSHEET

Complete Worksheets for Each New Activity and Modified Existing Activity Alleged to Be Mandated by the State, and Include the Completed Worksheets With Your Filing.

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: **Water Code § 13383 Ord. to submit method to comply w/statewide trash provisions. Santa Ana Reg. Water Quality Control Board, eff. 6/2/17.**

Activity: **Track Selection Mandate, Trash Order, p.5**

Initial FY: **16** - **17** Cost: **$2,558** Following FY: **17** - **18** Cost: **$3,896**

Evidence (if required): **Section 6, Declaration**

All dedicated funding sources; State: **None** Federal: **None**

Local agency's general purpose funds: **None**

Other nonlocal agency funds: **None**

Fee authority to offset costs: **None**

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: **Water Code § 13383 Ord. to Submit Method to Comply w/Statewide Trash Provisions, Santa Ana Reg. Water Quality Control Board, eff. 6/2/17.**

Activity: **Ongoing Implementation Mandates, Trash Order pp. 1-2**

Initial FY: **16** - **17** Cost: **$0** Following FY: **17** - **18** Cost: **$6,045**

Evidence (if required): **Section 6 Declaration**

All dedicated funding sources; State: **None** Federal: **None**

Local agency's general purpose funds: **None**

Other nonlocal agency funds: **None**

Fee authority to offset costs: **None**

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: _____

Activity: _____

Initial FY: ____-____ Cost: _____ Following FY: _____-_____ Cost: _____

Evidence (if required): _____

All dedicated funding sources; State: _____ Federal: _____

Local agency's general purpose funds: _____

Other nonlocal agency funds: _____

Fee authority to offset costs: _____

SECTION 5

NARRATIVE STATEMENT

IN SUPPORT OF TEST CLAIM

IN RE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

WATER CODE SECTION 13383 ORDER TO SUBMIT

METHOD TO COMPLY WITH STATEWIDE TRASH PROVISIONS

OF CITY OF RIALTO

I. INTRODUCTION

CITY OF RIALTO ("Claimant" or "City") submits this Test Claim seeking reimbursement of the costs of implementing the requirements imposed on it by an executive order of the Santa Ana Regional Water Quality Control Board ("Regional Board"), issued under section 13383 of the Water Code. Claimant is the owner and operator of a Phase I Municipal Separate Storm Sewer System ("MS4") within the Clean Water Act section 402 permitting jurisdiction of the Regional Board. Discharges from Claimant's MS4 are permitted under a National Pollutant Discharge Elimination System permit ("NPDES permit") issued by the Regional Board.

On April 7, 2015, the State Water Resources Control Board ("SWRCB") adopted Resolution No. 2015-0019, which amended the Water Quality Control Plan for Ocean Waters of California to Control Trash ("Ocean Plan") and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California ("ISWEBE Plan"), to establish a statewide narrative water quality objective and implementation standards to control trash with respect to the surface waters of the State.[1] The amendments to the Ocean Plan and ISWEBE Plan are referred to collectively as the "Trash Provisions."

On June 2, 2017, under the requirements of the Trash Provisions, the Regional Board issued an Executive Order to Claimant entitled "Water Code Section 13383 Order to Submit Method to Comply with Statewide Trash Provisions; Requirements for Phase I Municipal Separate Storm Sewer System (MS4) Permittees Within the Jurisdiction of the Santa Ana Regional Water Quality Control Board" ("Trash Order").[2] The Trash Order is the Executive Order at issue in this Test Claim.

Recently, the California Supreme Court issued a landmark ruling on the subject of requirements imposed on MS4 permittees related to trash control. In *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765, the California Supreme Court analyzed whether requirements imposed by state water quality control boards on local agencies in NPDES permits are "federal" mandates, exempt from the requirement for the State to provide for a subvention of state funds under Article XIII B section 6 of the California Constitution. The Supreme Court held if a requirement is not "expressly required" by federal law and is imposed under the State's discretion, then the requirement is not federally mandated. The burden is on the State to establish its requirements are imposed by federal law. (*Id.*)

The California Supreme Court held the Clean Water Act does not mandate a requirement in an order by the State or Regional Boards if the federal law gives the state discretion whether to impose a particular requirement and the state exercises its discretion to impose the requirement in the exercise of a choice. (*Id.*) Similarly, the Court of Appeal determined requirements imposed in an NPDES permit were state mandates because the terms were not expressly required by federal law but were imposed in the state's discretion. (*Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661, 683-684, review denied April 11, 2018.)

[1] Trash Provisions at p. 1; see also SWRCB Resolution No. 2015-0019. These are included under Section 7.

[2] A copy of the Trash Order is included under Section 7.

The requirements of the Trash Order and Trash Provisions are not mandated by the Clean Water Act or its regulations. The Trash Order is an implementing order applicable to Claimant, through which the State exercises a true choice and imposes on Claimant a new program or higher level of service related to the control of trash.

The Trash Order is a state mandate for which Claimant is entitled to a subvention of funds under Article XIII B, section 6, of the California Constitution. It imposes state mandated actions and costs on Claimant, and none of the exceptions in Government Code section 17556 excuse the State from reimbursing Claimant.

II. BACKGROUND

On December 2, 2015, the Trash Provisions became effective and established a narrative water quality objective for trash in both the Ocean Plan[3] and the ISWEBE Plan.[4] The Trash Provisions are not an order on Claimant. The MS4 permit is the method through which the requirements in the Trash Provisions would be implemented.[5] The Trash Provisions require the Regional Board to modify, re-issue, or newly adopt NPDES permits issued pursuant to section 402(p) of the Federal Clean Water Act to include the requirements of the Trash Provisions, but they allow the Regional Board a choice with respect to the initial implementing step. Within 18 months after the effective date of the Trash Provisions, the regional boards must issue one of the following orders to MS4 permittees or co-permittees, requiring them to select one of two compliance measures defined in the Trash Provisions ("Track 1" or "Track 2"):

> 1. Modify, re-issue, or adopt the applicable MS4 permit to add provisions implementing the Trash Provisions and requiring each MS4 permittee to give written notice within three months of the effective date of the implementing permit stating whether the permittee elects to comply under Track 1 or Track 2; for permittees that have elected to comply with Track 2, submit an implementation plan to the regional board within eighteen months of the implementing permit; or
>
> 2. Issue an order pursuant to Water Code section 13267 or 13383 requiring MS4 permittees to submit, within three months from receipt of the order, written notice stating whether the permittee elects to pursue Track 1 or Track 2; for permittees that have elected to comply with Track 2, submit an implementation plan to the regional board within eighteen months of the receipt of the Water Code section 13267 or 13383 order. (Appendix D to the Trash Provisions and Appendix E to the Trash Provisions.)

[3] SWRCB Resolution No. 2015-0019, Ocean Plan at Chapter II.C.5 of Appendix D.
[4] SWRCB Resolution No. 2015-0019, ISWEBE Plan at Chapter III.A of Appendix E. The narrative objectives provide, in part, "trash shall not be present" in ocean waters, inland surface waters, enclosed bays, estuaries, and along shorelines or adjacent areas "in amounts that adversely affect the beneficial use or cause nuisance." The Trash Provisions prohibit "[t]he discharge of trash to surface waters of the State or the deposition of Trash where it may be discharged into surface waters of the State . . . ." (*Id.*)
[5] Trash Provisions, Staff Report, pp. 19, 20 and 22.

Track 1 and Track 2 require the following:

> Track 1: Installation, operation, and maintenance of "full capture systems" for all storm drains that capture runoff from "priority land uses" in Claimant's jurisdiction;[6] or
>
> Track 2: Installation, operation, and maintenance of any combination of "full capture systems", "multi–benefit projects", "other treatment controls", and/or "institutional controls" within either the jurisdiction of the Co-permittee or within the jurisdiction of the Co-permittee and contiguous MS4 permittees. The Co-permittee may determine the locations or land uses within its jurisdiction to implement any combination of controls. The Co-permittee shall demonstrate that such combination achieves "full capture system equivalency". The Co-permittee may determine which controls to implement to achieve compliance with "full capture system equivalency". It is SWRCB's expectation that the Co-permittee will elect to install "full capture systems" where such installation is not cost-prohibitive.[7]

The Trash Provisions require regional boards to order MS4 permittees to implement the selected Track; they also impose the following requirements on Claimant:

> 1. For MS4 permittees that elect to pursue Track 1, full compliance with the trash discharge prohibition shall occur within ten (10) years of the effective date of the first implementing permit. In addition, the implementing permit must require the MS4 permittees to demonstrate achievements of interim milestones such as average load reductions of ten percent (10%) per year or other progress to full implementation. In no case may the final compliance date, which will be included in the implementing permit, be later than fifteen (15) years from the effective date of the Trash Provisions;[8]
>
> 2. For MS4 permittees that elect to pursue Track 2, full compliance shall occur within ten (10) years of the effective date of the first implementing permit and requiring the permittees to demonstrate achievement of interim milestones such as average load reductions of ten percent (10%) per year or other progress to full implementation. In no case may the final compliance date, which will be

[6] Appendix D to the Trash Provisions adding Chapter III, L.2.a.(1) to the Ocean Plan and Appendix E to the Trash Provisions adding Part 1, Chapter IV, A.3.a.(1) to the ISWEBE Plan; see definitions in glossaries to the Ocean Plan and the ISWEBE Plan.

[7] Appendix D to the Trash Provisions adding Chapter III, L.2.a.(2) to the Ocean Plan and Appendix E to the Trash Provisions adding Part 1, Chapter IV, A. 3.a.(2) to the ISWEBE Plan; see definitions in glossaries to the Ocean Plan and the ISWEBE Plan.

[8] Appendix D to the Trash Provisions adding Chapter III.L.4.a.(2) to the Ocean Plan and Appendix E to the Trash Provisions adding Chapter IV.A.5.a.(2) to the ISWEBE Plan.

included in the implementing permit, be later than fifteen (15) years from the effective date of the Trash Provisions;[9]

3. For MS4 permittees that elect to pursue Track 1 to monitor and annually report to the regional board demonstrating installation, operation, maintenance, and the Geographic Information System (GIS) mapped location and drainage area served by its full capture systems;[10] and

4. For MS4 permittees that elect to pursue Track 2, to develop and implement a monitoring plan that demonstrates the effectiveness of its compliance systems and to report the results of such monitoring to the regional board on an annual basis;[11] and

5. Require MS4 permittees that elect to pursue Track 2, to develop and implement a monitoring plan that demonstrates the effectiveness of its compliance systems and to report the results of such monitoring to the regional board on an annual basis which include GIS-mapped locations and drainage area served by each compliance system.[12]

III. THE MANDATE AT ISSUE

On June 2, 2017, the Regional Board issued the Trash Order to implement the initial steps of the Trash Provisions in compliance with Water Code section 13383.[13]

The Trash Order imposes the following requirements on Claimant:[14]

1. By August 31, 2017, submit electronically a letter to the Santa Ana Regional Board identifying the Permittee's selected method of compliance, (Track 1 or Track 2) as defined previously in this Order.

2. Track 2 Permittees Only: By November 30, 2018 submit electronically to the Santa Ana Regional Board an implementation plan, subject to approval by the Executive Officer, that describes the following:

[9] Appendix D to the Trash Provisions adding Chapter III.L.4.a.(3) to the Ocean Plan and Appendix E to the Trash Provisions adding Chapter IV.A.5.a.(3) to the ISWEBE Plan.
[10] Appendix D to the Trash Provisions adding Chapter III.L.5.a. to the Ocean Plan and Appendix E to the Trash Provisions adding Chapter IV.A.6.a. to the ISWEBE Plan.
[11] Appendix D to the Trash Provisions adding Chapter III.L.4.a.(4) to the Ocean Plan and Appendix E to the Trash Provisions adding Chapter IV.A.5.a.(4) to the ISWEBE Plan.
[12] Appendix D to the Trash Provisions adding Chapter III.L.5.b. to the Ocean Plan and Appendix E to the Trash Provisions adding Chapter IV.A.6.b. to the ISWEBE Plan.
[13] Trash Order at p. 1.
[14] Trash Order at p. 5.

a. The combination of controls selected and the rationale for the selection;

b. How the combination of controls is designed to achieve Full Capture System Equivalency;

c. How Full Capture System Equivalency will be demonstrated;

d. If using a methodology other than the attached recommended Visual Trash Assessment Approach to determine trash levels, a description of the methodology used; and,

e. If proposing to select locations or land uses other than Priority Land Uses, a justification demonstrating that the alternative land uses generate trash at rates that are equivalent to or greater than the Priority Land Uses.

In addition to the activities expressly mandated by the Trash Order, the Trash Order states that the Trash Provisions' minimum monitoring and reporting requirements be implemented through an MS4 permit (see Sections I, II, above). Monitoring and reporting requirements obligate Claimant to demonstrate installation, operation, maintenance, and GIS mapped location and drainage area served by its full capture systems and, for Track 2 entities, to demonstrate the effectiveness of systems. Full implementation the trash discharge prohibition must occur within 15 years after the Trash Provisions – by the end of 2030. Thus, the clock is running on Claimant's compliance obligations.

IV. LEGAL BACKGROUND

The Clean Water Act regulates discharges of pollutants into waters of the United States using "cooperative federalism."[15] Each state must adopt water quality standards applicable to intrastate waters within its jurisdiction.[16] The US EPA authorizes states to administer their own programs.[17] States may issue permits with requirements exceeding the requirements of the federal program, but states cannot issue permits with requirements less stringent than the

[15] 33 U.S.C. § 1251; *Aminoil U.S.A., Inc. v. Cal. State Water Resources Control Board* (9th Cir. 1982) 674 F.2d 1227, 1228 (superceded by statute on other grounds as noted in *Beeman v. Olson* (9th Cir. 1987) 828 F.2d 620, 621).

[16] 33 U.S.C. § 1313 ("Section 303); see also 33 U.S.C 1313(d); 40 CFR 130.2(h) requiring states' identifying waters that not meeting water quality standards, rank those water bodies, and develop total maximum daily loads ("TMDLs") for them and assign wasteload allocations ("WLA") to existing and future point sources of pollution as water quality based effluent limitations. (33 U.S.C 1313(d); 40 CFR 130.2(h).)

[17] 33 U.S.C. § 1342(b), (c)(1); 40 C.F.R. § 123.1, subd. (d)(1).

requirements of the federal program.[18] This structure establishes a state program that operates under state law.

A. CALIFORNIA'S PORTER-COLOGNE ACT AND REGIONAL STORM WATER PERMITS

California is among the states authorized to implement the NPDES permit program. (33 USC 1342(b); *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1565-1566.)[19]

California incorporated the Clean Water Act's NPDES program into its existing regulatory structure, becoming authorized to issue NPDES permits. The California Legislature ("Legislature") determined that assuming the responsibility was "in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division." (Water Code, § 13370, subd. (c).)

The Porter-Cologne Act gives California broader authority to regulate water quality than under the Clean Water Act.[20] "[I]t is well settled that the Clean Water Act authorizes states to impose water quality controls that are more stringent than are required under federal law."[21] The regional water quality control boards are not required by general standards in the Clean Water Act to impose any specific requirements.[22]

The SWRCB is empowered by Porter-Cologne "to adopt water quality control plans …" for waters that require water quality standards under the Clean Water Act.[23] The Ocean Plan and ISWEBE are water quality control plans.[24] The objectives in a water quality control plan must be implemented through a permit or other order.[25] Moreover, Water Code section 13383 provides in part:

> (a) The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements … for any person who discharges, or proposes to discharge, to navigable

[18] 33 U.S.C. § 1370; See *Burbank, supra*, 35 Cal.4th at 618; *Building Industry Association of San Diego County v. State Water Resources Control Board* (2002) 124 Cal.App.4th 866, 881.

[19] California sought authorization of its program in order to avoid direct regulation by the federal government of persons already subject to regulation under state law. (Water Code, § 13370, subd. (c).) The SWRCB and the nine Regional Water Quality Control Boards are the state agencies with primary responsibility for the coordination and control of water quality. (Water Code, § 13001; *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619.)

[20] *Burbank v. State Wat. Res. Control Bd.* (2005) 35 Cal.4th at 618, 619; *Building Industry, supra,* 124 Cal.App.4th at 881.

[21] *Building Industry Association of San Diego County, supra,* 124 Cal.App.4th at 881; see also *Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1165.

[22] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

[23] Water Code § 13170.

[24] SWRCB Resolution No. 2015-0019.

[25] See, e.g., *Tahoe-Sierra Preservation Council v. State Water Resources Control Bd*. (1989) 210 Cal.App.3d 1421, 1438, reh'g denied and opinion modified (June 28, 1989).

> waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates, or proposes to own or operate, a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes, or proposes to use or dispose, of sewage sludge.
>
> (b) The state board or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.

The SWRCB issued the Trash Provisions under its discretionary authority under Porter-Cologne, and the Regional Board issued the Trash Order pursuant to its discretionary authority under Section 13383 of the Water Code.[26]

V. THE LAW OF UNFUNDED STATE MANDATES

Section 6 of Article XIII B of the California Constitution requires the State to provide a subvention of funds to local government agencies any time the Legislature or a state agency requires the local government agency to implement *a new program, or provide a higher level of service under an existing program.* Section 6 provides in relevant part:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local governments for the cost of such program or increased level of service.

The purpose of Section 6 "is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.) The section "was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues." (*County of Fresno, supra*, 53 Cal.3d at 487; *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 984-985.) The Legislature enacted an administrative procedure to define and pay mandate claims under Section 6. (Govt. Code § 17500, *et seq.*; see *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 333.)

Government Code section 17556 lists seven exceptions to the rule requiring reimbursement for state mandated costs. The exceptions are as follows:

> (a) The claim is submitted by a local agency . . . that . . . requested legislative authority for that local agency . . . to implement the

[26] Trash Order at p. 1.

program specified in the statute, and that statute imposes costs upon that local agency . . . requesting the legislative authority. .

(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. . . .

(d) The local agency . . . has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. . . .

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies . . . that result in no net costs to the local agencies. . . , or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. . . .

(f) The statute or executive order imposes duties that are necessary to implement, or expressly included in, a ballot measure approved by the voters in a statewide or local election. . . .

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

The Legislature defined "costs mandated by the state" as,

> "any increased costs which a local agency ... is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."[27]

[27] Gov. Code § 17514.

A. THE TRASH ORDER IMPOSES A NEW PROGRAM OR HIGHER LEVEL OF SERVICE

The mandates created by the Trash Order meet the tests established by the Supreme Court for determining whether there is a reimbursable state mandated local program.[28]

The Trash Order imposes a new program or higher level of service. In the proceedings leading to the Commission's *San Diego* decision[29] the Department of Finance had argued that new requirements did not constitute a new program or higher level of service because each increase in best management practices or other permit requirements was necessary to assure compliance with the maximum extent practicable standard. The Commission correctly rejected this argument at p. 49. Similarly, the Court of Appeal rejected the argument that the permit requirements were "necessary" to meet the federal "maximum extent practicable" standard, holding that it is "simply not the case that, because a condition was in the Permit, it was, ipso facto, required by federal law." (*Id*. at 682-683, citing *Department of Finance, supra*, 1 Cal.5th at p. 768.)

VI. THE TRASH ORDER'S MANDATES ARE STATE MANDATES

The Trash Order imposes state mandated activities and costs on Claimant. No exception to the subvention requirement of Section 6 applies to the present Test Claim.[30]

In *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, the California Supreme Court established a test to determine whether a requirement imposed in a NPDES permit is a federal, rather than a State, mandate. This test is twofold: (1) whether any federal law, guideline, or any other evidence of a federal mandate, required each condition; if so then the requirement is a federal mandate, but (2) if the condition was not "expressly required" by federal law and was instead imposed pursuant to the State's discretion, then the requirement is not federally mandated. The burden is on the State to establish its requirements are imposed by federal law. (*Id*.)

In the context of MS4 permits, the Supreme Court concluded the CWA requirement for MS4 permits to reduce pollution impacts to the "maximum extent practicable" was not a federal mandate, because determining the controls necessary to meet the "maximum extent practicable" standard is a discretionary action directing the regional boards to make a "true choice." That "true choice" imposes a *State* mandate where no *federal* requirement explicitly applies–unless

[28] *County of Los Angeles v. State of California* (1987) 43 Cal. 3d 46.

[29] In re: Test Claim on: San Diego Regional Water Quality Control, Discharge of Stormwater Runoff, Order No. R9-2007-0001, Case No.: 07-TC-09.

[30] Gov. Code § 17556. The Trash Order does not constitute legislative authority for Claimant to undertake the mandated activities. Claimant also did not request issuance of the Trash Order. The Trash Order has not been declared existing law or regulation by action of the courts. It does not provide for offsetting savings to Claimant, and therefore cannot result in no net costs. The mandated activities are not necessary to implement, and are not expressly included in, a ballot measure approved by the voters in a statewide or local election. The Trash Order did not create or eliminate a new crime or infraction or change the penalty for a crime or infraction.

the conditions are the only means by which the "maximum extent practicable" standard can be met.

Thus, the Supreme Court concluded the requirements of installation and maintenance of trash receptacles at transit stops and inspection of commercial, industrial and construction sites, imposed by the Los Angeles Regional Board's MS4 permit, are not a federal requirement and are therefore unfunded State mandates subject to Section 6 reimbursement.

Similarly, in *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661, 683-684, review denied 2018 Cal. LEXIS 2647, April 11, 2018, the Court of Appeal applied the framework established by the Supreme Court DOF Decision, concluding the San Diego Regional Board had a "true choice" and exercised its discretion in requiring MS4 permittes to implement cleaning storm water conveyances, street sweeping, a hydromodification plan, low impact development practices, education programs, regional and watershed urban runoff management programs, and program effectiveness assessments. In the absence of any federal law, regulation, or administrative case authority expressly requiring the MS4 permit conditions, those requirements were State mandates. Therefore, the local governments were entitled to reimbursement.

At page 2, the Trash Order expressly states that the Regional Board issued the Trash Order pursuant to Water Code section 13383. (Test Claim, p. 7-1-2.) The Trash Order is action of the state pursuant to state law, not federal law. The Trash Order makes the conclusory statements that it is issued to implement federal law, that the Trash Order gives Claimant discretion "to select specific proposed actions" to comply, and that Regional Board is "further authorized by Clean Water Act section 308(a)" to issue the Trash Order. However, the Track Selection Mandate, Track 2 Implementation Mandates and the Ongoing Implementation Mandates are not required under the Clean Water Act or any other federal law.

The federal laws and regulations cited in the Trash Order do not require local government agencies to undertake the Track Selection Mandate, the Track 2 Implementation Plan Mandates, or the Ongoing Implementation Mandates; instead, the cited federal laws and regulations are directed to the state and give the state discretion over whether to impose the Trash Order mandated activities on local government. (Trash Order at pp. 2, 4, citing to 33 U.S.C. §§ 1312, 1313, 40 C.F.R. §§ 122.41(h), 122.44(d)(1)(vii)(B), 130.7, 131.) There is no evidence the Trash Order is the only means of meeting a federal requirement. Therefore, the Regional Board's finding that the Trash Order was issued as a requirement of federal law is in error and is not entitled to deference.[31] (*Dept. of Finance, supra*, 1 Cal.5th at 768.)

[31] Section 302 of the Clean Water Act does not require the track selection mandate, the Track 2 implementation plan mandates, or the ongoing implementation mandates. Under Section 302, the State is authorized to exercise its discretion to establish effluent limitations for point source discharges. (33 U.S.C. § 1312(a).) Section 303 of the Clean Water Act and 40 C.F.R. Sections 130.7 and 131.1 through 131.8 do not require local governments to undertake the new mandates. (33 U.S.C. § 1313; 40 C.F.R. §§ 130.7, 131.1 – 131.8.) Under these sections, the State must identify waters which do not meet water quality standards, rank those water bodies, and develop total maximum daily loads ("TMDLs") for water bodies with wasteload allocations assigned to existing and future point sources of pollution. (3 U.S.C.

None of the federal laws or regulations cited in the Trash Order requires a local agency to undertake the mandates at issue. Federal law does not require the SWRCB or Regional Board to impose the Trash Provisions or Trash Order on Claimant. Their issuance was a discretionary choice. The Trash Provisions and Trash Order are state mandates.

VII. THE CLAIM IS TIMELY

The Trash Order became effective on June 2, 2017. Pursuant to Government Code section 17551(c), this Test Claim is submitted within 12 months of the effective date of the Trash Order. Gov. Code § 17551(c). It was submitted June 1, 2018.

VIII. STATEMENT OF ACTUAL COSTS EXCEEDING $1,000; STATE MANDATED ACTIVITIES AND COSTS

As set forth in the attached Declaration of Mr Robert Eisenbeisz ("Declaration"), Claimant has incurred actual increased costs as a result of the mandates set forth herein in excess of $1,000. Declaration at ¶¶12-13.

The Trash Order imposes new requirements on Claimant that it was not required to implement prior to issuance of the Trash Order.[32] The new programs and activities and costs imposed by the Trash Order are as follows:

A. THE TRASH ORDER TRACK SELECTION MANDATE

1. Program Requirement

The Trash Order required Claimant to select one of two tracks for implementing the Trash Provisions (the "Track Selection Mandate").[33] Claimant selected Track 1. The Track Selection Mandate, located on page 5 of the Trash Order, required the following:

> By **August 31, 2017**, submit electronically a letter to the Santa Ana Regional Board identifying the Co-permittee's selected method of compliance, (Track 1 or Track 2) as defined previously in this Order.[34]

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§ 1313(d). 40 C.F.R. § 130.2(h).) Section 303 and C.F.R. Sections 130.7 and 131.1 through 131.8 leave the State discretion to act in a manner consistent with the assumptions and requirements of any available wasteload allocations. (33 U.S.C. § 1313.) Section 308 of the Clean Water Act does not require local governments to undertake the mandates at issue here. (33 U.S.C. § 1318(a).) Thus, the State exercised its discretion in issuing the Trash Order. (33 U.S.C. § 1318; *Coastal Envtl. Rights Found. v. California Reg'l Water Quality Control Bd.* (2017) 12 Cal.App.5th 178, 191.) The State must issue permits. (Govt. Code § 17553(b)(1)(F)(v); 40 C.F.R. 122.44.)

[32] Declaration at ¶ 10.
[33] Trash Order at p. 5. Declaration at ¶ 7. Test Claim p. 7-1-5.
[34] Trash Order at p. 5. Declaration at ¶ 7. Test Claim p. 7-1-5.

2. Description of Newly Mandated Activities (Track Selection Mandate)

In order to select between Track 1 and Track 2 and properly assess compliance with the ultimate requirements and costs of the Trash Provisions, as set forth in paragraphs 8.a and 11 of the Declaration, the **Track Selection Mandate** required Claimant to undertake a study of the following:

> 1. determine which track would allow Claimant to comply with the Trash Provisions, as implemented through the Trash Order;[35]
>
> 2. identify Priority Land Use areas within its jurisdiction and determine whether Claimant had authority to install Full Capture Systems in all Priority Land Use areas;[36]
>
> 3. determine the feasibility of installing Full Capture Systems in Priority Land Use areas, the availability and feasibility of Multi-Benefit Projects and other Treatment or Institutional Controls available to Claimant, whether alternative land use designations were better suited for implementing Full Capture Systems or alternative trash control requirements; and the availability and feasibility of demonstrating Full Capture System Equivalency;[37]
>
> 4. interpret the Trash Order, including meetings;[38]
>
> 5. research available full capture systems;[39]
>
> 6. conduct a financial analysis of compliance options; and[40]
>
> 7. analyze the data and information obtained through the studies described above, and select a track.[41]

3. Description of Existing Requirements and Costs

Prior to the Trash Order, existing requirements of federal and state law did not include any of the activities imposed by the Trash Order, and there were no costs related to existing activities.[42] That is, Claimant has never been required to study or plan to install full capture

[35] Declaration at ¶ 8.a.
[36] *Ibid.*
[37] *Ibid.*
[38] Declaration at ¶ 11.
[39] *Ibid.*
[40] *Ibid.*
[41] Rialto Declaration at ¶¶ 8, 11, Exh. A. *Ibid.*
[42] Declaration at ¶ 10.

systems for trash or implement compliance measures that have the equivalency of full capture systems for trash.

4. Actual Increased Costs Incurred During Fiscal Year 2016-2017

To implement the track selection mandated activities and determine which track to pursue, Claimant was required to conduct the assessments in Declaration paragraph 8.a and Section VIII.A.2, above during Fiscal Year 2016-2017.[43] In Fiscal Year 2016-2017, Claimant expended the following amount to implement the **Track Selection Mandate**, as set forth in paragraph 12 and Exhibit A of the Declaration:[44]

Fiscal Year	Costs of Implementing Track Selection Mandate
2016-2017	$2558.00

5. Actual and Estimated Increased Costs Incurred During Fiscal Year 2017-2018

During Fiscal Year 2017-2018, Claimant continued to undertake the track selection activities, including identifying Priority Land Uses in Claimant's jurisdiction, assessing whether Claimant has authority to install Full Capture Systems in all Priority Land Use areas, assessing the feasibility of installing Full Capture Systems in Priority Land Use areas, assessing the availability and feasibility of multi-benefit projects and other treatment or institutional controls available to Claimant in Priority Land Use areas; assessing whether alternative land use designations were better suited for implementing Full Capture Systems or alternative trash control requirements; and assessing the availability and feasibility of demonstrating full capture system equivalency; researching full capture; determining track feasibility, financial analysis; and selecting a track. In so doing, Claimant incurred costs associated with staffing and contract work. In Fiscal Year 2017-2018, Claimant expended the following amount to implement the **Track Selection Mandate**, as set forth in paragraph 12 and Exhibit A of the Declaration:[45]

Fiscal Year	Costs of Implementing Track Selection Mandate
2017-2018	$3,896.00

[43] Declaration at ¶¶ 8, 12, 13.
[44] Declaration at ¶ 12; Gov. Code § 17564.
[45] Declaration at ¶ 12; Gov. Code § 17564.

6. Description of Newly Mandated Activities

Because Claimant selected Track 1, Claimant was not required to undertake any activities pursuant to the Track 2 Implementation Plan Mandate.[46]

7. Description of Existing Requirements and Costs

Prior to the Trash Order, existing requirements of federal and state law did not include any of the activities imposed by the Trash Order, and there were no costs related to existing activities.[47]

8. Actual Increased Costs Incurred During Fiscal Year 2016-2017

Because Claimant selected Track 1, Claimant did not incur any costs pursuant to the Track 2 Implementation Plan Mandate in Fiscal Year 2016-2017.[48]

9. Actual and Estimated Increased Costs Incurred During Fiscal Year 2017-2018

Because Claimant selected Track 1, Claimant did not incur any costs pursuant to the Track 2 Implementation Plan Mandate in Fiscal Year 2016-2017.[49]

B. ONGOING IMPLEMENTATION MANDATE

1. Challenged Program Requirement

As set forth on pages 1-2 of the Trash Order, Claimant must fully comply with the Trash Provisions no later than fifteen (15) years after the effective date of the Trash Provisions (December 2, 2015), or December 2, 2030.[50] The Trash Order constitutes "the initial steps of the Trash Provisions," which ultimately require Claimant to implement, monitor, and report on implementation of, its selected track (the "Ongoing Implementation Mandate"). Claimant will also be required to achieve interim milestones toward full compliance with the Trash Provisions, such as "average load reductions of ten percent (10%) per year or other progress to full implementation."[51]

2. Description of Newly Mandated Activities (Ongoing Implementation)

As set forth in paragraphs 8.d and 11.j of the Declaration, the **Ongoing Implementation** Mandate required Claimant to undertake the following activities designed to implement the

[46] Declaration at ¶ 8.c.
[47] Declaration at ¶ 10.
[48] Declaration at ¶ 8.c.
[49] Declaration at ¶ 8.c.
[50] Trash Order at pp. 1-2; Test Claim p. 7-1-1-2.
[51] Trash Order at p. 4; Test Claim at p. 7-1-4; see also State Water Resources Control Board Order No. 2015-0019, Ocean Plan at III.L.4.a.(2), (3) and ISWEBE Plan at A.5.a.(2), (3).

selected track, monitor implementation, and report on the results of the monitoring, and which involved and will involve staff and contract labor continuing indefinitely:[52]

1. establish a program for funding and constructing infrastructure improvements,[53]

2. implement best management practices,[54]

3. maintain improvements after construction,[55]

4. monitor the construction and maintenance of the improvements,[56] and

5. draft reports of the improvements, their operation, and maintenance.[57]

In other words, Claimant must establish a program for planning, funding and constructing citywide infrastructure improvements; install full capture systems throughout its city boundaries; implement best management practices; operate and maintain the systems after construction through regular clean-out of trash; track and monitor the construction and maintenance of the improvements; and draft and submit reports to the Regional Board.

3. Description of Existing Requirements and Costs

Prior to the Trash Order, Claimant was not required and did not undertake any of the Ongoing Implementation Mandate activities listed above.[58] Thus, the Trash Order does not modify existing activities. The Trash Order requires Claimant to undertake new activities.

4. Actual Increased Costs Incurred During Fiscal Year 2016-2017

To implement the mandated activities, Claimant was required to undertake the activities described in Section VIII.B.2 during Fiscal Year 2016-2017.[59] In Fiscal Year 2016-2017, Claimant expended the following amount to implement the **Ongoing Implementation Mandate**, as set forth in paragraph 8.d, 12 and Exhibit A of the Declaration:[60]

Fiscal Year	**Costs of Implementing Ongoing Implementation**

[52] Declaration at ¶¶ 8.d, 11.j.
[53] Declaration at ¶ 8.d.i.
[54] Declaration at ¶ 8.d.i.
[55] Declaration at ¶ 8.d.ii.
[56] Declaration at ¶ 8.d.iii.
[57] *Id*. Declaration at ¶ 8.d.iv.
[58] Declaration at ¶ 10.
[59] Declaration at ¶¶ 8, 11, 12.
[60] Declaration at ¶ 12; Gov. Code § 17564.

	Mandate
2016-2017	$0

5. Actual Increased Costs Incurred During Fiscal Year 2017-2018

To implement the **ongoing implementation** mandated activities, Claimant was required to undertake the activities described in Section VIII.B.2 above and establishing a program to plan for and fund capital improvement projects and implementation of best management practices throughout Claimant's jurisdiction; maintain improvements after construction; monitor the construction and maintenance of the improvement and implement of best management practices; and draft reports of the improvements, practices, their operation, and maintenance, during Fiscal Year 2017-2018.[61] During Fiscal Year 2017/18 and 2018/19, Claimant expended and expects to extend the following amounts to implement the **Ongoing Implementation Mandat**e, as set forth in paragraphs 8d, 12 and Exhibit A of the Declaration:

Fiscal Year	Costs of Implementing Ongoing Implementation Mandate
2017-2018	$6045.00
2018-2019	$30,000.00

The new activities required by the Trash Selection Mandate and the Ongoing Implementation Mandate for the Fiscal Years 2016/17, 2017/18, and 2018/19 are summarized as follows:

Mandate	FY 2016/2017	FY 2017/2018	FY 2018/2019
Track Selection (Trash Order p. 5)	$2558 Dec. ¶ 12.a	$3896 Dec. ¶ 12.e	$0 Dec. ¶ 12.e
Ongoing Implementation (Trash Order pp. 1-2)	$0 Dec. ¶ 12.c	$6045 Dec. ¶ 12.f	$30,000 Dec. ¶ 12.f
Total	$2558	$9941	$30,000

C. COSTS ASSOCIATED WITH MANDATED ACTIVITIES ARE REIMBURSABLE

The mandates created by the Trash Order meet both tests established by the California Supreme Court for determining what constitutes a reimbursable state mandated local program.[62] As set forth by the Supreme Court, a "program" within the meaning of article XIII B, section 6,

[61] Declaration at ¶¶ 8, 11, 12.
[62] *County of Los Angeles v. State of California* (1987) 43 Cal. 3d 46.

is one that carries out "the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."(*County of Los Angeles v. State of Cal.* (1987) 43 Cal.3d 46, 56.) There are two ways to meet this definition. (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.) This definition has two, alternative prongs, only one of which has to apply in order for the mandate to qualify as a program.[63]

The activities mandated by the Trash Order meet the definition under either pathway. First, the Trash Order requires Claimant to provide services to the public: the collection of trash discharged by third parties. The stated intent of the Trash Provisions is to "address the impacts of trash to the surface waters of California through the establishment of a statewide narrative water quality objective and implementation requirements to control trash, including the prohibition against the discharge of trash."[64] The stated purpose of the Trash Order is to establish "the initial steps in planning for the implementation of the Trash Amendments … in accordance with Water Code section 13383."[65] The Trash Order is intended to do and does carry out the State's policy of prohibiting the discharge of trash to the surface waters of the state.[66]

The activities mandated by the Trash Order "impose unique requirements on local governments" that do not generally apply to all residents and entities in the state and they are intended to "implement a state policy."[67] Claimant seeks reimbursement for the mandated activities required by the Trash Order. There are no provisions in the Trash Order that impose the same requirements on any non-governmental entities. The mandated activities for which Claimant seeks reimbursement are unique to local government agencies.68

X. STATEWIDE COST ESTIMATE

The SWRCB evaluated the cost of implementing the Trash Provisions on a per capita basis for certain jurisdictions subject to the Trash Provisions.[69] The Cost Study estimated the statewide cost per capita per year for Phase I MS4 entities to comply with the Trash Provisions ranged from $4 to $10.67. With an estimated statewide population of 16.4 million, the Cost Study estimates statewide costs for Phase I MS4 entities subject to Track 1 of the Trash Provisions to be $65,000,000 per year. (Id., pp. C-3 (Table 1) and C-23, C-24 (Table 13). $65,000,000 is the estimated highest statewide cost per year. (Track 2 would be $67,000,000 per year). (Cost Study, p. C-30.)

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[63] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.
[64] Trash Provisions, p. 2, ¶ 8.
[65] Trash Order, pp. 1-2, Section 3.
[66] Trash Provisions, Staff Report, pp. 5-7.
[67] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.
[68] Trash Provisions, Staff Report, pp. 12-14.
[69] State Water Resources Control Board, Amendment to the Water Quality Control Plan for the Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California , Appendix C, Economic Considerations (April 7, 2015) ("Cost Study"); see also Resolution No. 2015-0019, Fact Sheet, App. C. The Cost Study was not pursuant to the requirements applicable to this Test Claim. (Cost Study C-2.)

The Regional Board issued identical orders to permittees under its jurisdiction, on an individual basis. Therefore, the cost estimates provided in the Rialto Declaration relate only to Claimant's individual costs. Those costs are detailed in Exhibit A and paragraph 12 to the Rialto Declaration submitted in support of this Test Claim. Exhibit A indicates $9,941 in costs for Fiscal Year 2017-2018. Claimant presumes other MS4 permittees who received trash orders filed test claims and may be filing revised test claims with the Commission. Claimant does not know which entities, or how many entities –if any--may file, and is not able to estimate the total amount of any such claims.[70] Claimant is informed and believes other regional boards may have issued orders comparable to the Trash Order to other MS4 permittees. Some such MS4 permittees may presumably file test clams. Claimant does not know the identity or number or any such potential claimants or the amounts of their claims.

XI. CLAIMANT DOES NOT HAVE FEE AUTHORITY TO OFFSET ITS COSTS; NO EXCEPTIONS APPLY TO THE SUBVENTION.[71]

In its Statement of Decision 07-TC-09 at 105-106, the Commission decided that "a local agency does not have sufficient fee authority within the meaning of Government Code section 17556 if the fee or assessment is contingent on the outcome of an election by voters or property owners." (See also Gov. Code § 17553(b)(1)(G).)

Articles XIII A, XIII C, and XIII D of the California Constitution require voter approval of any funding mechanism available to Claimant to fund the costs of compliance with the Trash Order mandates. Claimant lacks authority for purposes of Government Code section 17556 to levy service charges, fees, or assessments to cover the costs of the Trash Order's requirements.

Revenue-generating enactments by a local government are usually considered taxes subject to voter-approval requirements unless the enactments within certain exceptions under Article XIII of the California Constitution. (Cal. Const. art. XIII D § 2(b), (d).) Section 1(d) of Article XIII C of the California Constitution defines a tax as any levy, charge or exaction of any kind imposed by a local government, except:

> (1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
>
> (2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
>
> (3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing

[70] *Id.*
[71] Gov. Code § 17556.

> investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.
>
> (4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
>
> (5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
>
> (6) A charge imposed as a condition of property development.
>
> (7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D. (Cal. Const. art. XIII C § 1(d).)

None of the exceptions in Government Code section 17556 excuse the State from reimbursing Claimant. The City did not request legislative authority for Claimant to undertake the mandated activities. Claimant also did not request issuance of the Trash Order. The Trash Order has not been declared existing law or regulation by action of the courts. It does not provide for offsetting savings to Claimant, and therefore cannot result in "no net costs." The mandated activities are not necessary to implement and are not expressly included in a ballot measure approved by the voters in a statewide or local election. The Trash Order did not create or eliminate a new crime or infraction or change the penalty for a crime or infraction. (Rialto Declaration paragraph 21.)

Moreover, assessments and property-related fees imposed on owners or occupants of real property by their ownership or use of property constitutes a property-related fee governed by Article XIII D of the California Constitution.[72] Article XIII D requires majority voter approval of property related fees, except for fees or charges for sewer, water, and refuse collection services.[73]

California is required to reimburse Claimant's costs of complying with the Trash Order mandates because Claimant lacks authority to levy service charges, fees, or assessments sufficient to pay for the mandates in the Trash Order.[74]

Case law has recognized three categories of local agency fees or assessments available to pay for state mandates: (1) special assessments based on the value of benefits conferred; (2) development fees exacted in return for permits or other government privileges; and (3)

[72] See Cal. Const. art. XIII D §§ 2(h), 3(a).
[73] Cal. Const. art. XIII D § 6(c).
[74] Gov. Code § 17556(d).

regulatory fees imposed as an exercise of police power.[75] These are not available to the City to cover the costs of compliance with the Trash Order. (Rialto Decl. Paragraphs 14, 16-19.) For the reasons discussed below, Claimant does not have authority to pay for the mandates in the Trash Order within the meaning of Government Code section 17556.

1. Claimant Cannot Use Special Assessments to Pay for the Mandates.

The Trash Order at page 1 indicates the actions required by the Trash Order are designed "to address the impacts trash has on the beneficial uses of surface waters" throughout Claimant's jurisdiction. (Test Claim p. 7-1-1.) These mandates are part of the Trash Provisions' goal to improve water quality by reducing the presence of trash in MS4s. (SWRCB Resolution No. 2015-0019 at ¶¶ 1-6.) As stated in *Howard Jarvis Taxpayers Assn. v. Salinas* (2002) 98 Cal.App.4th 1351, the costs of implementing the mandates in the Trash Order cannot be tied to a direct benefit or service to any individual businesses, property owners, or residents. Claimant's selection between Track 1 and Track 2 and ongoing implementation does not create any direct or specific benefits for people or properties within Priority Land Uses. (*Id*.) The mandated costs benefit water quality city-wide. (Rialto Declaration at ¶ 14.)

The benefits conferred by the activities mandated by the Trash Order apply to all people and property in the City; therefore, Claimant cannot levy a special assessment or fee on certain payors based on their unique benefit or service received. (Cal. Const. art XIII C Sec. 1(e)(1),(2).) Any fee charged by Claimant for costs related to the Trash Order Mandates, therefore, would not meet the requirement of Article XIII C §§ 1(e) (1) and 1(e) (2) and would be subject to voter approval.

2. Voter Approval is Required for Property-Related Fees, and Therefore, City Lacks the Authority to Impose Such Fees to Pay for Compliance.

A fee imposed on owners or occupants of real property based on their ownership or use of property is a property-related fee under article XIII D of the California Constitution. Article XIII D requires voter approval of most property-related fees. In relevant part, Article XIII D, section 3(a) states:

> "(a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except … (2) Any special tax receiving a two-thirds vote pursuant to § 4 of Article XIII A … (4) Fees or charges for property related services as provided by this article.…"

Article XIII D, section 2(e) defines a fee or charge as follows:

[75] *Sinclair Paint v. State Board of Equalization* (1997) 15 Cal.4th 866, 874; Commission on State Mandates Statement of Decision ("Statement of Decision"), Discharge of Stormwater Runoff, Test Claim 07-TC-09, at 102.

> "any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service."

Article XIII D, section 2(h) defines property-related service as "a public service having a direct relationship to property ownership."

Article XIII D, section 6(c) requires voter approval for most new or increased fees and charges. It provides: "Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. …"

Any tax that funds a specific program is a "special tax," subject to the requirements of article XIII A, section 4, and article XIII C, section 2(d) of the California Constitution. These constitutional provisions require special taxes to be approved by 2/3 of the voters of the portion of the jurisdiction subject to the fee.

In *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351 ("*Salinas*") the court of appeal struck down a fee that the City of Salinas attempted to enact to fund the city's stormwater management program. The Court held that a stormwater fee was a property-related fee governed by Article XIII D and that such a fee could not be imposed unless it was approved by the voters. The court held the storm drainage fee "burden[s] landowners *as landowners*," and it was truly a property-related fee subject to the requirements of Article XIII D.[76]

As in *Salinas*, any fee imposed to cover the costs of the Trash Order mandates would be a property-related fee under current published case law, and that fee would not qualify as a fee for water, sewer, or "refuse collection" under such published case law. (Cal. Const. art. XIII D § 6(c).) As in *Salinas*, Claimant does not rely on meters to measure the amount of runoff leaving properties or the amount of trash generated by Priority Land Use areas. (Rialto Declaration at ¶ 14.) The trash addressed in the Trash Order cannot be collected through typical trash collection services. (Rialto Declaration at ¶ 14; Trash Order, pp. 1-2.)

3. Claimant Cannot Use Development Fees for Trash Order Compliance.

The Trash Order, p. 2, addresses trash generated as a result of developed properties. The Claimant cannot pay for the Trash Order requirements using development impact fees. The Trash Order mandates are not linked to a discrete service or permit for a particular development.

[76] The language of the Trash Order at pages 1-2 indicate the costs of complying with the Trash Order mandates are costs connected to City's MS4 operation.

4. SB 231

Statutes 2017, Chapter 536 ("SB 231") revised Government Code section 53570 to define "sewer," as used in Article XIII D, and added Government Code section 53751 to provide additional detail for that definition. SB 231 expands the definition of "sewer" under Article XIII D to include storm water-related services and exempts storm water-related fees and charges from the majority affirmative vote requirement set forth in Article XIII D, section 6(c). The issue of the Article XIII D majority protest process' effect on the funding of a state mandate, if any, is currently subject to review by the Third District Court of Appeal in the case of *Paradise Irrigation District v. Commission on State Mandates*, (Sacramento County Superior Court 34-2015-80002016). No decision has been issued in this case. Claimant does not presently have the authority to levy a fee, charge, or assessment sufficient to fund the mandated Trash Provisions or Trash Order. Since *Salinas, supra*, interprets a constitutional provision, and SB 231 is a statute, *Salinas* is law notwithstanding the passage of SB 231 until a court provides further guidance.

5. Claimant Has No State, Federal or Non-Local Agency Funds That Are Funding, or Could Fund, These Activities

To Claimant's knowledge, there are no state, federal or non-local agency funds that are or will be available to fund these new activities. (Govt. Code §17553(b)(1)(F)(i)-(iv); Rialto Declaration at paragraphs 14, 16-20.) Claimant claims its net costs for compliance with the Trash Order, which are not recovered through any grants.

XII. INFORMATION REGARDING PRIOR COMMISSION DECISIONS AND WHETHER THERE ARE LEGISLATIVELY DETERMINED MANDATES

The Commission has not made a determination on a test claim on the June 2, 2017 Trash Order at issue here. However, the Commission has made the following determinations on related matters:

> In re: Test Claim on: Los Angeles Regional Water Quality Control, Municipal Stormwater and Urban Runoff Discharges, Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21
>
> In re: Test Claim on: San Diego Regional Water Quality Control, Discharge of Stormwater Runoff, Order No. R9-2007-0001, Case No.: 07-TC-09.

There have been no legislatively determined mandates on the Trash Order. (Govt. Code § 17553(b)(1)(G).)

XIII. CONCLUSION

The State exercised a true choice in issuing the Trash Order which imposes state mandated activities and costs on Claimant, which are not exempted from the subvention requirements of Section 6. Claimant does not have the authority to develop and impose fees to fund these new State mandated activities. Claimant requests that the Commission find that the mandated activities set forth in this Test Claim are state mandates requiring a subvention under Section 6.

DECLARATION OF ROBERT EISENBEISZ

IN SUPPORT OF TEST CLAIM

IN RE

SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

WATER CODE SECTION 13383 ORDER TO SUBMIT

METHOD TO COMPLY WITH STATEWIDE TRASH PROVISIONS OF

CITY OF RIALTO

DECLARATION OF ROBERT EISENBEISZ

I, Robert Eisenbeisz, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for those matters set forth on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein. Specifically, I have personal knowledge of the matters set forth in paragraphs 1 through 21 with the exception of paragraph 15, and as to paragraph 15, I am an informed and believe it to be correct.

2. I am a licensed Civil Engineer, with California license number C 54931. In 1991, I received my Bachelor of Science Degree in Civil Engineering from California State Polytechnic University, Pomona.

3. I am employed by the City of Rialto ("Claimant" or "City") as Public Works Director/City Engineer.

4. I have held my current position for approximately 3 years. I have worked for the City of Rialto for 3 years. In the ordinary course of business, my authorized and regular duties with the City include, but are not limited to, coordinating the City's storm water compliance; regulatory and managerial oversight of the City's storm water ("NPDES") management program, including, but not limited to, operational oversight of the program, City staff, and contract staff in central program areas, including the development of Storm Water Pollution Prevention Plans ("SWPPP") for City of Rialto Capital Improvement Projects, development of Water Quality Management Plans ("WQMPs") for both public and private development within the City of Rialto, oversight of the City's Commercial, Industrial and Restaurant Inspection Program and Construction Site Inspection Programs, and preparation of various documents. As part of these

functions, I gain knowledge of the City's fiscal condition, and I ascertain whether there are funding sources for these programs.

5. The State Water Resources Control Board ("State Board") adopted Resolution No. 2015-0019, known as the "Trash Provisions," on April 7, 2015. I have reviewed and I am familiar with the Trash Provisions. The Trash Provisions became effective December 2, 2015.

a. The Trash Provisions ordered Regional Water Quality Control Boards, among other things, to include the requirements set forth in the Trash Provisions in permits or orders issued, and to be issued, to MS4 permittees.

b. Based on the order from the State Board, the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") issued *Water Code Section 13383 Order to Submit Method to Comply with Statewide Trash Provisions; Requirements for Phase I Municipal Separate Storm Sewer System (MS4) Co-Permittees Within the Jurisdiction of the Santa Ana Regional Water Quality Control Board*" (the "Trash Order"), on June 2, 2017. I have reviewed and am familiar with the Trash Order. The Regional Board issued the Trash Order to Claimant as the owner or operator of a municipal separate storm sewer system ("MS4") and as a permittee under Regional Board Order R8-2010-0036, which imposes various requirements on the Claimant in regard to discharges to and from its MS4.

6. The Trash Order required the Claimant to select between two "tracks" to implement a prohibition of trash discharge to surface waters of the State and to report that selection to the Regional Board. Track 1 requires installation of stormwater treatment control systems (called "Full Capture Systems"), meeting specific design criteria, in all storm drains that capture runoff from developed, high-density residential, industrial, commercial, mixed urban, and public transportation sites, facilities and land uses (called "Priority Land Uses"). Track 2

requires installation of a combination of full capture systems, multi-benefit projects, or other treatment or institutional controls that reduce the same trash load that would be reduced if full capture systems were installed, operated, and maintained for all storm drains that capture runoff from Priority Land Uses.

7. The Trash Order established two deadlines: (1) by August 31, 2017, select a track for implementation (the "Track Selection Mandate"). The Track Selection Mandate is found on page 5 of the Trash Order; and (2) if Track 2 was selected, to submit an implementation plan (the "Track 2 Implementation Plan Mandate") by November 30, 2018. The Track 2 Implementation Plan Mandate is found on page 5 of the Trash Order. The Trash Provisions establish a deadline for full implementation of the trash prohibition of fifteen years after the effective date of the Trash Provisions, which requires Claimant to undertake ongoing activities to implement the selected track ("Ongoing Implementation Mandates"). The Ongoing Implementation Mandates are located on pages 1-2 of the Trash Order.

8. Through my employment with Claimant, I am involved in Claimant's activities required to comply with the Trash Order. The activities required to comply with the Trash Order include the following (collectively the "Trash Order Mandated Activities"):

a. Track Selection Mandate:

i. identify Priority Land Use areas within Claimant's jurisdiction;

ii. assess whether Claimant has authority to install Full Capture Systems in all Priority Land Use areas;

iii. assess the feasibility of installing Full Capture Systems in Priority Land Use areas;

iv. assess the availability and feasibility of Multi-Benefit Projects and other Treatment or Institutional Controls available to Claimant in Priority Land Use areas;

v. assess whether alternative land use designations were better suited for implementing Full Capture Systems or alternative trash control requirements; and

vi. assess the availability and feasibility of demonstrating Full Capture System Equivalency; research full capture.

vii. determine which track is feasible; financial analysis; select a track.

b. Claimant had to decide whether to select Track 2 which would have required Claimant assess the combination of controls that would achieve Full Capture Systems Equivalency; prepare an implementation plan that describes the alternative controls; explains how those controls are designed to achieve Full Capture System Equivalency; describe how Full Capture System Equivalency will be demonstrated, including a description of the methodology used; and study whether land uses in the implementation plan, which are not Priority Land Uses, generate trash at rates that are equivalent to or greater than the Priority Land Uses.

c. Claimant selected Track 1.

d. Ongoing Implementation Mandate:

i. establish a program to plan for and fund capital improvement projects and implementation of best management practices throughout Claimant's jurisdiction;

ii. maintain improvements after construction;

iii. monitor the construction and maintenance of the improvements and implementation of best management practices, and

iv. draft reports of the improvements, practices, their operation, and maintenance.

9. The Trash Order was issued in Fiscal Year 2016-2017. Claimant seeks reimbursement of costs incurred in FY 2016-2017 and in FY 2017-2018 as well as any costs yet to be incurred in future fiscal years.

10. Based on my involvement in implementing the Trash Order Mandated Activities, the Trash Order requires Claimant to perform new activities that Claimant was not required to and did not undertake prior to the issuance of the Trash Order and these are unique to local governmental entities, which are not required by federal law.

11. Implementing the Trash Order Mandated Activities has required Claimant to expend significant resources on staffing/contract labor, materials, and supplies. The Trash Order required Claimant to expend resources as follows:

a. Staff and consultant costs to interpret the Trash Order, including meetings;

b. Staff and consultant costs to review and analyze Priority Land Use areas within Claimant's jurisdiction;

c. Staff and consultant costs to research available Full Capture Systems;

d. Staff and consultant costs to do a financial analysis of compliance options;

e. Staff and consultant costs to analyze the data and information obtained through the studies described above;

f. Staff costs to conduct field investigations for Full Capture System installation;

g. Staff costs to plan management of contractor installing Full Capture Systems;

h. Staff costs to analyze installation locations and update municipal catch basin inventory;

i. The City will incur capital costs to be expended on Full Capture Systems; and

j. The City will incur operations and maintenance costs to be expended on Full Capture Systems.

12. To date, Claimant incurred and expects to incur the following actual and estimated increased costs to comply with the Trash Order mandated activities, as set forth in more detail in Exhibit A:

a. Actual increased costs to comply with the Track Selection Mandate imposed by page 5 of the Trash Order in Fiscal Year 2016/2017 are: **$2,558.00.**

b. Actual costs to comply with the Ongoing Implementation Mandates imposed on pages 1-2 of the Trash Order for Fiscal Year 2016/2017 are: **$0.00**.

c. Actual and estimated increased costs to comply with the Track Selection Mandate imposed by page 5 of the Trash Order in Fiscal Year 2017/2018 are: **$3,896.00**.

d. Actual and estimated costs to comply with the Ongoing Implementation Mandates imposed on pages 1-2 of the Trash Order in Fiscal Year 2017/2018 are **$6,045.00** and the actual and estimated costs in Fiscal Year 2018/2019 are **$30,000.00**.

13. As detailed in Exhibit A, actual and estimated costs incurred by Claimant, and these costs exceed $1,000. I have personal knowledge of the above staff and consultant costs, and I am personally familiar with the terms and conditions of each of the contracts. In order to comply with the Trash Order, City has entered into contracts with third parties. I am familiar with the terms and conditions of those contracts. My staff, at my direction, reviews and approves invoices from the vendors for the services rendered pursuant to such contracts. I have reviewed and I am familiar with the books and records maintained by the City in the ordinary course of

business relating to the City's efforts to comply with the Trash Order and the information set forth in this declaration accurately reflects the information contained in those records. I have also personally reviewed and approved invoices from the vendors for the services rendered pursuant to such contracts. I have also been personally involved with developing the estimated increased costs Claimant expects to incur in implementing the Trash Order. The actual and estimated increased costs of the Trash Order mandated activities are set forth in a chart I prepared, a true and correct copy of which is attached hereto as Exhibit A. The actual and estimated increased costs do not include all of the costs associated with implementing Claimant's selected track. The Trash Order will require the City to retrofit up to 600 catch basins with full capture devices at a significant cost for installation and increased costs for maintenance. Based on my experience and observation in implementing the Trash Order, the Trash Order requires Claimant to perform new activities that are not required by Federal Law and are unique to local governmental entities.

14. It is not possible to connect the costs to benefits to any individual resident, business, or property owner that are distinct from benefits conferred on all persons within Claimant's jurisdiction. The costs associated with implementing the Trash Order-mandated activities do not arise from a direct benefit or service conferred on any property owners, residents, or individual businesses, including people or properties within Priority Land Uses. The costs in implementing the Trash Order mandated activities are study-related and plan-related costs . Claimant does not rely on meters to measure either the amount of runoff leaving properties in Claimant's jurisdiction or the amount of trash generated by Priority Land Use areas. The trash control features of the Trash Order cannot be implemented or tracked through typical trash collection services.

15. I am informed and believe that the Regional Board has issued orders comparable to the Trash Order to other MS4s within the Regional Board's jurisdiction and that other regional boards have issued orders comparable to the Trash Order to other MS4 permittees. I am informed and believe that other MS4s who received such comparable orders may have filed and be filing revised test claims with the Commission. I am not able to estimate the total amount of such other anticipated claims.

16. I am not aware of any dedicated state or federal funds that are or will be available to pay for these increased costs.

17. I am not aware of any non-local agency funds that are or will be available to pay for these increased costs. The costs claimed by Claimant are the net costs to Claimant which are not recovered through grants.

18. I am not aware of any authority to assess a fee to offset these increased costs.

19. The only available source to pay these increased costs presently, and in the future, is Claimant's general fund.

20. The City of Rialto is currently facing a significant fiscal crisis as a result of increasing pension costs. For FY18, the City forecasted a structural deficit of $4,781,449, which required service cuts, frozen positions, and Other Post-Employment Benefit obligations in order to balance revenues and expenditures. Commencing in FY19, City's annual payments to California Public Employees' Retirement System ("PERS") will increase by approximately $2.1 million per year. The City's annual payment obligation will grow from a sizable $11.3 million in FY17 to a substantial $26.5 million cost in FY25. The City will allocate a substantial portion of its future revenue growth to satisfy this extraordinary obligation to the employee retirement system, with retirement costs approaching 25%-30% of general fund revenues. The City has

embarked on a 10-year financial planning effort to address this growing burden, which will inevitably require reductions in labor, service and capital outlay. PERS continues to signal that it may lower the discount rate further, which will increase employer contribution rates and the payment obligations due from the City. The imposition of an additional, unfunded mandate presented by the Trash Order will only exacerbate this fiscal crisis for the City.

21. The City did not request legislative authority for Claimant to undertake the mandated activities. Claimant also did not request issuance of the Trash Order. The Trash Order has not been declared existing law or regulation by action of the courts. It does not provide for offsetting savings to Claimant, and therefore cannot result in "no net costs." The mandated activities are not expressly included in a ballot measure approved by the voters in a statewide or local election. The Trash Order did not create or eliminate a new crime or infraction or change the penalty for a crime or infraction.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 13TH day of September 2018, in Rialto, California.

Robert Eisenbeisz, P.E., Public Works Director/City Engineer

EXHIBIT A
TO
DECLARATION OF ROBERT EISENBEISZ

IN SUPPORT OF TEST CLAIM

IN RE

SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

WATER CODE SECTION 13383 ORDER TO SUBMIT

METHOD TO COMPLY WITH STATEWIDE TRASH PROVISIONS

OF

CITY OF RIALTO

	FY 16/17	FY17/18	FY 18/19
Track Selection Mandate			
Staffing / contract labor	**$2.558.00**	**$3,896.00**	**$0.00**
Materials	**0.00**	**0.00**	**0.00**
Supplies	**0.00**	**0.00**	**0.00**
Ongoing Implementation Mandate			
Staffing / contract labor	**0.00**	**$6,045.00**	**$30,000.00**
Materials	**0.00**	**0.00**	**0.00**
Supplies	**0.00**	**0.00**	**0.00**
TOTALS	**$2,558.00**	**$9,941.00**	**$30,000.00**

SECTION 7

DOCUMENTATION

IN SUPPORT OF TEST CLAIM

IN RE

SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

WATER CODE SECTION 13383 ORDER TO SUBMIT

METHOD TO COMPLY WITH STATEWIDE TRASH PROVISIONS

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June 2, 2017

Mike Story
Administrator
City of Rialto
150 South Palm Avenue
Rialto, CA 92376

WATER CODE SECTION 13383 ORDER TO SUBMIT METHOD TO COMPLY WITH STATEWIDE TRASH PROVISIONS; REQUIREMENTS FOR PHASE I MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) CO-PERMITTEES WITHIN THE JURISDICTION OF THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

Dear Mr. Story,

The Santa Ana Regional Water Quality Control Board (Santa Ana Regional Board) is charged with the protection of beneficial uses of surface water in parts of Orange, Riverside, and San Bernardino counties. On April 7, 2015, the State Water Resources Control Board (State Water Board) adopted statewide Trash Provisions[1] to address the impacts trash has on the beneficial uses of surface waters. Throughout the state, trash is typically generated on land and transported to surface water, predominantly through municipal separate storm sewer system (MS4) discharges. Within the jurisdiction of the Santa Ana Regional Board, these discharges from San Bernardino County's Phase I MS4s are regulated through the San Bernardino County MS4 Permit (Order No. R8-2010-0036 NPDES No. CAS618036) pursuant to section 402(p) of the Federal Clean Water Act.

The Trash Provisions establish a statewide water quality objective for trash and a prohibition of trash discharge, or deposition where it may be discharged, to surface waters of the State. For Phase I Co-permittees that have regulatory authority over Priority Land Uses,[2] the Trash Provisions require implementation of the prohibition through requirements incorporated into Phase I MS4 Permits and/or through monitoring and

[1] Amendment to the Water Quality Control Plan for Ocean Waters of California to Control Trash (Ocean Plan) and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, And Estuaries Of California (ISWEBE Plan) to be adopted by the State Water Board. Documents may be downloaded from our website at http://www.waterboards.ca.gov/water_issues/programs/trash_control/documentation.shtml.

[2] Defined in Enclosure, *Trash Provision Glossary*.

reporting orders, by **June 2, 2017**.[3] Since the Trash Provisions have not yet been implemented through the San Bernardino County MS4 Permit, the Santa Ana Regional Board is implementing the initial steps of the Trash Provisions through this Order in accordance with Water Code section 13383, as specified in the Trash Provisions[4] and as further authorized by Clean Water Act section 308(a) and 40 Code of Federal Regulations part 122.41(h). The implementation plans that are submitted in response to this Order are subject to approval by the Executive Officer.

The Trash Provisions require Phase I Co-permittees that have regulatory authority over Priority Land Uses to select either Track 1 or Track 2 as a method of compliance with the trash prohibition. Each method is summarized below. Through this Order, the Santa Ana Regional Board requires each Co-permittee to determine and report their selection: [5]

1. Track 1: Install, operate, and maintain Full Capture Systems[6] for all storm drains that capture runoff from the Priority Land Uses in their jurisdictions; or

2. Track 2: Install, operate, and maintain any combination of Full Capture Systems, Multi-Benefit Projects[7], other Treatment Controls[7], and/or Institutional Controls[7] within either the jurisdiction of the Co-permittee or within the jurisdiction of the Co-permittee and contiguous MS4 permittees. The Co-permittee may determine the locations or land uses within its jurisdiction to implement any combination of controls. The Co-permittee shall demonstrate that such combination achieves Full Capture System Equivalency[7]. The Co-permittee may determine which controls to implement to achieve compliance with the Full Capture System Equivalency. It is, however, the State Water Board's expectation that the Co-permittee will elect to install Full Capture Systems where such installation is not cost-prohibitive.

To ensure that each Co-permittee's selection is completed accurately, the Santa Ana Regional Board recommends each Co-permittee develop maps identifying Priority Land Use areas within their jurisdiction, the corresponding storm drain network and associated drainage areas, and proposed locations for certified Full Capture System installations. Co-permittees that select the Track 2 method are encouraged to identify on the maps the locations or land uses where a combination of controls, which are identified in Track 2 above, will be implemented to achieve Full Capture Systems Equivalency.

Co-permittees that select Track 1 may discover that there are locations where certified Full Capture Systems cannot be implemented, or are better implemented within another land use area. The Trash Provisions allow a Co-permittee to request substitution of one or more Priority Land Uses with alternate land uses within their jurisdiction.

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[3] If you believe that your agency is not subject to the Trash Provisions because your agency does not have regulatory authority over any Priority Land Use, please contact the Santa Ana Regional Board staff member identified below.

[4] Chapter IV.A.5.a(1)B of the ISWEBE and Chapter III.L.4.a(1)B of the Ocean Plan.

[5] Chapter IV.A.3.a of the ISWEBE Plan and Chapter III.L.2.a of the Ocean Plan.

[6] Defined in Enclosure, *Trash Provision Glossary*.

The Trash Provisions describe two examples of assessment approaches for Co-permittees to demonstrate Full Capture System Equivalency when they select the Track 2 compliance method. Co-permittees may use alternative methods to demonstrate Full Capture System Equivalency. One alternative method currently implemented in the San Francisco Bay region relies heavily on the use of on-land visual trash assessments. A description of the Visual Trash Assessment Approach[7] is enclosed in this Order and may be used by Co-permittees to meet the requirement for a baseline trash assessment.

Co-permittees choosing Track 2 may determine the locations or land uses within their jurisdictions to implement any combination of controls that achieve Full Capture System Equivalency. The plan to implement these controls is subject to approval by the Santa Ana Regional Board Executive Officer.[8]

This Order directs MS4 Co-permittees selecting Track 2 to first assess trash levels of Priority Land Uses. Co-permittees selecting Track 2 must, at a minimum, assess the Priority Land Use areas, even if they subsequently select other locations or land uses within their jurisdiction to implement any combination of controls that meet Full Capture System Equivalency. If proposing to select locations or land uses other than Priority Land Uses, the Co-permittees must assess trash levels at those locations or land uses and provide a justification demonstrating that the selected locations or land uses generate trash at rates that are equivalent to or greater than the Priority Land Uses.

The Trash Provisions provide the Santa Ana Regional Board with the authority to determine that specific land uses or locations generate substantial amounts of trash in addition to the priority land uses.[9] In the event the Santa Ana Regional Board makes that determination, the Co-permittees will be required to comply with the requirements of the Trash Provisions with respect to such land uses or locations.

Although not yet incorporated into the San Bernardino County MS4 Permit, the Trash Provisions require that minimum Monitoring and Reporting requirements be implemented through an MS4 Permit. The Santa Ana Regional Board staff will recommend including monitoring and reporting requirements in the next iteration of the San Bernardino County MS4 Permit which are at least as stringent as those in the Trash Provisions below:

1. Co-permittees that elect to comply with Track 1 shall provide a report to the Santa Ana Regional Board demonstrating installation, operation, maintenance, and the Geographic Information System (GIS) mapped location and drainage area served by its Full Capture Systems on an annual basis.[10]

[7] See Enclosure, *Recommended Trash Assessment Minimum Level of Effort.*

[8] Chapter IV.A.5.a.(1)B. of ISWEBE Plan or Chapter III.L.4.a.(1)B. of the Ocean Plan.

[9] Chapter IV.A.3.d. of ISWEBE Plan or Chapter III.L.2.d of the Ocean Plan.

[10] Chapter IV.A.6.a. of ISWEBE Plan or Chapter III.L.5.a. of the Ocean Plan.

2. Co-permittees that elect to comply with Track 2 shall develop and implement monitoring plans that demonstrate the effectiveness of the Full Capture Systems, Multi-Benefit Projects, other Treatment Controls, and/or Institutional Controls and compliance with Full Capture System Equivalency[11]. Monitoring reports shall be provided to the Santa Ana Regional Board on an annual basis, and shall include GIS mapped locations and drainage area served for each of the Full Capture Systems, Multi-Benefit Projects, other Treatment Controls, and/or Institutional Controls installed or utilized by the Co-permittee. In developing the monitoring reports the Co-permittee should consider the following questions:

    a. What type of and how many Treatment Controls, Institutional Controls, and/or Multi-Benefit Projects have been used and in what locations?

    b. How many Full Capture Systems have been installed (if any), in what locations have they been installed, and what is the individual and cumulative area served by them?

    c. What is the effectiveness of the total combination of Treatment Controls, Institutional Controls, and Multi-Benefit Projects employed by the Co-permittee?

    d. Has the amount of Trash discharged from the MS4 decreased from the previous year? If so, by how much? If not, explain why.

    e. Has the amount of Trash in the MS4's receiving water(s) decreased from the previous year? If so, by how much? If not, explain why.

3. Co-permittees will be required to demonstrate achievement of interim milestones such as average load reductions of 10% per year or other progress to full implementation. Full compliance with the Trash Provisions shall occur within ten (10) years of the effective date of the first implementing permit except as specified in Chapter III.L.4.a.5 of Ocean Plan and Chapter IV.A.5.a.5 of the ISWEBE Plan.[12] In no case may the final compliance date be later than fifteen (15) years from the effective date of the Trash Provisions (i.e. December 2, 2030).[13]

This Order is issued to implement federal law. The water quality objective established by the Trash Provisions serves as a water quality standard federally mandated under Clean Water Act section 303(c) and the federal regulations. (33 U.S.C. § 1312, 40 C.F.R. § 131.) This water quality standard was specifically approved by U.S. EPA following

[11] Chapter IV.A.6.b. of ISWEBE Plan or Chapter III.L.5.b. of the Ocean Plan.

[12] The exception provides that, where the permitting agency, such as the Santa Ana Regional Board, makes a determination that a specific land use generates a substantial amount of Trash, the permitting agency has discretion to determine the time schedule for full compliance. In no case may the final compliance date be later than ten (10) years from the determination.

[13] Chapter IV.A.5.a.(2) and (3) of ISWEBE Plan or Chapter III.L.4.a.(2) and (3) of the Ocean Plan.

adoption by the State Water Board and approval by the Office of Administrative Law. This Order requests information necessary for municipal permittees to plan for implementation of actions to achieve the water quality standard for trash. Further, the water quality standard expected to be achieved pursuant to the Trash Provisions may allow each water body impaired by trash and already on the Clean Water Act section 303(d) list to be removed from the list, or each water body subsequently determined to be impaired by trash to not be placed on the list, obviating the need for the development of a total maximum daily load (TMDL) for trash for each of those water bodies. (33 U.S.C. § 1313(d); 40 C.F.R. § 130.7.) In those cases, the specific actions that will be proposed by the municipal permittees in response to this Order substitute for some or all of the actions that would otherwise be required consistent with any waste load allocations in a trash TMDL. (40 C.F.R. § 122.44, subd. (d)(1)(vii)(B).) This Order nevertheless allows municipal permittees to select specific proposed actions to meet the federal requirements.

The implementation plan required by this Order in clause 2 below is subject to approval by the Santa Ana Regional Board's Executive Officer. A request for an equivalent alternative land use must be approved by the Santa Ana Regional Board's Executive Officer prior to installation and implementation of certified Full Capture Systems or Full Capture System Equivalency trash controls.

California Water Code Section 13383(a) states the following:

"The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements, as authorized by Section 13160, 13376, or 13377 or by subdivisions (b) and (c) of this section, for any person who discharges, or proposes to discharge, to navigable waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates, or proposes to own or operate, a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes, or proposes to use or dispose, of sewage sludge."

The reporting requirements of this Order are necessary to comply with the Trash Provisions in the ISWEBE Plan and the Ocean Plan. Pursuant to California Water Code section 13383, **it is hereby ordered** that the Co-permittee shall submit electronically the following items:

1. By **August 31, 2017**, submit electronically a letter to the Santa Ana Regional Board identifying the Co-permittee's selected method of compliance, (Track 1 or Track 2) as defined previously in this Order.

2. By **August 31, 2017**, submit electronically a letter to the Santa Ana Regional Board identifying the Co-permittee's selected method of compliance, (Track 1 or Track 2) as defined previously in this Order.

3. **Track 2 Permittees Only:** By **November 30, 2018** submit electronically to the Santa Ana Regional Board an implementation plan, subject to approval by the Executive Officer, that describes the following:

    a. The combination of controls selected and the rationale for the selection;

    b. How the combination of controls is designed to achieve Full Capture System Equivalency;

    c. How Full Capture System Equivalency will be demonstrated;

    d. If using a methodology other than the attached recommended Visual Trash Assessment Approach to determine trash levels, a description of the methodology used; and,

    e. If proposing to select locations or land uses other than Priority Land Uses, a justification demonstrating that the alternative land uses generate trash at rates that are equivalent to or greater than the Priority Land Uses.

4. Sign, certify, and submit all letters and the implementation plan with supporting documentation required by this Order electronically to santaana@waterboards.ca.gov.

5. Ensure that any person signing a letter, implementation plan and supporting documentation required by this Order makes the following certification:

    "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."

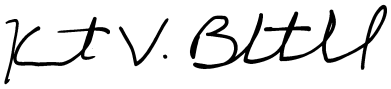
The issuance of this Order is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15262, Chapter 3, Title 14 of the California Code of Regulations because this Order only requires feasibility or planning studies for possible future actions which the Santa Ana Regional Board has not approved, adopted, or funded. The Santa Ana Regional Board did consider environmental factors associated with this Order and finds that the actions required in this Order will ensure future protection of water quality and those associated beneficial uses the Santa Ana Regional Board is charged to protect.

Any person aggrieved by this action of the Santa Ana Regional Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found at the following webpage or will be provided upon request.: http://www.waterboards.ca.gov/public notices/petitions/water quality/index.shtml

Failure to comply with this Order, or falsifying any information provided therein, may result in enforcement action including civil liabilities for late or inadequate reports, consistent with Water Code section 13385.

Questions regarding this Order or any requests for assistance should be directed to Keith L. Elliott at (951) 782-4925 or keith.elliott@waterboards.ca.gov.

Sincerely,



Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

Enclosures (2): 1. Trash Provisions Glossary
2. State Water Resources Control Board Recommended Trash Assessment Minimum Level of Effort

cc: Co-permittee NPDES Coordinators by e-mail

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION 2015-0019

AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR OCEAN WATERS OF CALIFORNIA TO CONTROL TRASH AND PART 1 TRASH PROVISIONS OF THE WATER QUALITY CONTROL PLAN FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES OF CALIFORNIA

WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted the Water Quality Control Plan for the Ocean Waters of California (Ocean Plan) in 1972 and last revised it in 2012.

2. On March 15, 2011, the State Water Board adopted the California Ocean Plan Triennial Review Workplan by Resolution 2011-0013, directing State Water Board staff to review the high priority issues identified in the workplan, including the control of plastic debris and other trash, and make recommendations for any necessary changes to the Ocean Plan.

3. Trash in the State's surface waters is a pervasive problem and adversely affects numerous beneficial uses including, but not limited, to wildlife habitat, marine habitat, preservation of rare and endangered species, fish migration, navigation, and water contact and non-contact recreation.

4. Studies show that trash is predominantly generated on land and then transported to a receiving water body. The main transport pathway of trash to receiving water bodies is through storm water transport.

5. In accordance with Clean Water Act section 303(d), the 2010 Integrated Report identifies seventy-three water segments as impaired for trash or debris in California.

6. Water quality objectives adopted by the nine Regional Water Quality Control Boards (referred to collectively as Regional Water Boards and individually as Regional Water Board) vary for trash. The State Water Board and Regional Water Boards implement trash controls through various means, including storm water permits, adopting and implementing total maximum daily loads (TMDLs), and waste discharge requirements. Waters continue to be impaired by trash, the regulatory control approaches vary, and there is a need for statewide uniformity to control trash.

7. The State Water Board is authorized to revise and adopt water quality control plans in accordance with the provisions of Water Code sections 13240 through 13244 for waters for which water quality standards are required by the federal Clean Water Act. (Water Code § 13170.)

8. The goal of the Amendment to the Ocean Plan and Part I Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan) (collectively referred to as the Trash Amendments or individually as Trash Amendment) is to address the impacts of trash to the surface waters of California through the establishment of a statewide narrative water quality objective and implementation requirements to control trash, including a prohibition against the discharge of trash.

9. The Staff Report developed for the Trash Amendments, titled "Proposed Final Staff Report, including the Substitute Environmental Documentation" is a detailed technical document that analyzes and describes the necessity and rationale for the development of the statewide water quality objective and the implementation plan to control trash.

10. Pursuant to Water Code section 13170, a water quality control plan adopted by the State Water Board supersedes a water quality control plan adopted by a Regional Water Board, to the extent any conflict exists for the same waters. There are no conflicts between the Trash Amendments and any existing water quality control plan.

11. The Trash Amendments apply to all surface waters of the State, with the exception of those waters within the jurisdiction of the Los Angeles Regional Water Board where trash or debris TMDLs are in effect prior to the effective date of the Trash Amendments.

12. The water quality objective shall be implemented through the prohibition of discharge and other implementation requirements through permits issued pursuant to section 402, subsection (p), of the Clean Water Act, waste discharge requirements, or waivers of waste discharge requirements.

13. In accordance with Water Code section 13241, in establishing the narrative water quality objective for trash, the State Water Board considered, as discussed more fully in the Staff Report (at Section 9 and Appendix C), the applicable factors in establishing the narrative water quality objective for trash: the past, present, and probable future beneficial uses of surface waters that can be impacted by trash; environmental characteristics of these waters; water quality conditions that could reasonably be achieved through a coordinated control effort, and economic considerations. Adoption of the Trash Amendments is unlikely to affect housing needs or the development or use of recycled water.

14. In developing, considering, and adopting the Trash Amendments, the State Water Board complied with the procedural requirements contained in the regulations applicable to the State Water Board's certified exempt regulatory programs to comply with the California Environmental Quality Act (CEQA) (23 Cal. Code Regs. §§ 3720-3780):

    a. On June 26, 2007, the State Water Board held a public scoping meeting in San Francisco regarding a potential amendment to the Ocean Plan to address trash and solicited comments from the public and public agencies on the scope of the project, alternatives, reasonably foreseeable methods of compliance, and the content of the environmental analysis to be considered in the development of the project.

    b. On October 7 and 14, 2010, the State Water Board sought public consultation in Rancho Cordova and Chino, respectively, regarding a statewide policy for controlling trash in waters of the state, and solicited comments on the scope and content of the environmental information to be considered in the development of the project.

c. The State Water Board convened a Public Advisory Group composed of ten stakeholders representing municipalities, California Department of Transportation, industry, and environmental groups. The Public Advisory Group met on July 26, 2011, August 30, 2011, October 12 and 13, 2011, May 22, 2012, August 13, 2012, and March 6, 2013 to provide comments on, and feedback to, the development of the proposed Trash Amendments and Draft Staff Report.

d. In March, April, and May 2013, State Water Board held fourteen focused stakeholder meetings to provide an overview of the development of the proposed Trash Amendments and to receive feedback on key issues prior to the development and distribution of the proposed Trash Amendments and the Draft Staff Report.

e. On June 10, 2014, the State Water Board provided notice to members of the public and public agencies of the opportunity to submit written comments on the proposed Trash Amendments and the Draft Staff Report; the written comment period; and the dates for the public workshop and public hearing to receive oral comments and evidence regarding the proposed Trash Amendments.

f. During the written public comment period, the State Water Board conducted a public workshop on July 16, 2014, and a public hearing on August 5, 2014, to solicit public comment and testimony regarding the proposed Trash Amendments and Draft Staff Report.

g. The State Water Board provided written responses to seventy-six written public comment letters timely received and three written comment letters received after the comment deadline.

h. Based on the oral and written comments, the State Water Board revised the proposed Trash Amendments and Draft Staff Report. On December 31, 2014, the State Water Board distributed and posted the proposed Final Trash Amendments and proposed Final Staff Report.

i. On February 12, 2015, the State Water Board provided a forty-five day notice to the public that the State Water Board would hold a public meeting to consider the adoption of the proposed Final Trash Amendments and approval of the Final Staff Report.

15. The Staff Report satisfies the substantive requirements applicable to the State Water Board's certified exempt regulatory programs to comply with CEQA.

a. The Staff Report contains a description of the project, a completed environmental checklist, an identification of any significant or potentially significant adverse impacts of the project; an analysis of reasonable alternatives to the project and mitigation measures; and an environmental analysis of the reasonably foreseeable methods of compliance, including a reasonable range of environmental, economic, and technical factors, population and geographic areas. (23 Cal. Code Regs. § 3777, subds. (a)-(c).)

b. The State Water Board is the lead agency for the proposed Trash Amendments. In preparing the Staff Report's environmental analysis pertaining to the reasonably foreseeable methods of compliance, the State Water Board is "not required to conduct a site-specific project level analysis of the methods of compliance, which CEQA may otherwise require of those agencies who are responsible for complying with the plan or policy when they determine the manner in which they will comply." (Id. § 3777, subd. (c).). Dischargers that have the Trash Amendment's implementation requirements incorporated into their respective permits will be required to select the specific method or methods to employ to achieve compliance. Project-level analysis is expected to be conducted by the appropriate public agency prior to implementation of project-specific methods of compliance for the proposed Trash Amendments. The environmental analysis in the Staff Report assumes that the project specific methods of compliance would be designed, installed, and maintained following all applicable state and local laws, regulations, and ordinances.

c. The Final Substitute Environmental Documentation consists of the Draft Staff Report dated June 10, 2014, the Proposed Final Staff Report, comments and responses to comments on the Draft Staff Report and the proposed Trash Amendments, the environmental checklist, and this resolution. (Id. §§, 3777, 3779.5, subd. (b).)

16. Pursuant to Health and Safety Code section 57004, the Draft Staff Report and proposed Trash Amendments underwent external scientific peer review through an interagency agreement with the University of California. Peer review was solicited on March 10, 2014 and completed on July 14, 2014.

17. Adoption of the Trash Amendments is consistent with the State Antidegradation Policy (State Water Board Resolution 68-16) and the federal Antidegradation Policy (40 CFR § 131.12).

18. The Trash Amendments do not become effective until approved by the State Office of Administrative Law (OAL) and the Trash Amendments' narrative water quality objective for trash does not become effective until approved by the United States Environmental Protection Agency (U.S. EPA).

THEREFORE, BE IT RESOLVED THAT:

1. In accordance with California Code of Regulations, title 23, section 3779.5, subdivision (c), and California Code of Regulations, title 14, section 15091, subdivision (a)(2), the State Water Board hereby finds there are potentially significant impacts to air quality, biological resources, cultural resources, geology/soil resources, hazards and hazardous materials, hydrology/water quality, noise and vibration, public services, transportation/traffic, and utilities/ service systems and potentially cumulative significant impacts related to noise and vibration, air quality, transportation and circulation, utilities and service systems, and greenhouse gas emissions by some of the reasonably foreseeable methods of compliance. As discussed in the Staff Report, potentially significant impacts to air quality and potentially cumulative significant impacts related to noise and vibration, air quality, transportation and circulation, utilities and service systems, and greenhouse gas emissions may arise from the installation and maintenance of one or more the different types of the full capture systems and street sweeping. Also as discussed in the Staff Report, potentially significant impacts

to biological resources, cultural resources, geology/soil resources, hazards and hazardous materials, hydrology/water quality, noise and vibration, public services, transportation/traffic, and utilities/ service systems may arise from the installation and maintenance of one or more the different types of the full capture systems. The Staff Report explains that measures are available for each method of compliance that, if implemented, can reduce or eliminate those impacts. Selection of the methods of compliance and mitigation measures are not under the control or discretion of the State Water Board, and to the extent they are within the responsibility and jurisdiction of other public agencies, such public agencies will be required to comply with CEQA in approving the methods of compliance. Such agencies have the ability to implement the mitigation measures, can and should implement the mitigation measures, and are required under CEQA to consider whether to implement the mitigation measures when the agencies undertake their own evaluation of impacts associated with specific activities to comply with the Trash Amendments.

2. The State Water Board hereby approves and adopts the Final CEQA Substitute Environmental Documentation, which was prepared, where appropriate, in accordance with the provisions applicable to the State Water Board's certified exempt regulatory programs, California Code of Regulations, title 23, sections 3777 through 3779.

3. After considering the entire administrative record, including all oral testimony and comments received at the adoption meeting, the State Water Board hereby adopts the Trash Amendments, which are specifically titled the Amendment to the Water Quality Control Plan for Ocean Waters of California to Control Trash (Appendix D of the Staff Report) and Part I Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Appendix E of the Staff Report).

4. The State Water Board directs State Water Board staff, in consultation with the California Stormwater Quality Association, other interested stakeholders, and the Regional Water Boards, to evaluate whether Treatment Controls TC-10, TC-11, TC-12, TC-22, TC-32, and TC-40, as set forth in the New Development and Redevelopment BMPs Handbook (California Stormwater Quality Association, 2003) meet the requirements for certification as "full capture system" as defined in the Trash Amendments and report on same to the State Water Board within six months of the adoption of the Trash Amendments.

5. The State Water Board directs staff, as part of the Stormwater Strategic Initiative, to evaluate strategies to address generation of trash in "hot spots." Staff, at a minimum, shall consider discharges, including but not limited to, from homeless encampments, high-use beaches as defined under Assembly Bill 411, and parks adjacent to waters of the State.

6. The State Water Board directs State Water Board staff, in consultation with the Ocean Protection Council and other governmental agencies and stakeholders, to assess potential performance measures, including receiving water monitoring, for evaluating the environmental outcomes of Trash Amendments implementation.

7. The State Water Board directs State Water Board staff, in conjunction with the Regional Water Boards, to periodically report to the State Water Board on the status of the implementation of the Trash Amendments, at a minimum within three and seven years following the first implementing permit.

8. The State Water Board directs the Los Angeles Water Board to convene a public meeting within a year of the effective date of the Trash Amendments to reconsider the scope of its trash TMDLs, with the exception of the TMDLs for the Los Angeles River and Ballona Creek watersheds, and to consider an approach that would focus municipal separate storm sewer systems (MS4) permittees' trash control-efforts on high-trash generation areas within their jurisdiction.

9. The Regional Water Boards, within eighteen months of the effective date of the Trash Amendments, and for each NPDES MS4 permittee within their respective region subject to either of the Trash Amendments, shall comply with the time schedules contained therein.

10. The State Water Board, within eighteen months of the effective date of the Trash Amendments, and for each NPDES MS4 permittee subject to either of the Trash Amendments, shall comply with the time schedules contained therein.

11. The Executive Director or designee is authorized to submit the Trash Amendments to OAL and the U.S. EPA for review and approval.

12. The Executive Director or designee is authorized to make minor, non-substantive modifications to the language of the Trash Amendments, if OAL determines that such changes are needed for clarity or consistency, and inform the State Water Board of any such changes.

13. The State Water Board directs State Water Board staff, upon approval by OAL, to file a Notice of Decision with the Secretary for Natural Resources and transmit payment of the applicable fee as may be required to the Department of Fish and Wildlife pursuant to Fish and Game Code section 711.4.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 7, 2015.

AYE:	Chair Felicia Marcus Vice Chair Frances Spivy-Weber Board Member Tam M. Doduc Board Member Steven Moore Board Member Dorene D'Adamo
NAY:	None
ABSENT:	None
ABSTAIN:	None

Jeanine Townsend

Jeanine Townsend
Clerk to the Board

Final Staff Report

Including the Substitute Environmental Documentation

Amendment to the Water Quality Control Plan for the Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California

DIVISION OF WATER QUALITY

STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

State of California
Edmund G. Brown Jr., Governor

California Environmental Protection Agency
Matthew Rodriquez, Secretary

State Water Resources Control Board
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Sacramento, CA 95814
(916)341-5250
Homepage: http://www.waterboards.ca.gov

Felicia Marcus, Chairman
Frances Spivy-Weber, Vice Chair
Tam M. Doduc, Member
Steven Moore, Member
Dorene D'Adamo, Member

Tom Howard, Executive Director

Jonathan Bishop, Chief Deputy Director
Caren Trgovcich, Chief Deputy Director

Cover Art by:
Yoonhye Kim, 7th Grade, 2012
California Coastal Art & Poetry Contest
California Coastal Commission
www.coast4u.org

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LIST OF ABBREVIATIONS

AB	Assembly Bill
ASBS	Areas of Special Biological Significance
Basin Plans	Regional Water Quality Control Plan
BASMAA	Bay Area Stormwater Management Agencies Association
BMP	Best Management Practices
Caltrans	California Department of Transportation
CASQA	California Stormwater Quality Association
CCR	California Code of Regulations
CEQA	California Environment Quality Act
CGP	Construction General Permit
Colorado River Basin Water Board	Colorado River Basin Regional Water Resource Control Board
CWA	Clean Water Act
GIS	Geographic Information System
LID	Low-Impact Development Controls
Los Angeles Water Board	Los Angeles Regional Water Quality Control Board
IGP	Industrial Storm Water General Permit
ISWEBE Plan	Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California
MFAC	Minimum Frequency of Assessment and Collection
MRP	San Francisco Bay Municipal Regional Stormwater Permit
MS4	Municipal Separate Storm Sewer System
NOAA	National Oceanic and Atmospheric Administration
North Coast Water Board	North Coast Regional Water Quality Control Board
NPDES	National Pollutant Discharge Elimination System
Ocean Plan	Water Quality Control Plan for Ocean Waters of California
Porter-Cologne	Porter-Cologne Water Quality Control Act
Regional Water Board	Regional Water Quality Control Board
San Francisco Bay Water Board	San Francisco Bay Regional Water Quality Control Board
SB	Senate Bill
SED	Substitute Environmental Documentation
State Water Board	State Water Resources Control Board
TMDLs	Total Maximum Daily Loads
Trash Amendments	Amendment to the Water Quality Control Plan for Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California
U.S. EPA	United States Environmental Protection Agency
Wat. Code	California Water Code
Water Boards	State and Regional Water Quality Control Boards
WDR	Waste Discharge Requirements

1 INTRODUCTION

Trash is junk or rubbish generated by human activity that frequently ends up in waterways. Trash is items such as cigarette butts, paper, fast food containers, plastic grocery bags, cans and bottles, used diapers, construction site debris, industrial preproduction plastic pellets, old tires, and appliances. Trash discarded on land frequently ends up in waterways and the ocean as rainstorms wash it into gutters and storm drains, and then into creeks and rivers. The presence of trash in waterways adversely affects beneficial uses, including but not limited to threats to aquatic life, wildlife, and public health.

The State Water Resources Control Board and Regional Water Quality Control Boards (collectively, the Water Boards) are controlling trash primarily through Total Maximum Daily Loads (TMDLs) and permits. The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) led the way with effective trash management strategies with the Los Angeles River Watershed Trash TMDL. The San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) is following this lead with trash components to their Municipal Regional Storm Water National Pollutant Discharge Elimination System (NPDES) Permit. These approaches are not entirely consistent, and there are still ongoing trash problems across the state waterways. There is a strong need for a statewide consistency within the Water Boards regarding trash control.

The State Water Resources Control Board (State Water Board) is proposing an Amendment to the Water Quality Control Plan for Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California. This Staff Report shall collectively refer to the amendment to control trash and Part 1 Trash Provisions as "Trash Amendments".[1] The provisions proposed in the Trash Amendments include six elements: (1) water quality objective, (2) applicability, (3) prohibition of discharge, (4) implementation provisions, (5) time schedule, and (6) monitoring and reporting requirements. The proposed provisions would apply to all surface waters of the state, with the exception of those waters within the jurisdiction of the Los Angeles Water Board with trash or debris TMDLs that are in effect prior to the effective date of the Trash Amendments.

This Final Staff Report analyzes the need for the final Trash Amendments and alternative options to the Trash Amendments considered by the State Water Board. This document also serves as the State Water Board's Substitute Environmental Documentation (SED) required to meet the requirements of the California

[1] The State Water Board intends to amend the Water Quality Control Plan for Enclosed Bays and Estuaries of California to create the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan (ISWEBE Plan). The State Water Board intends that the Part 1 Trash Provisions will be incorporated into the ISWEBE Plan, once it is adopted.

Environmental Quality Act (CEQA)[2], pursuant to Public Resources Code sections 21080.5, 21159 and CEQA Guidelines sections 15250 – 15253; and the State Water Board's Regulations for Implementation of the Environmental Quality Act of 1970, 23 California Code of Regulations (CCR) sections 3720 – 3781.

1.1 Purpose of the Staff Report

The purpose of this Final Staff Report is to present the State Water Board's analysis of the need for and the effects of the final Trash Amendments and meet the State Water Board's requirement to comply with CEQA.

CEQA authorizes the Secretary for Natural Resources to certify that state regulatory programs meeting certain environmental standards are exempt from many of the procedural requirements of CEQA (CCR, Title 14, § 15251(g)). The Secretary for Natural Resources has certified the State Water Board regulations for adoption or approval of standards, rules, regulations, or plans to be used in the Basin/208 Planning program for the protection, maintenance, and enhancement of water quality in California (23 CCR § 3775 – 3781). Therefore, this Final Staff Report includes the documentation (i.e., draft SED) required for compliance with CEQA, and a separate CEQA document will not be prepared.

According to the State Water Board regulations for the implementation of CEQA (23 CCR § 3777), the SED shall consist of a written report prepared for the Board containing an environmental analysis of the project; a completed environmental checklist (where the issues identified in the checklist must be evaluated in the checklist or elsewhere in the SED); and other documentation as the board may include. The SED is required to include, at a minimum, the following information:

1) A brief description of the proposed project;
2) An identification of any significant or potentially significant adverse environmental impacts of the proposed project;
3) An analysis of reasonable alternatives to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts; and
4) An environmental analysis of the reasonably foreseeable methods of compliance. The environmental analysis shall include, at a minimum, all of the following:
    a) An identification of the reasonably foreseeable methods of compliance with the project;

[2] CEQA provides that certain regulatory programs of state agencies may be certified by the Secretary for Natural Resources as being exempt from the requirements for preparing Environmental Impact Reports (EIR), Negative Declarations, and Initial Studies if the Secretary finds that the program meets certain criteria. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. The Secretary has certified the State Water Resource Control Board regulatory program for adoption or approval of standards, rules, regulations, or plans to be used in the Basin/208 Planning program for the protection, maintenance, and enhancement of water quality in California as an exempt certified state regulatory program (Pub. Res. Code § 21080.5; Cal. Code Regs., tit.14, § 15251, subd. (g)).

b) An analysis of any reasonably foreseeable significant adverse environmental impacts associated with those methods of compliance;
c) An analysis of reasonably foreseeable alternative methods of compliance that would have less significant adverse environmental impacts; and,
d) An analysis of reasonably foreseeable mitigation measures that would minimize any unavoidable significant adverse environmental impacts of the reasonably foreseeable methods of compliance.

In the preparation of this Final Staff Report, the State Water Board utilizes numerical ranges or averages to assess the potential environmental impacts over a broad range of geographic areas within the state covering all nine regional water board jurisdictions. Per the direction of CEQA and the State Water Board regulations, however, the analysis contained in this Final Staff Report does not engage in speculation or conjecture and the environmental analysis does not attempt to provide a site-specific project level analysis of the methods of compliance (which CEQA may otherwise require of those agencies who are responsible for complying with the plan or policy when they determine the manner in which they comply). The analysis does take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites. (Pub Res Code § 21159; 14 CCR § 15144, 15145; 23 CCR § 3777(c)). Responses to comments and consequent revisions to the information in the Draft Staff Report will be subsequently presented in a Final Staff Report for consideration by the State Water Board. After the State Water Board has certified the document as adequate, the title of the document becomes the Final Staff Report.

1.2 Regulatory Framework

In 1969, the Porter-Cologne Water Quality Control Act (Porter-Cologne) (California Water Code (Wat. Code § 13000 et seq.) was adopted as the principal law governing water quality in California. Porter-Cologne institutes a comprehensive program to protect the quality and "beneficial uses" (or "designated uses" under federal parlance) of the state's water bodies. Beneficial uses include, but are not limited to, "domestic, municipal, agricultural, and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves" (Wat. Code § 13050, subd. (f)). Regulatory protection of beneficial uses is carried out, in part, through water quality objectives established in each regional water quality control plan (basin plan) (Wat. Code § 13241). Under Porter-Cologne, the regional water quality control boards (regional water boards) adopt basin plans in which they designate the beneficial uses of the waters of the region and establish water quality objectives to protect those beneficial uses. Basin plans are required to include a plan of implementation to ensure that waters achieve the water quality objectives.

As proposed, the Trash Amendments would apply to all surface waters of the state, including: ocean waters, enclosed bays and estuaries, and inland surface waters. "Waters of the state" are defined under Porter-Cologne as any surface water or groundwater, including saline waters, within the boundaries of the state (Wat. Code § 13050(e)). Under California state law, territorial boundaries extend three nautical miles

beyond the outermost islands, reefs, and rocks and include all waters between the islands and the coast (Cal. Gov. Code § 170).

In 1972, Congress enacted the federal Clean Water Act (CWA) with the goal to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S. Code § 1251(a)). The CWA directs states, with oversight by the U.S. Environmental Protection Agency (U.S. EPA), to adopt water quality standards to protect the public health and welfare, enhance the quality of water, and serve the purposes of the CWA. Ultimately, states must provide comprehensive protection of their waters through the application of water quality standards. State standards must include: (1) designated uses for all water bodies within their jurisdictions, and (2) water quality criteria (referred to as objectives under California law) sufficient to protect the most sensitive of the uses. The CWA established the NPDES Permit Program to regulate point source discharges of pollutants to waters of the United States (33 U.S. Code § 1342). In California, the Water Boards issue and administer NPDES permits under a program approved by the U.S. EPA (Wat. Code § 13377), and in conjunction with the requirements of Porter-Cologne.

NPDES permits are required to contain effluent limitations reflecting pollution reduction achievable through technological means, as well as more stringent limitations necessary to ensure that receiving waters meet state water quality standards (33 U.S. Code § 1311(b)(1)(A)-(C)). Section 303, subdivision (c)(2)(B) of the CWA requires states to adopt water quality criteria for all priority pollutants established in section 307(a). As part of its efforts to comply with section 303, subdivision (c)(2)(B), the State Water Board adopted two statewide plans in accordance with Water Code section 13170: the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) in 1972 and the Enclosed Bays and Estuaries Plan in 2008. These statewide plans supersede basin plans to the extent that any conflict exists (Wat. Code § 13170).

The CWA and Porter-Cologne direct the Water Boards to regulate the discharge of pollutants into waters of the United States and waters of the State. Trash is considered a pollutant and where runoff and storm water transport trash into these waters, it is considered discharge of waste subject to Water Board authority.

1.3 Effect on Existing Basin Plans, Trash-Related TMDLs and Permits

Antidegradation

Any relaxation of water quality standards that may occur as a result of the final Trash Amendments must comply with federal and state antidegradation policies, which require the protection of all existing beneficial uses (40 CFR § 131.12, State Water Board Resolution No. 68-16). If the initial water quality exceeds that which is necessary to protect every beneficial use, the water quality can be lowered, as long as certain criteria are met. Dischargers are not allowed to degrade water bodies to levels below that which is necessary to protect existing beneficial uses. The antidegradation analysis for the final Trash Amendments is found in Section 9.

Basin Plans

Following adoption by the State Water Board, the final Trash Amendments would supersede basin plans to the extent that any conflict exists (Wat. Code § 13170).

TMDLs

The final Trash Amendments would apply to all surface waters in the state, with the exception of those waters with the jurisdiction of the Los Angeles Water Board that have trash TMDLs in effect prior to the Trash Amendments. As the fifteen trash TMDLs in the Los Angeles Region have more stringent provisions than the final Trash Amendments, the final Trash Amendments would not result in a degradation of water quality standards in those waters. While the final Trash Amendments do not apply to existing trash TMDLs in the Los Angeles Region, the final Trash Amendments direct the Los Angeles Water Board to reconsider the scope of its trash TMDLs within one year of the Trash Amendments' effective date and focus its permittees' trash control efforts on high trash generation areas rather than all areas within each permittee's jurisdiction. The reconsideration would occur for all existing trash TMDLs, except for the Los Angeles River Watershed and Ballona Creek Trash TMDLs, because those two TMDLs are approaching final compliance deadlines of September 30, 2016 and September 30, 2015, respectively.

Permits

The final Trash Amendments would require permitting authorities to re-open, re-issue, or newly adopt NPDES permits for Municipal Separate Storm Sewer System (MS4) Phase I permittees, MS4 Phase II permittees, and California Department of Transportation (Caltrans) permittees, as well as Industrial Storm Water General Permit (IGP) and Construction General Permit (CGP) permittees, to incorporate the prohibition of discharge and implementation requirements of the final Trash Amendments within those permits. Until such permits are amended, the final Trash Amendments would not apply to dischargers covered under those permits.

A Water Board could, however, adopt storm water NPDES permits with stricter trash-discharge provisions, such as broadening the scope of regulated land uses.

1.4 Beneficial Uses Impacted by Trash

The final Trash Amendments are directed toward achieving the highest water quality consistent with maximum benefit to the people of the state. Beneficial uses, as defined by Porter-Cologne section 13050, are the uses of surface water and groundwater that may be protected against water quality degradation. The Water Boards are charged with protecting all beneficial uses from pollution and nuisance that may occur as a result of waste discharges in the region. Beneficial uses of surface waters, ground waters, marshes, and wetlands serve as a basis for establishing water quality objectives and discharge prohibitions to attain these goals and are defined in the basin plans for each regional water board and the Ocean Plan.

There are many beneficial uses in California that can be affected by trash. This section discusses the impacts of trash on beneficial uses associated with aquatic life and public health.

Trash is a threat to aquatic habitat and life as soon as it enters state waters. Mammals, turtles, birds, fish, and crustaceans are threatened following the ingestion of or entanglement by trash (Moore et al. 2001, U.S. EPA 2002). Ingestion and

entanglement can be fatal for freshwater, estuarine, and marine life. Similarly, habitat alteration and degradation due to trash can make natural habitats unsuitable for spawning, migration, and preservation of aquatic life. These negative effects of trash to aquatic life can impact twelve beneficial uses. A summary of specific impacts associated with each aquatic life beneficial use is presented in Table 13, Appendix A.

Trash in state waters can impact humans by means of jeopardizing public health and safety and posing harm and hindrance in recreational, navigational, and commercial activities. Trash can also affect the traditional and cultural rights of indigenous people or subsistence fishers to waters of the state. Specific impacts associated with each public health beneficial use is presented in Table 14, Appendix A.

1.5 Trash in the Environment

The presence of trash in surface waters, especially coastal and marine waters, is a serious issue in California. Trash discarded on land is frequently transported through storm drains and to waterways, shorelines, the seafloor, and the ocean. Statewide and local studies have documented the presence of trash in state waters and the accumulation of land-based trash in the ocean. Street and storm drain trash studies conducted in regions across California have provided insight into the composition and quantity of trash that flows from urban streets into the storm drain system and out to adjacent waters.

Trash in state waters is related to the direct and indirect activities of inhabitants inland, along coastal shorelines, and offshore (NOAA 2008a). A major source of trash is either intentionally or accidentally improperly discarded waste, thrown or deposited on land and in water bodies. If trash occurs on land, it is commonly transported to nearby water bodies by wind and/or rain or dry weather runoff. The five primary sources and transport mechanisms for trash to reach state waters are:

1) Littering by the public on or adjacent to waterways;
2) Storm events draining watersheds and carrying trash originating from littering, inadequate waste handling or illegal dumping via the storm drain system to receiving waters;
3) Wind-blown trash, also originating from littering, inadequate waste handling or illegal dumping;
4) Illegal dumping into or adjacent to water bodies, and;
5) Direct disposal (overboard disposal and/or dumping) of trash into water bodies from vessels involved in commercial, military, fishing or recreational activities.

Studies show that trash is predominantly generated on land and then transported to a receiving water body. The main transport pathway of trash to receiving water bodies is through storm water transport. Several studies have been conducted to determine the sources of land-based trash generation and the rates of trash generation areas. The land areas evaluated in these studies typically included the following: high density residential, low density residential, commercial services, industrial, public facilities, education institutions, military institution, transportation, utilities, mixed urban, open space, agriculture, water, and recreation land uses (City of Los Angeles 2002, County of

Los Angeles Department of Public Works 2004a; 2004b, City of Cupertino 2012, City of San Jose 2012, EOA, Inc. 2012a; 2012b).

Additional details about the composition of trash, the transport of transport of trash in the environmental, and trash assessment studies can be found in Appendix A.

1.6 Current Efforts to Address Concerns Related to Trash in California Waters

Regulations and policies are currently implemented in California to address trash in state waters. These efforts are discussed in the following sections and in greater detail in Appendix A.

State Laws and Local Ordinances

Numerous statewide laws and local ordinances have been adopted in California to address trash. For instance, California prohibits littering where such litter "creates a public health and safety hazard, a public nuisance, or a fire hazard" (Penal Code § 374.4). The California Vehicle Code provides that no one may throw or trash, including cigarettes onto highways and adjacent areas (§ 23111 and 23112).

California is the leader in implementing local ordinances with goals of reducing trash, specifically plastics. At least 65 jurisdictions have either banned expanded polystyrene foam food containers completely or have prohibited use by government agencies or at public events (Clean Water Action 2011b). In 2006, the City of San Francisco passed a ban on single-use carryout bags in grocery stores and pharmacies. Since then, at least 72 local jurisdictions have adopted city and county ordinances for single-use carryout bags (Environment California Research and Policy Center 2011). Statewide, several attempts have been made to pass single-use plastic bag ban bills over the past several years, including Assembly Bill (AB) 1998 in 2010 and Senate Bill (SB) 405 in 2013, although none have been passed in the State Legislature (West Coast Governors' Alliance on Ocean Health 2013).

On September 30, 2014, Governor Edmund G. Brown Jr. signed the nation's first statewide ban on single-use plastic bags—Senate Bill 270 (Sen. Padilla) (2014 Stat. Ch. 850) (adding Chapter 5.3 to Part 3 of Division 30 of the Public Resources Code). Senate Bill 270 aligns state law with the ordinances passed by local governments in California to reduce plastic waste. The new law prohibits grocery stores and pharmacies that have a specified amount of sales in dollars or retail floor space from providing single-use carry-out plastic bags as of July 1, 2015, and enacts the same ban for convenience stores and liquor stores on or after the following year. The legislation prohibits stores from selling or distributing a recycled paper bag or compostable bags at the point of sale for at a cost of less than $0.10.

No Existing Trash-Specific Water Quality Objectives

Each regional water board has adopted narrative objective(s) for pollutants in its basin plan. These narrative objectives refer to trash-related pollutants and other pollutants such as foam and sediment in general terms (i.e., floatable, suspended, and settleable material), but do not specifically refer to trash as a specific pollutant. The Ocean Plan also has similar floatable, suspended, and settleable material objectives, but no specific mention of trash as a pollutant.

Current NPDES Permits and Existing Trash TMDLs

The CWA establishes the NPDES permit as the primary mechanism for achieving water quality standards in navigable waters. NPDES permits are issued to point source dischargers and include effluent and receiving water limitations. Existing NPDES permits, such as Phase I, Phase II, and Caltrans, have some existing requirements for trash reduction in the form of institutional controls, such as street sweeping and educational programs (Gordon and Zamist 2003). These existing requirements can be applicable to multiple types of urban storm water pollutants, including trash.

For those waters that do not attain water quality standards even after NPDES permits are issued to point sources with the effluent limitations described above, the CWA requires states to adopt TMDLs for the pollutants causing the impairment in a water body. TMDLs are designed to restore water quality by controlling the pollutants that cause or contribute to such impairments.

The presence of trash in California waters has resulted in a number of waters listed as impaired on the CWA section 303(d) list of Water Quality Limited Segments over the past several listing cycles. According to California's 2008-2010 section 303(d) list of impaired waters, there are 73 listings due to trash in California waters. Although listings occur in four regions (San Francisco Bay, Los Angeles, Colorado River Basin, and San Diego), TMDLs have only been developed to date in the Los Angeles Region and the Colorado River Basin Region. In the Colorado River Basin, a TMDL for trash was adopted for the New River (at the international boundary) that included a numeric target of zero trash (Colorado River Basin Water Board 2006). In the Los Angeles Region, fifteen TMDLs were adopted for trash and debris by either the Los Angeles Water Board or U.S. EPA: San Gabriel River East Fork, Ballona Creek, Los Angeles River Watershed, Revolon Slough, and Beardsley Wash, Ventura River Estuary, Malibu Creek Watershed, Lake Elizabeth, Munz Lake, Lake Hughes, Legg Lake, Machado Lake, Santa Monica Bay Nearshore and Offshore, Peck Road Park Lake, Echo Park Lake, and Lincoln Park Lake (Table 16; Los Angeles Water Board 2000; 2004; 2007a; 2007b; 2007c; 2007d; 2007e; 2007f; 2008g; 2010, U.S. EPA 2012a).

The Los Angeles Water Board's trash and debris TMDLs set the numeric target for trash in the applicable water bodies to zero, as derived from the water quality objective in the basin plans. The TMDLs have all also defined trash to be "man-made litter," as defined by the California Government Code (§ 68055.1(g)). Implementation plans vary slightly but are mostly based on phased percent reduction goals that can be achieved through discharge permits, best management practices (BMPs), and structural controls.

The San Francisco Bay Water Board uses provisions in the San Francisco Bay Municipal Regional Stormwater Permit (MRP) to address trash in the 27 303(d) listed water bodies in the Region (Order No. R2-2009-0074). The San Francisco Bay MRP applies to 76 large, medium and small municipalities and flood control agencies in the San Francisco Bay Region. The San Francisco Bay MRP prohibits the discharge of "rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas." The trash-related receiving water limitations identified in the San Francisco Bay MRP do not place numeric targets on trash but uses

narrative language to prohibit trash discharges. The San Francisco Bay MRP requires that permittees reduce trash from their storm sewer systems by 40 percent by July 1, 2014. The San Francisco Bay MRP permittees are developing and implementing a Short-Term Trash Load Reduction Plan to attain the 40 percent (City of Cupertino 2012, City of San Jose 2012).

State Policy Efforts

In response to the increasing problem of trash within California, particularly plastic trash, policymakers have initiated efforts such as the California Ocean Protection Council's Resolution on Reducing and Preventing Marine Debris (2007) and subsequent Implementation Strategy for Reducing Marine Litter (2008). These policies respectively proposed targeted reductions of trash within a set timeline, and prioritize state efforts for source reduction of the "worst offenders" of trash, such as cigarette butts, plastic bottle caps, plastic bags, and polystyrene. In 2013, the West Coast Governor's Alliance on Ocean Health introduced a Marine Debris Strategy. The Strategy provides a toolbox of key actions that may be implemented collaboratively or individually by western states at its discretion and allows for the successful achievement of target milestones through various reduction methods.

1.7 Current Trash Cleanup Costs

A report, commissioned by U.S. EPA Region 9, estimated that West Coast communities (California, Oregon, and Washington) are spending approximately $13 per resident per year to combat and clean up trash that would otherwise end up as marine debris. The report conservatively suggested that West Coast coastal communities are spending more than $520 million to combat trash and marine debris. Cost information was sought for six different trash management activities: beach and waterway cleanup, street sweeping, installation of storm water capture devices, storm drain cleaning and maintenance, manual cleanup of trash, and public anti-trash campaigns. Data was collected from 90 different communities ranging in size from 200 to over four million residents (Stickel et al. 2012). A follow-up study conducted by the Natural Resources Defense Council and Kier Associates focused on the cost of current trash abatement activities for 95 California communities. The study found that California communities annually spend approximately $428 million ($10.5 per resident) to reduce trash and prevent trash from entering state waters. The study found that the average annual reported per capita cost ranged from $8.94 for large communities to $18.33 for small communities (fewer than 15,000 people) with the largest of communities (over 250,000 people) averaging $11.24 (Stickel et al. 2013).

2 PROJECT DESCRIPTION

The Water Board's regulations for implementation of CEQA require the SED to include a brief description of the project (23 CCR 3777(b)(1)). The following section: (1) describes the final Trash Amendments; (2) provides an overview of the objectives of the Plan; and (3) contains non-exclusive lists of: (a) the agencies that are expected to use this SED in their decision making and permits, (b) other approvals required to implement the project, and (c) related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies.

The complete texts of the final Trash Amendments are included in this Final Staff Report as Appendix D for the Ocean Plan and Appendix E for the ISWEBE Plan.

2.1 Trash Amendments' Description and Project Objective[3]

The State Water Board proposes to adopt the Trash Amendments into both the Ocean Plan and the ISWEBE Plan. The provisions proposed in the Trash Amendments include six elements: (1) water quality objective, (2) applicability, (3) prohibition of discharge, (4) implementation provisions, (5) time schedule, and (6) monitoring and reporting requirements. The proposed provisions would apply to all surface waters of the state, with the exception of those waters within the jurisdiction of the Los Angeles Water Board with trash or debris TMDLs that are in effect prior to the effective date of the Trash Amendments.

The State Water Board's project objective for the final Trash Amendments is to address the impacts of trash to the surface waters in California (with the exception of those waters within the jurisdiction of the Los Angeles Water Board with trash or debris TMDLs that are in effect prior to the effective date of the final Trash Amendments) through development of a statewide plan to control trash. The project objective for the final Trash Amendments is to provide statewide consistency for the Water Boards' regulatory approach to protect aquatic life and public health beneficial uses, and reduce environmental issues associated with trash in state waters, while focusing limited resources on high trash generating areas.

A central element of the final Trash Amendments is a land-use based compliance approach to focus trash controls to the areas with high trash generation rates. Within this land-use based approach, a dual alternative compliance Track approach is proposed for permitted storm water dischargers (i.e., MS4 Phase I, MS4 Phase II, Caltrans, IGP, and CGP) to implement a prohibition of discharge for trash. Table 1 outlines the proposed dual alternative compliance Tracks for permitted storm water dischargers.

[3] The State CEQA Guidelines state that a project description should include "a statement of the objectives sought by the proposed project..[And] should include the underlying purpose of the project" (14 CCR 15124(b)).

Table 1. Overview of Proposed Compliance Tracks for NPDES Storm Water Permits.

	Track 1	Track 2
NPDES Storm Water Permit	MS4 Phase I and II IGP/CGP*	MS4 Phase I and II Caltrans IGP/CGP*
Plan of Implementation	Install, operate and maintain full capture systems in storm drains that capture runoff from one or more of the priority land uses/facility/site.	Implement a plan with a combination of full capture systems, multi-benefit projects, institutional controls, and/or other treatment controls to achieve full capture system equivalency.
Time Schedule	10 years from first implementing permit but no later than 15 years from the effective date of the Trash Amendments.**	10 years from first implementing permit but no later than 15 years from the effective date of the Trash Amendments.**
Monitoring and Reporting	Demonstrate installation, operation, and maintenance of full capture systems and provide mapped location and drainage area served by full capture systems.***	Develop and implement set of monitoring objectives that demonstrate effectiveness of the selected combination of controls and compliance with full capture system equivalency.***

* IGP/CGP permittees would first demonstrate inability to comply with the outright prohibition of discharge of trash.

** Where a permitting authority makes a determination that a specific land use or location generates a substantial amount of trash, the permitting authority has the discretion to determine a time schedule with a maximum of ten years. IGP/CGP permittees would demonstrate full compliance with deadlines contained in the first implementing permit.

*** No trash monitoring requirements for IGP/CGP, however, IGP/CGP permittees would be required to report trash controls.

2.2 Water Quality Objective

To provide consistency statewide with a water quality objective, the final Trash Amendments would establish the following narrative water quality objectives for the Ocean Plan and the ISWEBE Plan.

The narrative water quality objective for the Ocean Plan would be: Trash shall not be present in ocean waters, along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance.

The narrative water quality objective for the ISWEBE Plan would be: Trash shall not be present in inland surface waters, enclosed bays, estuaries, and along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance.

2.3 Prohibition of Discharge

The Trash Amendments propose to implement the water quality objective for trash through a conditional prohibition of discharge of trash directly into waters of the state or where trash may ultimately be deposited into waters of the state. The prohibition of discharge applies to both permitted and non-permitted dischargers. Dischargers with NPDES permits would comply with the prohibition as outlined with the plan of implementation when such implementation plan is incorporated into the dischargers' NPDES permits. The final Trash Amendments clarify that dischargers with non-NPDES WDRs or waivers of WDRs that contain specific requirements for the control of trash shall be determined to be in compliance with the prohibition of discharge if the dischargers are in full compliance with such requirements. Under the original language, a discharger subject to an existing non-NPDES WDR or waiver of WDR could have been potentially in compliance with the requirements of the WDR, or Waiver of WDR, yet simultaneously out of compliance with prohibition of discharge included in the Draft Trash Amendments. Non-permitted dischargers must comply with the prohibition of discharge or be subject to direct enforcement action.

In addition, the prohibition of discharge specifically applies to the discharge to surface waters of the state of preproduction plastic by all manufacturers and transporters of preproduction plastics and manufacturers that use preproduction plastics in the manufacture of other products, or the deposition of preproduction plastic where it may be discharged into surface waters of the State. To ensure that the Trash Amendments do not interfere with existing permits requirements, the proposed Final Trash Amendments have been clarified to state that for dischargers subject to NPDES permits for discharges associated with industrial activity (e.g., IGP), those permittees would continue to comply with the "Preproduction Plastic Debris Program" under Water Code section 13367(a) and the requirements in the IGP (Order No. 2014-0057-DWQ) to comply with the prohibition concerning preproduction plastics.

2.4 Plan of Implementation

2.4.1 Permitted Storm Water Dischargers

One of the main transport mechanisms of trash to receiving waters is through the storm water system. The final Trash Amendments therefore focus on trash discharge reduction by requiring that NPDES storm water permits, specifically the MS4 Phase I and Phase II Permits, Caltrans Permit, the CGP, and the IGP, contain provisions that require permittees to comply with the prohibition of discharge. These provisions focus on trash control in the locations with high trash generation rates, in order to maximize the value of limited resources spent on addressing the discharge of trash into state waters.

MS4 Phase I and Phase II Permits

Municipalities are a source of trash generation, especially in areas with urban land uses and large population densities. MS4 Phase I and Phase II NPDES permits, which regulate discharges of storm water from MS4 systems throughout the state, have existing requirements for trash reduction in the form of institutional controls such as street sweeping and educational programs. Even with these existing provisions,

municipalities, however, continue to be significant dischargers of trash to waters of the state.

Under the final Trash Amendments, MS4 Phase I and Phase II NPDES permittees with regulatory authority over land uses can comply with the prohibition of discharge of trash under a dual alternative compliance approach or "Tracks". The Track requirements would be inserted into NPDES permits. Both Tracks have permittees focus their trash control efforts on priority land uses (i.e., those land uses that studies have shown generate significant sources of trash) (City of Los Angeles 2002, County of Los Angeles Department of Public Works 2004a; 2004b, City and County of San Francisco 2007, Moore et al. 2011, City of Cupertino 2012, City of San Jose 2012, EOA, Inc. 2012a). The final Trash Amendments define priority land uses as land uses that are actually developed (i.e., not simply zoned) as high density residential, industrial, commercial, mixed urban, and public transportation stations[4]. In addition, the final Trash Amendments provide that an MS4 may request that its permitting authority approve an equivalent alternative land use (i.e., an alternative to the land uses listed above) if that MS4 has land use(s) within its jurisdiction that generate trash at rates that are equivalent to or greater than one or more of the priority land uses listed This alternative option would help MS4s and their permitting authorities focus on controlling trash in each MS4's highest trash generating areas. The intent of this prioritization of land uses is to allow MS4s to allocate trash-control resources to the developed areas that generate the highest sources of trash.

Under Track 1, a permittee would install, operate and maintain full capture systems[5] for storm drains that capture runoff from priority land uses in their respective jurisdictions. Under Track 2, a permittee would develop and implement a plan that uses any combination of controls, such as full capture systems, other treatment controls (e.g., partial capture devices and green infrastructure and low impact development controls (LID)), institutional controls, and/or multi-benefit projects[6] to achieve the same performance results as Track 1 would achieve, referred to as, and defined as "full

[4] The final Trash Amendments specifically define each of these five regulated land uses for purposes of implementation of the water quality objective and the prohibition of discharge; so, these definitions may differ substantially from an MS4's own local definition of those land uses in its ordinances, general plan, etc.

[5] Full capture systems for storm drains are defined in the final Trash Amendments as treatment controls (either a single device or a series of devices) that traps all particles that are 5 mm or greater, and has a design treatment capacity that is either: a) of not less than the peak flow rate, Q, resulting from a one-year, one-hour, storm in the subdrainage area, or b) appropriately sized to, and designed to carry at least the same flows as, the corresponding storm drain. Examples of full capture systems are described in greater detail in Section 5.2 of this document.

[6] Multi-benefit projects are treatment control projects that achieve any of the benefits set forth in Section 10562, subdivision (d) of Division 6 of the Water Code (the Watershed, Clean Beaches, and Water Quality Act). These projects could be designed to infiltrate, recharge or store storm water for beneficial reuse, to develop or enhance habitat and open space through storm water management, and/or reduce storm water runoff volume while removing the transport of trash. Multi-benefit projects can be implemented between contiguous permittees within a watershed for increased effectiveness and cost-sharing to reduce trash and improve storm water.

capture system equivalency".[7] Due to particular site conditions, types of trash, and the available resources for maintenance and operation within a municipality, the combination of full capture systems, multi-benefit projects, other treatment controls, and institutional controls used to comply with the prohibition of discharge will vary by permittee. However, it is the State Water Board's expectation that full capture systems should be preferentially selected by a permittee in executing the implementation plan to control the discharge of trash and achieve compliance with full capture system equivalency so long as such installation is not cost prohibitive.

MS4 storm water permittees that opt to comply under Track 2 would have to submit implementation plans to their permitting authority, which is the Water Board that issues the permit. The implementation plans must: (a) describe the combination of controls selected by each MS4, and the rationale for the selection, (b) describe how the combination of selected controls is designed to achieve full capture system equivalency, and (c) how the full capture system equivalency will be demonstrated. The implementation plans are subject to the approval by the permitting authority. The intention for the implementation plans is to assist in long term plan efforts and provide specifics on the trash controls effort to be incorporated into the implementing permit.

Non-Traditional Small MS4s or Other Land Uses or Areas within an MS4

The final Trash Amendments allow for the Water Boards to determine that at the local or regional level, areas outside of the scope of the priority land uses within an MS4 may generate substantial amounts of trash. Possible areas may include locations such parks, stadia, schools, campuses, and roads leading to landfills. Some Non-Traditional Small MS4s[8] maybe outside or lack jurisdictional authority over priority land uses. After reaching that determination in consultation with the applicable MS4, the appropriate Water Board may require the MS4 to adopt Track 1 or Track 2 control measures over such land uses or locations. The proposed final Trash Amendments have been modified to more accurately reflect this intent.

California Department of Transportation

Caltrans designs and operates California's state highway system. Caltrans' operation of this linear transportation system requires that it have its own MS4 permit distinct from the MS4 permits for Phase I and Phase II municipalities with regulatory authority over land uses. For example, the locations of high trash generating areas within Caltrans' jurisdiction are different than the priority land uses within municipalities' jurisdictions. Based on information from Caltrans' trash studies (Caltrans 2000, Caltrans 2004), coordination with Caltrans, Adopt-A-Highway program, and Keep California Beautiful program (Mid Atlantic Solid Waste Consultants 2009), the final Trash Amendments focus Caltrans' compliance efforts on the significant trash generating areas within the state's linear transportation system. Significant trash generating areas may include

[7] See section 2.4.1 for Full Capture System Equivalency discussion.

[8] Federal and State operated facilities that can include universities, prisons, hospitals, and military bases (e.g., State Army National Guard barracks, parks and office building complexes).

areas such as: (1) highway on- and off- ramps in high-density residential, commercial, mixed urban, and industrial land uses; (2) rest areas and park-and-rides; and (3) state highways in commercial and industrial land uses. Additionally, the final Trash Amendments give Caltrans the opportunity to identify other significant trash generating areas (i.e., mainline highway segments) by conducting pilot studies and/or surveys.

To comply with the prohibition of discharge of trash, Caltrans must comply with requirements in all significant trash generating areas, similar to Track 2 for MS4 Phase I and II permittees, by installing, operating, and maintaining any combination of full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls. Caltrans must demonstrate that such combination of controls achieves full capture system equivalency. Furthermore, in areas where Caltrans' operations overlap with the jurisdiction of an MS4 Phase I or II permittee with regulatory authority over priority land uses, the final Trash Amendments direct the applicable parties to coordinate efforts to install, operate, and maintain treatment and institutional controls.

Similar to MS4 Phase I and Phase II permittees, the final Trash Amendments require Caltrans to submit an implementation plan that: (a) describes the specific locations of its significant trash generating areas, (b) the combination of controls selected and the rationale for the selection, and (c) how the combination of controls will achieve full capture system equivalency.

Industrial and Construction Permittees

Under the final Trash Amendments, dischargers with industrial or construction NPDES permits (e.g., IGP or CGP) would be required to eliminate trash from all storm water discharges and authorized non-storm water discharges. This outright prohibition includes discharges associated with the site or facility, as well as any additional space such as a parking lot. If the industrial or construction permittee, however, demonstrates to the Water Board that it is unable to comply with the outright prohibition, then the permittee, through the discretion of the Water Board, may require the discharger to comply with one of two options. Under the first option, the permittee would install, operate, and maintain full capture systems for storm drains that service the facility or site. As a second option, the permittee could develop and execute an implementation plan that committed to any combination of controls, such as full capture systems, other treatment controls (e.g. partial capture devices and green infrastructure and low impact development controls), institutional controls, and/or multi-benefit projects to achieve full capture system equivalency. As specified in Section 2.3, IGP permittees would continue to comply with the preproduction plastic provisions as specified by the "Preproduction Plastic Debris Program" under Water Code section 13367(a) and the requirements in the IGP (Order No. 2014-0057-DWQ).

Full Capture System Equivalency

The following entities must establish full capture system equivalency: (1) MS4 Phase I and Phase II permittees that elect Track 2, (2) Caltrans, and (3) IGP permittees that elect implementation provisions similar to Track 2. The final Trash Amendments define full capture system equivalency as:

> [T]he trash load that would be reduced if full capture systems were installed, operated, and maintained for all storm drains that capture runoff from the relevant areas of land (priority land uses, significant trash generating areas, facilities or sites regulated by NPDES permits for discharges of storm water associated with industrial activity, or specific land uses or areas that generate substantial amounts of trash, as applicable). The full capture system equivalency is a trash load reduction target that the permittee quantifies by using an approach, and technically acceptable and defensible assumptions and methods for applying the approach, subject to the approval of permitting authority.

During the public participation process for the Trash Amendments, many commenters requested clarification as to how Track 1 equivalency could be determined. While the permittee is responsible for determining the trash load reduction target, the proposed final Trash Amendments provide two examples of approaches that a permittee could use to determine full capture system equivalency: a trash capture rate approach and a reference approach. Other approaches may be more appropriate for any individual permittee's situation. The two methods identified in the amendment include:

1) Trash Capture Rate Approach. Directly measure or otherwise determine the amount of Trash captured by full capture systems for representative samples of all similar types of land uses, facilities, or areas within the relevant areas of land over time to identify specific trash capture rates. Apply each specific trash capture rate across all similar types of land uses, facilities, or areas to determine full capture system equivalency. Trash capture rates may be determined either through a pilot study or literature review. Full capture systems selected to evaluate trash capture rates may cover entire types of land uses, facilities, or areas, or a representative subset of types of land uses, facilities, or areas. With this approach, full capture system equivalency is the sum of the products of each type of land use, facility, or area multiplied by trash capture rates for that type of land use, facility, or area.

2) Reference Approach. Determine the amount of trash in a reference receiving water in a reference watershed where full capture systems have been installed for all storm drains that capture runoff from all relevant areas of land. The reference watershed must be comprised of similar types and extent of sources of trash and land uses (including priority land uses and all other land uses), facilities, or areas as the permittee's watershed. With this approach, full capture system equivalency would be demonstrated when the amount of trash in the receiving water is equivalent to the amount of trash in the reference receiving water.

As an example, an MS4 Phase I or Phase II permittee could determine trash capture rates for representative types of priority land uses where full capture devices had already been installed (e.g. for high density residential, commercial, industrial, mixed urban, and transportation station land uses). The trash capture rate should be

expressed as an amount of trash captured per time per area (e.g., pounds of trash per day per acre). The permittee could determine these trash capture rates by directly measuring the amount of trash collected by full capture systems over a defined period of time, such as 6 months, in each of the representative priority land use types. The representative land use types could be either the entire land use or a subset of a land use. The permittee could also utilize trash capture rates for similar land uses in other jurisdictions that have conducted trash capture rate studies, such as through a trash or debris TMDL.

Once the permittee has determined representative trash capture rates, those representative trash capture rates are applied to all similar priority land uses, where for instance the trash capture rate for high density residential is multiplied by the total area of all high density residential land uses in the permittee's jurisdiction. The full capture system equivalency would be determined by summing the trash capture loads for all priority land uses. The trash reduction target should be expressed as the amount of trash captured per time, e.g., pounds of trash per day or tons of trash per year.

The Trash Capture Rate Approach is focused on quantifying the amount of trash capture in particular land uses or location. Alternatively, the Reference Approach is focused on the condition of the receiving water by assessing and comparing the trash conditions of a reference receiving water with the receiving water from the permittee's jurisdiction. The permittee determines the amount of trash in a reference receiving water within a reference watershed where full capture systems have been installed for all storm drains that capture runoff from all relevant areas of land (e.g., priority land uses, significant trash generating areas, or facilities or sites). This means the reference watershed must be comprised of similar types and extent of land uses (including priority land uses and all other land uses), facilities, or areas as the permittee's watershed. The Reference Approach would be best executed using a reference receiving water that has a fully or nearly full implemented trash or debris TMDL.

Within the scope of the Trash Amendments, full capture system equivalency must be established after the permittee elects Track 2 or implementation provisions similar to Track 2 prior to implementation of trash controls. The details of how the selected controls are designed to achieve full capture system equivalency and how full capture system equivalency will be demonstrated are to be included in the permittee's implementation plan. The implementation plan is subject to the approval of the permitting authority. Therefore, the permitting authority has the discretion to require changes to the quantification of full capture system equivalency. As trash controls are implemented, the focus of monitoring program is to assess and monitor the progress towards achievement of the full capture system equivalency, and thus the prohibition of discharge.

2.4.2 Nonpoint Source Dischargers

Under the final Trash Amendments, nonpoint source dischargers subject to WDRs or waivers of WDRs, and not covered under an NPDES permit, required, at the discretion of the Water Board, to implement any appropriate trash controls in areas or facilities that generate substantial amounts of trash (e.g., high usage campgrounds, picnic areas, or

beach recreation areas). Trash control requirements for such nonpoint dischargers would be discharger specific, varying from treatment controls to institutional controls.

2.5 Time Schedule

Compliance with the water quality objective and plan for implementing the prohibition of discharge would be demonstrated by permittees in accordance with a time schedule set forth in the final Trash Amendments. The time schedule would be contingent on the effective date of the first implementing permit (whether such permit is modified, re-issued, or newly adopted). MS4 Phase I and II permittees with regulatory authority over land uses complying under Track 1 or Track 2 would have ten years from the effective date of the implementing permit to demonstrate full compliance with Track 1 or Track 2, as the case may be.

For MS4 Phase I and Phase II permittees that are newly designated as part of an existing MS4 it may not be feasible to expect compliance within ten years from the effective date of the first implementing permit (e.g., where designation occurs nine years after the first implementing permit). To address this, the final Trash Amendments have been clarified so that for MS4 Phase I and Phase II permittees that are designated after the effective date of the Trash Amendments, full compliance must be demonstrated within ten years of the effective date of the designation.

Several of the time schedule provisions in the proposed final Trash Amendments do not apply to MS4 permittees subject to the San Francisco Bay MRP or the East Contra Costa Municipal Storm Water Permit, because those permits already require control requirements substantially equivalent to Track 2. As a result, those MS4 permittees need not elect whether they will proceed with Track 1 or Track 2. Additionally, many of those MS4 permittees have already submitted a Short-Term Trash Load Reduction Plan and Long-Term Trash Load Reduction Plan that may be equivalent to the implementation plan required by the Trash Amendments. In order to reduce duplicative efforts, the Trash Amendments' requirement that MS4 permittees submit implementation plans does not apply to a San Francisco Bay MRP or the East Contra Costa Municipal Storm Water Permit, because those permits already require control requirements substantially equivalent to Track 2." "In order to reduce duplicative effort, the Trash Amendments' requirement that MS4 permittees submit implementation plans does not apply to a San Francisco Bay MRP or an East Contra Costa permittee if the San Francisco Bay Water Board or the Central Valley Water Board determines that the Short-Term Trash Load Reduction Plan and Long-Term Trash Load Reduction Plan for that permittee are equivalent to the implementation plan required by the Trash Amendments. Additionally, the pertinent permitting authority for the aforementioned permits may establish an earlier full compliance deadline than the ten-year compliance schedule specified for Track 2.

For Non-Traditional Small MS4s permittees or other land uses or areas within an MS4 that determined by the Water Boards to generate substantial amounts of trash and require trash controls, the Water Boards has the discretion to determine the time schedule for compliance with a maximum allotment of ten years from the determination. The determined time schedules for these areas should be relative to the size of the area and type of trash controls.

Caltrans, too, would have ten years from the effective date of its implementing permit to demonstrate compliance. For MS4 Phase I and II permittees with regulatory authority over land uses and Caltrans, in no case would their final compliance date be later than fifteen years from the effective date of the final Trash Amendments. Within the ten-year compliance periods discussed above, the Water Board can set interim compliance milestones within a specific permit. These interim milestones could be set, for example, as a percent reduction or percent installation per year.

Industrial and construction permittees would need to demonstrate full compliance within the deadlines specified in their respective implementing permits. Such deadlines may not exceed the terms of the first implementing permits (whether such permits are modified, re-issued or newly adopted).

Reaching full compliance with the prohibition of discharge would require planning efforts on the part of MS4 Phase I, MS4 Phase II, and Caltrans permittees. To assist in effective planning, within 18 months of the effective date of the final Trash Amendments the applicable Water Board would issue a Water Code section 13267 or 13383 order to its MS4 Phase I and MS4 Phase II permittees requesting notification within three months of each permittees' elected compliance track (i.e., either Track 1 or Track 2). If a permittee elects to comply under Track 2, then such a permittee needs to submit an implementation plan to the applicable Water Board within 18 months of receiving the 13267 or 13383 order.

To assist Caltrans with its planning efforts, the State Water Board would issue a Water Code section 13267 or 13383 order within 18 months of the effective date of the final Trash Amendments requesting an implementation plan.

~~2.6~~ Time Extension for Achieving Full Compliance

The proposed draft Trash Amendments provided a time extension to MS4 Phase I and II permittees with regulatory authority over land uses for each regulatory source control adopted by a MS4 Phase I or II permittee. Each regulatory source control adopted by a permittee could provide such permittee with a one-year time extension to achieve final compliance with either Track 1 or Track 2. The time extension option was proposed to receive public input on the potential advantages and disadvantages to this approach.

However, subsequent to the State Water Board's public workshop and the public hearing on the proposed Trash Amendments, Senate Bill 270 (2014 Stats. Ch. 850) was enacted. That new law enacts a state-wide plastic bag carry-out ban pertaining to grocery stores and pharmacies that have a specified amount of sales in dollars or retail floor space, which goes into effect July 1, 2015, and imposes the same ban on convenience stores and liquor stores a year later. The new law will implement a product ban, which was generally the type of regulatory source control contemplated by the State Water Board and discussed with the public with regard to consideration of the time extension option. Essentially, enactment of Senate Bill 270 removed the need for regulatory source controls, particularly product bans that would reduce trash, in the proposed Trash Amendments. As a result, the final Trash Amendments omit "regulatory source controls" from a method to comply with Track 2 and omit any corresponding allowance of time extensions.

2.7 Monitoring and Reporting Requirements

Under the final Trash Amendments, the Water Boards would require monitoring and reporting requirements (with monitoring objectives) in MS4 Phase I, MS4 Phase II, and Caltrans permits to ensure adequate trash control. The requirements in the final Trash Amendments represent the minimum requirements to be included in such permits.

The proposed monitoring requirements vary among NPDES storm water permits and tailored to the type of compliance option and permittee. For example, MS4 permittees complying under Track 1 (by installing, maintaining, and operating a network of full capture systems in the priority land uses) would not have minimum monitoring requirements. Instead, permittees would need to provide an annual report to the applicable Water Board demonstrating installation, operation, and maintenance of full capture systems. The annual report would include a Geographic Information System (GIS) based map depicting the locations of each installed full capture system and the drainage area that serves each full capture system. The reporting requirements could be included into annual reports requested by the Water Board.

MS4 permittees complying under Track 2, on the other hand, do have minimum monitoring requirements. They would develop and implement annual monitoring that demonstrates the effectiveness of the selected combination of treatment and institutional controls and compliance with full capture system equivalency. Such permittees would be required to submit a monitoring report to the applicable Water Board on an annual basis. The monitoring reports must include a GIS map depicting the locations and drainage area served by each treatment control, institutional control, and/or multi-benefit project. In addition to the GIS map, the annual monitoring report should consider a number of questions designed to demonstrate the effectiveness of the selected controls and compliance with full capture system equivalency. Using a questions-based approach provides flexibility to the permit writers to select the most relevant monitoring techniques and expectations for their respective permits.

The final Trash Amendments would require the Caltrans permit to contain monitoring requirements that Caltrans develop and implement annual monitoring plans that demonstrate the effectiveness of the selected combination of treatment and institutional controls and compliance with full capture system equivalency. The annual monitoring reports would be provided to the State Water Board and the reports must include a GIS map with the locations of each of the treatment controls and institutional controls. In addition to the GIS map, each annual monitoring report should consider a number of questions designed to demonstrate the effectiveness of the selected controls and compliance with full capture system equivalency.

The IGP and CGP are statewide permits that regulate discharges of storm water and authorized non-storm water discharges associated with very specific industrial activities. These permits apply to thousands of projects with diverse features and characteristics between facilities and sites. As such, prescribing appropriate and consistent trash monitoring and reporting requirements for all permittees poses significant challenges. While the final Trash Amendments do not contain trash monitoring requirements for IGP and CGP permits, permittees could, however, be required to report the measures used to either (1) achieve the outright prohibition or (2) achieve equivalent trash control

through alternative methods. The reporting would occur in reissuances or through regional water board actions aimed at adding monitoring and requirements to permittees. Additional trash monitoring and reporting can be required through existing authorities in the California Water Code, and in some cases directly through language in the IGP and CGP.

2.8 Full Capture System Certification

At present, the Los Angeles Water Board oversees a full capture system certification process (Bishop 2004, 2005, 2007, Dickerson 2004, Smith 2007, Unger 2011). In addition, the San Francisco Water Board evaluated effectiveness of full capture systems listed in Appendix I of the Bay Area-wide Trash Capture Demonstration Project (Demonstration Project), Final Project Report (San Francisco Estuary Partnership 2014). For statewide consistency, the State Water Board would take responsibility for the certification process for new full capture systems. The process for the certification would follow a similar process established by the Los Angeles Water Board (Yang 2004). Prior to installation, the full capture systems must be certified by the Executive Director, or designee, of the State Water Board. Uncertified systems will not satisfy the Trash Amendments. To request certification, the permittee would submit a certification request letter, including supporting documentation, to the State Water Board's Executive Director. The Executive Director or designee will issue a written response either approving or denying the proposed certification. However, to ensure efficient use of resources and prevent municipalities from having to remove properly functioning capture systems, full capture systems previously certified by the Los Angeles Water Board or identified by the Demonstration Project would be considered certified for use by permittees.

2.9 Reasonably Foreseeable Methods of Compliance

The State Water Board's SED for the proposed project is required to include an analysis of the reasonably foreseeable methods of compliance with the project (see 23 CCR 3777; Pub. Res Code § 21159). Although the State Water Board is not required to conduct a site-specific project level analysis of the methods of compliance (23 CCR 3777(c); Pub. Res Code § 21159(d)), a general description of the reasonably foreseeable methods of compliance is contained in Section 5 of the Final Staff Report.

2.10 Location and Boundaries of the Proposed Project

The State CEQA Guidelines require identification of "the precise location and boundaries of the proposed project [to be] shown on a detailed map" (14 CCR 15124(d)). The location of the State Water Board's proposed project to adopt the Trash Amendments is all surface waters of the State, with the exception of waters within the jurisdiction of the Los Angeles Water Board for which trash TMDLs are in effect prior to the effective date of the Trash Amendments. This necessarily includes the geographies of the nine regional water boards within California, as set forth in the Environmental Setting section and the maps located therein (Section 3) of the Final Staff Report.

2.11 Agencies Expected to use this Staff Report in their Decision Making and Permits

The State CEQA Guidelines require that the project description include, among other things, "a statement briefly describing the intended uses of the EIR" (14 CCR 15124(d)). The State Water Board will use this Final Staff Report in determining whether to adopt the final Trash Amendments. A Water Board may use the information contained within this Final Staff Report for future decision making and/or permitting. Furthermore, in order to achieve the water quality objective, all NPDES permits would contain provisions to implement the final Trash Amendments. Therefore, if the proposed project is approved, the following entities, where they are considered public agencies for purposes of CEQA, may be considered Responsible Agencies and may use the Final SED adopted by the State Water Board in their decision making actions to comply with the final Trash Amendments:

- NPDES permitted storm water dischargers
- Dischargers with WDRS or waivers of WDRs
- Water Boards

2.12 Other Approvals Required to Implement the Trash Amendments

Except as may be required by other environmental review and consultation requirements as described below, no other agency approvals are expected to be required to implement the final Trash Amendments. However, governing bodies of NPDES permittees may determine that separate approval actions are necessary to formally approve the approach they would take to comply with permits that implement the final Trash Amendments (e.g., whether to comply under Track 1 or Track 2). Beyond analyzing the reasonably foreseeable methods of compliance, the Final Staff Report is not required to, and therefore does not analyze the detail related to the project specific actions that might be implemented by any particular permittee as a result of the State Water Board's proposed project (see 23 CCR 3777(c); Pub. Res Code § 21159(d)).

After adoption by the State Water Board, the Trash Amendments must be submitted to the California Office of Administrative Law for review and approval. Because the Trash Amendments include the adoption of a new water quality standard, they must also be approved by U.S. EPA.

2.13 Environmental Review and Consultation Requirements

As described in other portions of the Final Staff Report, depending on the location, size, and particular compliance method, reasonably foreseeable methods of compliance could involve impacts to specific environmental resources that may trigger related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. Since the Final Staff Report does not conduct a project-level analysis of the reasonably foreseeable methods of compliance, it is not possible to determine the specific environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies (nor the particular magnitude of any specific environmental impact). Compliance with any specific environmental review and

consultations would need to be conducted by the MS4s or NPDES permittees complying with the provisions in their permits that incorporate the requirements of the final Trash Amendments.

2.14 Public Process

Initial Scoping Meetings

In July 2007, the first scoping meeting was held in San Francisco to provide opportunity for public comment on several proposed Ocean Plan projects, including trash in ocean waters. Oral and written comments were received, but development of a trash project was delayed due to shifting resources to other priority plans and policies.

A subsequent scoping meeting was conducted to provide an additional forum for public comment on the preparation of the Draft Staff Report for breadth of a Statewide Policy for Trash Control in Waters of the State. State Water Board staff held scoping meetings on October 7, 2010, at Central Valley Water Quality Control Board Headquarters in Rancho Cordova, California, and on October 14, 2010, at Inland Empire Utility Agency Headquarters in Chino, California. Comments were provided by stakeholders regarding the scope and content of the environmental information required by federal and state regulations. Additionally, information was submitted on the range of actions, alternatives, mitigation measures, and possible significant effects to be analyzed within this document. Since that time, the scope of the project has transition from a statewide policy to amendments to statewide water quality control plans.

On March 15, 2011, in Resolution 2011-0013, the State Water Board adopted the Ocean Plan Triennial Review Workplan for the period 2011-2013. In the Triennial Review Workplan, the State Water Board made the regulation of plastic debris and other trash a very high priority.

Public Advisory Group

As part of the scoping process and in response to the Scoping Meeting, State Water Board staff convened a Public Advisory Group to assist with the initial development of the Trash Amendments. The Public Advisory Group consisted of a diverse group of stakeholders representing municipalities, Caltrans, industry, and environmental groups. The Public Advisory Group included:

- Sean Bothwell, California Coastkeeper Alliance
- Geoff Brosseau, The California Stormwater Quality Association
- Miriam Gordon, Clean Water Action
- Gary Hildebrand, Los Angeles County
- Kirsten James, Heal the Bay
- Scott McGowen, Caltrans
- Charles Moore, Algalita Marine Research Institute
- Tom Reeves, City of Monterey
- Tim Shestek, American Chemistry Council
- Leslie Tamminen, Seventh Generation Advisors

The Public Advisory Group held six meetings closed to the public to discuss the proposed Trash Amendments (Table 2). At these meetings, the Public Advisory Group

provided comments and feedback to the development of the proposed Trash Amendments and the Draft Staff Report.

Table 2. Public Advisory Group.

Date	Location
March 6, 2013	CalEPA Bldg, Sacramento
August 13, 2012	CalEPA Bldg, Sacramento
May 22, 2012	CalEPA Bldg, Sacramento
October 12 & 13, 2011	Cabrillo Aquarium, San Pedro
August 30, 2011	CalEPA Bldg, Sacramento
July 26, 2011	CalEPA Bldg, Sacramento

Focused Stakeholder Outreach Meetings

In March, April, and May 2013, State Water Board staff held fourteen focused meetings with stakeholders from industry, municipal governments, environmental interest groups, and staff from the San Francisco Water Board, Los Angeles Water Board, Caltrans, and CalRecycle (Table 3). The objective of the meetings was to provide an overview of the development of the proposed Trash Amendments and to receive feedback on key issues before the public release of the Draft Staff Report for the proposed Trash Amendments from focused sets of stakeholders. Selected meeting participants were provided an issue paper that provided an overview of the fundamentals of the proposed Trash Amendments and five key unresolved options to discuss regarding the content of the proposed Trash Amendments. The five unresolved options included:

1) Options to address the existing trash TMDLs and the San Francisco Bay Region Municipal Regional Storm Water Permit.
2) Options regarding the level of specificity to include in the Track 2 monitoring plan requirements.
3) Options for full capture system definition.
4) Options for incentivizing regulatory source controls.
5) Considerations regarding preproduction plastics.

Table 3. Focused Stakeholder Meetings.

Stakeholder Group	Meeting Date and Location
Caltrans	3/13/13 Sacramento, CA
Industrial Permittees	4/3/13 Sacramento, CA
Environmental Groups	4/3/13 Sacramento, CA
Los Angeles Water Board	4/5/13 Los Angeles, CA
MS4 Permittees	4/8/13 Sacramento, CA
MS4 Permittees	4/10/13 Santa Rosa, CA
MS4 Permittees	4/15/13 San Jose, CA
MS4 Permittees	4/16/13 San Luis Obispo, CA
MS4 Permittees	4/19/13 Santa Clarita, CA
MS4 Permittees	4/22/13 Costa Mesa, CA
CalRecycle	5/15/13 Sacramento, CA
Industrial Permittees	5/17/13 Riverside, CA
San Francisco Bay & Los Angeles Water Board MS4 Permittees	5/24/13 Sacramento, CA
San Francisco Bay Water Board	5/24/13 Sacramento, CA

Public Workshop and Public Hearing

On June 10, 2014, the State Water Board provided the Draft Staff Report, including the Draft SED for the proposed Trash Amendments to the public and public with an accompanying notice of the dates the State Water Board would hold a public workshop and a public hearing.

On July 16, 2014, State Water Board held a public workshop at the CalEPA Headquarters Building in Sacramento. The purpose of the public workshop was to provide information and answer questions from the public on the proposed Trash Amendments; no action was taken by the State Water Board. At the public workshop, State Water Board staff presented an overview of the proposed Trash Amendments. The staff presentation was followed by three presentations from PAG members: 1) Algalita Marine Research Institute, California Coastkeeper Alliance, Heal the Bay, and Seventh Generation Advisors, 2) American Chemistry Council, and 3) CASQA. In addition to presentations, fourteen groups provided public comment.

The State Water Board held a public hearing on the proposed Trash Amendments on August 5, 2014 at the CalEPA Headquarters Building in Sacramento, the date of which coincided with the close of the written comment period. The purpose of the public hearing was to receive oral comments and testimony on the proposed Trash Amendments, Draft Staff Report, including the Draft SED. Participants were given an opportunity to supplement their written comments with oral statements. No action was taken by the State Water Board. At the public hearing, there was a staff presentation and twenty-three groups provided public comment. At the close of the comment period at noon on August 5th, a total of seventy-six written comment letters were received. The State Water Board shall develop complete written response to the written comments timely received within the August 5th deadline.

2.15 Project Contact

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3 ENVIRONMENTAL SETTING[9]

A variety of environmental conditions exist in California. For water quality management, section 13200 of Porter-Cologne divides the state into nine different hydrologic regions. Brief descriptions of the regions and the water bodies addressed by this Final Staff Report are presented below. The information provided in this section is extracted from the ten basin plans created by each of the nine regional water boards. In addition to a description of each region, the land coverage of each region is addressed. This analysis provides an estimate of the area across California where NPDES permittees, specifically land uses for MS4 Phase I and MS4 Phase II permittees, with the exception of waters with existing trash and debris TMDLs within the jurisdiction of the Los Angeles Water Board, would have to comply with the prohibition of discharge for trash and the implementation provisions.

3.1 Trash in California

Throughout California, trash is found in streams, rivers, lakes, estuaries, beaches, and the ocean. The continued presence of trash in state waters is shown through data from the California Coastal Commission and Ocean Conservancy organized Coastal Cleanup Day. Since 1986, volunteers have collected trash from beaches, inland waterways, coastal waters, and underwater. Volunteers have removed approximately 690,322 pieces of trash from up to 2,023 miles of Coastal Cleanup sites. The top ten items collected from 1989-2012, which represented nearly 90 percent of the items removed, were: (1) cigarette butts; (2) bags (paper and plastic); (3) food wrappers and containers; (4) caps and lids; (5) cups, plates, forks, knives, and spoons; (6) straws and stirrers; (7) glass beverage bottles; (8) plastic beverage bottles; (9) beverage cans; and (10) building materials. The snapshot of the trash collected from Coastal Cleanup Day provides a clear baseline of trash pollution throughout the surface waters in California.

To address trash pollution, municipalities across California spend about half a billion dollars each year to combat, clean up, and prevent trash from entering state waters (Stickel et. al 2013). There are six main trash-control strategies employed by a municipality: waterway and beach cleanup, street sweeping, installation of full capture devices, storm drain cleaning and maintenance, manual cleanup of trash, and public education.

While municipalities employ at least a minimal amount of trash management, there are several regions with comparatively more extensive management strategies. In the Los Angeles and San Francisco Bay regions, municipalities have extensive trash control measures in response to 303(d) listed water bodies for trash and debris. The Los Angeles Water Board has adopted fifteen TMDLs with a numeric target of zero trash.

[9] CEQA directs that the environmental setting normally be used as the baseline for determining significant impacts of a proposed project (Cal. Code Regs., tit.14, §15125, subd. (a)). This section presents a broad overview of the environmental setting for the state of California related to the proposed final Trash Amendments. The section presenting the impact analysis in this Final Staff Report, including SED will identify, where relevant, any specific setting information relevant to the detailed assessment of environmental impacts of the proposed action.

While the San Francisco Bay MRP applies trash provisions to 76 municipalities to address the 27 303(d) listed water bodies in the region. Caltrans has multiple trash management strategies such as installation of gross separation systems, street sweeping, manual collection of trash with the Adopt-A-Highway Program, and public education with Don't Trash California. The CGP (2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ) prohibits the discharge of any debris from construction sites and encourages the uses of more environmentally safe, biodegradable materials on construction sites. Facilities enrolled under the IGP must comply with the "Preproduction Plastic Debris Program" (Wat. Code § 13367(a)) by following the BMPs in the manufacturing, handling, and transporting of preproduction plastics.

The presence of trash and efforts to address trash in California are described in further detail in Appendix A.

3.2 Developed Land by Land Cover and Regional Water Board

The final Trash Amendments focus on areas with high trash generation rates, i.e., priority land uses for MS4 Phase I and Phase II permittees and significant trash generating areas for Caltrans. There is no existing data on the location of priority land uses are. A GIS analysis was used to determine the possible geographic scope of the final Trash Amendments. Land cover data within census designated places and regional water board boundaries were used to provide an estimate the area covered under the final Trash Amendments. These estimates do not represent exact locations for trash controls, but provide an approximate area. The U.S. Census Bureau uses census designated places to delineate settled concentrations of population that are identifiable by name but are not legal designations incorporated under the laws of the state. Census designated places are delineated cooperatively by state and local officials and the Census Bureau before each Decennial Census. The 2012 Census Designated Places boundary (the legal boundary designation as of January 1, 2012) shapefile can be accessed at: http://www.census.gov/geo/maps-data/data/tiger-line.html. The 2012 California Census Designated Place category identified 1517 cities, with a total area of 9,621,423 acres (Figure 1).

Since counties do not have a uniform classification of land cover codes or divisions, urban land cover data was extracted from USGS Multi-Resolution Land Characteristics Consortium Land Cover Data 2006. The data can be accessed at: http://www.mrlc.gov/nlcd2006.php. To estimate the area covered under the final Trash Amendments, Land Use/Land Cover categories for developed low intensity, medium intensity, and high intensity were identified:

- Land Use (LU) 22 or "Developed, Low Intensity". This is defined as developed low intensity includes areas with a mixture of constructed materials and vegetation. Impervious surfaces account for 20-49 percent of total cover. These areas most commonly include single-family housing units.

- Land Use (LU) 23 or “Developed, Medium Intensity”. This is defined as developed medium intensity includes areas with a mixture of constructed materials and vegetation. Impervious surfaces account for 50-79 percent of the total cover. These areas most commonly include single-family housing units.

- Land Use (LU) 24 is “Developed, High Intensity”. This is defined as developed high intensity includes highly developed areas where people reside or work in high numbers. Examples include apartment complexes, row houses and commercial/industrial. Impervious surfaces account for 80-100 percent total cover.

Although there was a lack of statewide consistency in land use planning and GIS data from individual municipalities, “Developed, High Intensity” was assumed to be analogous proxy to the priority land uses of the final Trash Amendments: high density residential, industrial, commercial, mixed urban, and public transportation stations. A representative estimate for Caltrans’ significant trash generating areas was not included in the estimate. Additionally, the priority land uses does not include low density residential, as represented by “Developed, Low Intensity”.

The number of acres for the three developed land cover classes was calculated for each regional water board (Figure 2,

Table 4). Distribution of land cover classes varies by regional water board. The Central Valley Water Board has the most total acreage, but a very low percentage of Central Valley Region total area is highly developed

(2.38 percent). Higher coverage of developed land is generally seen in the southern coastal regions. The Los Angeles Water Board has the most acres of high intensity developed area (4.09 percent), while the Santa Ana Water Board has the highest number of total developed acres (28.74 percent) (

Table 5). The number of acres for the three classes was also calculated within census designated place boundaries (

Table 5). As with the total regional water board area, distribution of land cover classes with census designated places varies by a regional water board. When only considering areas with concentrated populations (i.e., within census designated places), Los Angeles Water Board has the most developed acres as well as the highest percentage of medium intensity, high intensity, and total developed land, followed closely by Santa Ana Water Board (Table 6). As previously noted, many of the priority land uses with the Los Angeles Water Board have waste load allocations for trash or debris TMDLs, and thus not applicable to the final Trash Amendments.

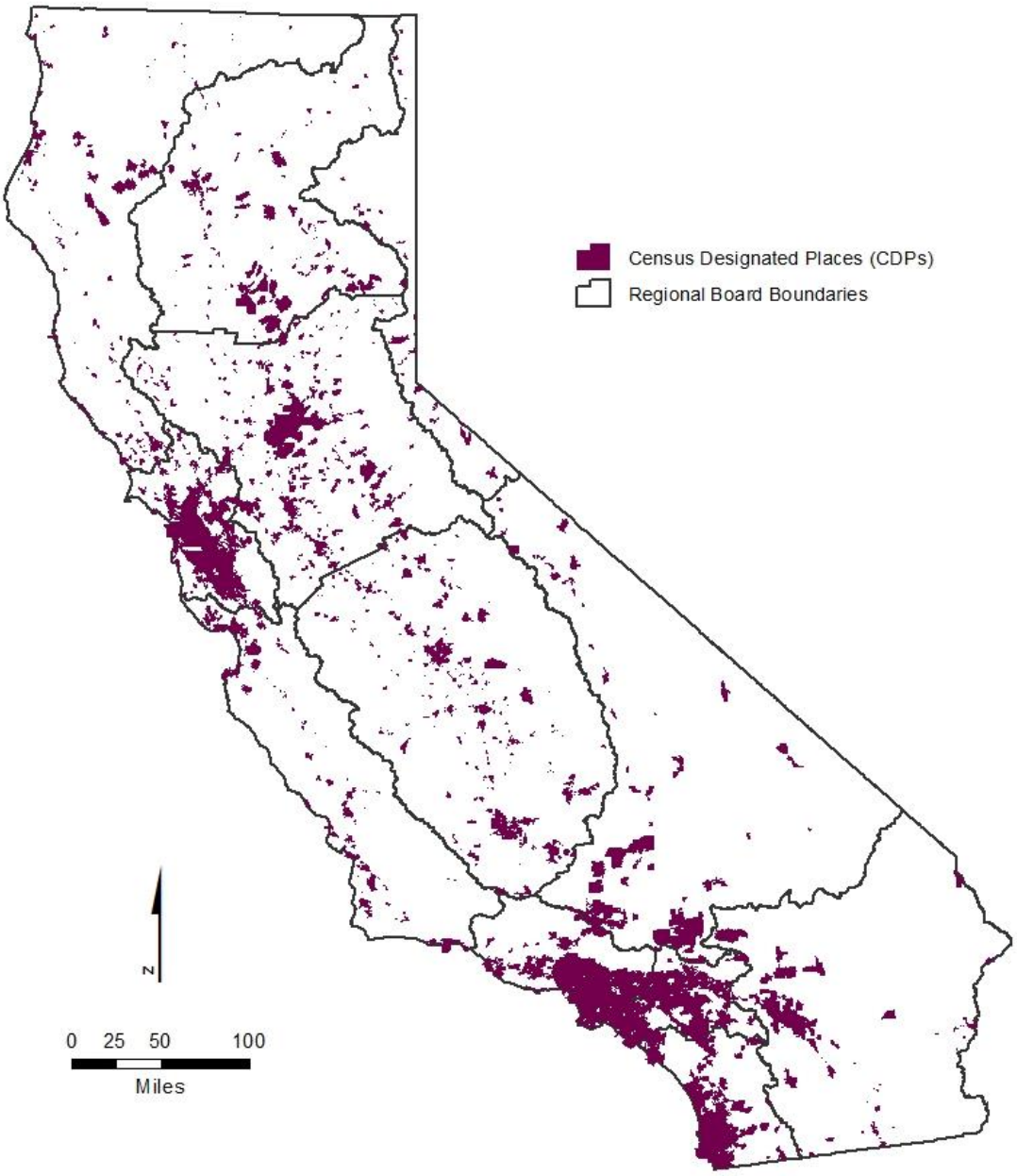


Figure 1. 2012 California Census Designated Places.

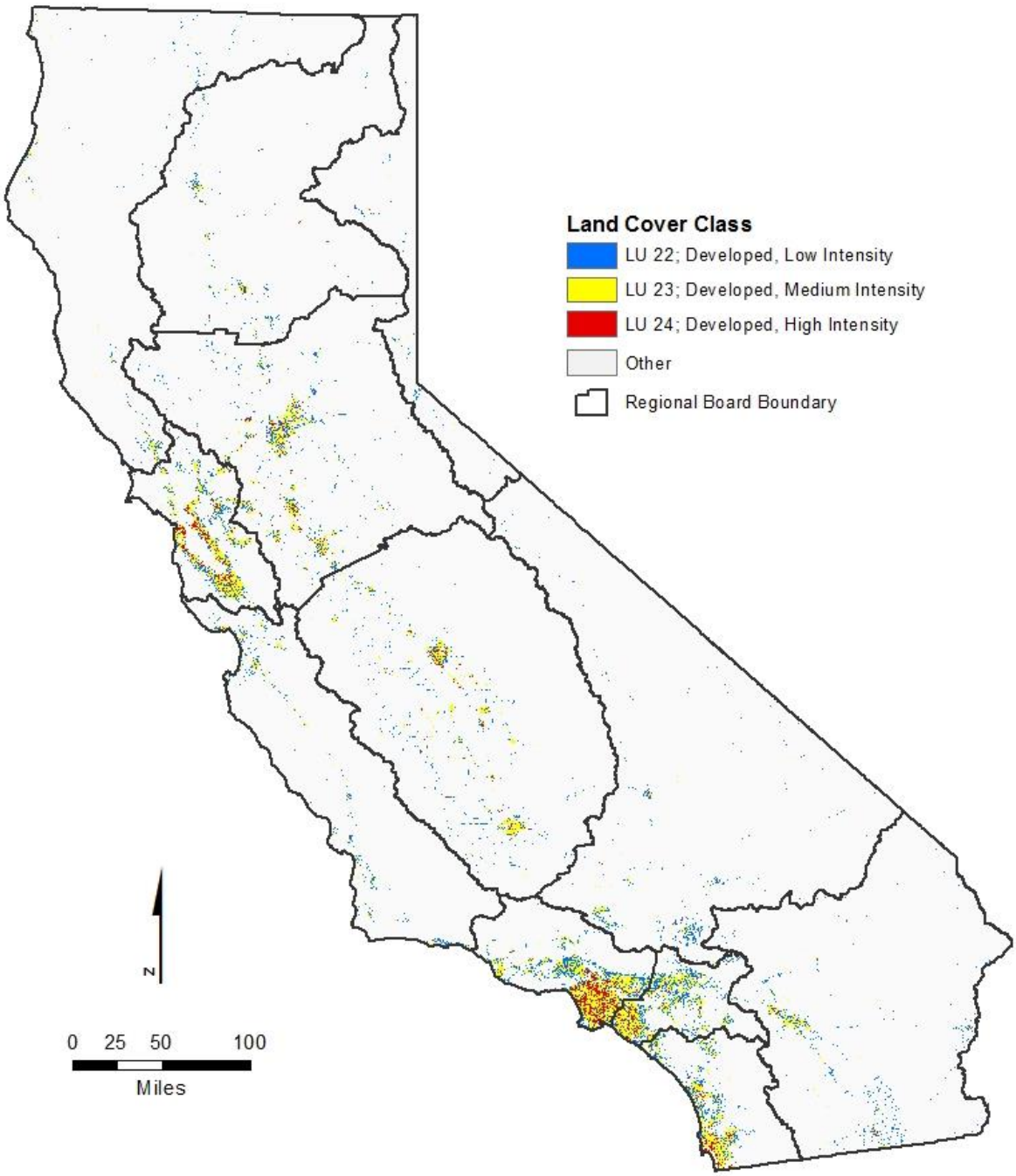


Figure 2. Developed Land Coverage by Regional Water Boards.

Table 4. Acres of Developed Land by Land Cover and Regional Water Board.

Regional Water Board	Developed, Low Intensity (acres)	Developed, Medium Intensity (acres)	Developed High Intensity (acres)	Other (acres)	Total (acres)
North Coast	53,897	28,435	3,362	12,355,869	12,441,564
San Francisco Bay	189,894	283,806	79,220	2,339,394	2,892,314
Central Coast	96,760	65,716	7,371	7,183,662	7,353,509
Los Angeles	234,649	369,182	116,470	2,127,311	2,847,612
Central Valley	422,468	394,517	88,186	37,075,180	37,980,350
Lahontan	124,387	38,374	5,517	20,818,762	20,987,040
Colorado River	119,633	56,414	6,829	12,528,939	12,711,815
Santa Ana	216,149	256,567	42,048	1,276,620	1,791,384
San Diego	153,175	196,314	41,780	2,092,315	2,483,584
Total (acres)	1,611,012	1,689,325	390,782	97,798,052	101,489,172

Table 5. Percent of Regional Water Board Designated as Developed Land by Land Cover Type.

Regional Water Board	Developed, Low Intensity (%)	Developed, Medium Intensity (%)	Developed High Intensity (%)	Total Developed (%)
North Coast	0.43%	0.23%	0.03%	0.69%
San Francisco Bay	6.57%	9.81%	2.74%	19.12%
Central Coast	1.32%	0.89%	0.10%	2.31%
Los Angeles	8.24%	12.96%	4.09%	25.29%
Central Valley	1.11%	1.04%	0.23%	2.38%
Lahontan	0.59%	0.18%	0.03%	0.80%
Colorado River	0.94%	0.44%	0.05%	1.44%
Santa Ana	12.07%	14.32%	2.35%	28.74%
San Diego	6.17%	7.90%	1.68%	15.75%

Table 6. Percent of Census Designated Places as Developed Land by Land Cover Type and Regional Water Board.

Regional Board	Developed, Low Intensity (%)	Developed, Medium Intensity (%)	Developed High Intensity (%)	Total Developed (%)
1	5.60%	4.67%	0.51%	10.78%
2	14.35%	23.98%	6.48%	44.82%
3	12.90%	11.77%	1.39%	26.06%
4	18.88%	30.55%	9.39%	58.82%
5R	4.13%	2.75%	0.65%	7.53%
5S	11.68%	14.66%	3.51%	29.85%
5F	7.78%	13.78%	2.58%	24.14%
5 All	8.50%	11.33%	2.48%	22.31%
6SLT	8.26%	1.92%	0.55%	10.73%
6V	7.06%	2.89%	0.35%	10.30%
6 All	7.22%	2.76%	0.38%	10.35%
7	8.37%	6.94%	0.85%	16.16%
8	20.58%	25.12%	3.87%	49.57%
9	15.84%	23.43%	5.21%	44.48%

3.3 Permitted Storm Water Dischargers in California

The final Trash Amendments includes implementation provisions for permitted storm water dischargers, specifically MS4 Phase I and II, Caltrans, IGP, and CGP permittees. In 2012-2013 Annual Performance Report[10], the Water Boards reported16,996 Storm Water facilities regulated under the Storm Water Construction, Storm Water Industrial and Storm Water Municipal Permits. The number of facilities and municipalities, separated by regional water board, are presented in Table 7.

[10] The California Water Boards' Annual Performance Report - Fiscal Year 2012-13 released on September 2013. http://www.waterboards.ca.gov/about_us/performance_report_1213/regulate/21200_npdes_sw_facilities.shtml

Table 7. Facilities Regulated Under the California Water Board's Storm Water Program.

Regional Water Board	Construction General Permittees	Industrial General Permittees	Municipal Storm Water Permittees (Phase I and II)	Total
North Coast	179	337	14	538
San Francisco Bay	1,069	1,316	109	2,494
Central Coast	457	401	45	903
Los Angeles	1,193	2,683	100	3,976
Central Valley	1,614	1,745	95	3,454
Lahontan	379	230	10	619
Colorado River	253	172	19	444
Santa Ana	1,136	1,583	62	2,781
San Diego	924	784	79	1,787
Total	7,204	9,251	532	16,996

3.4 North Coast Region

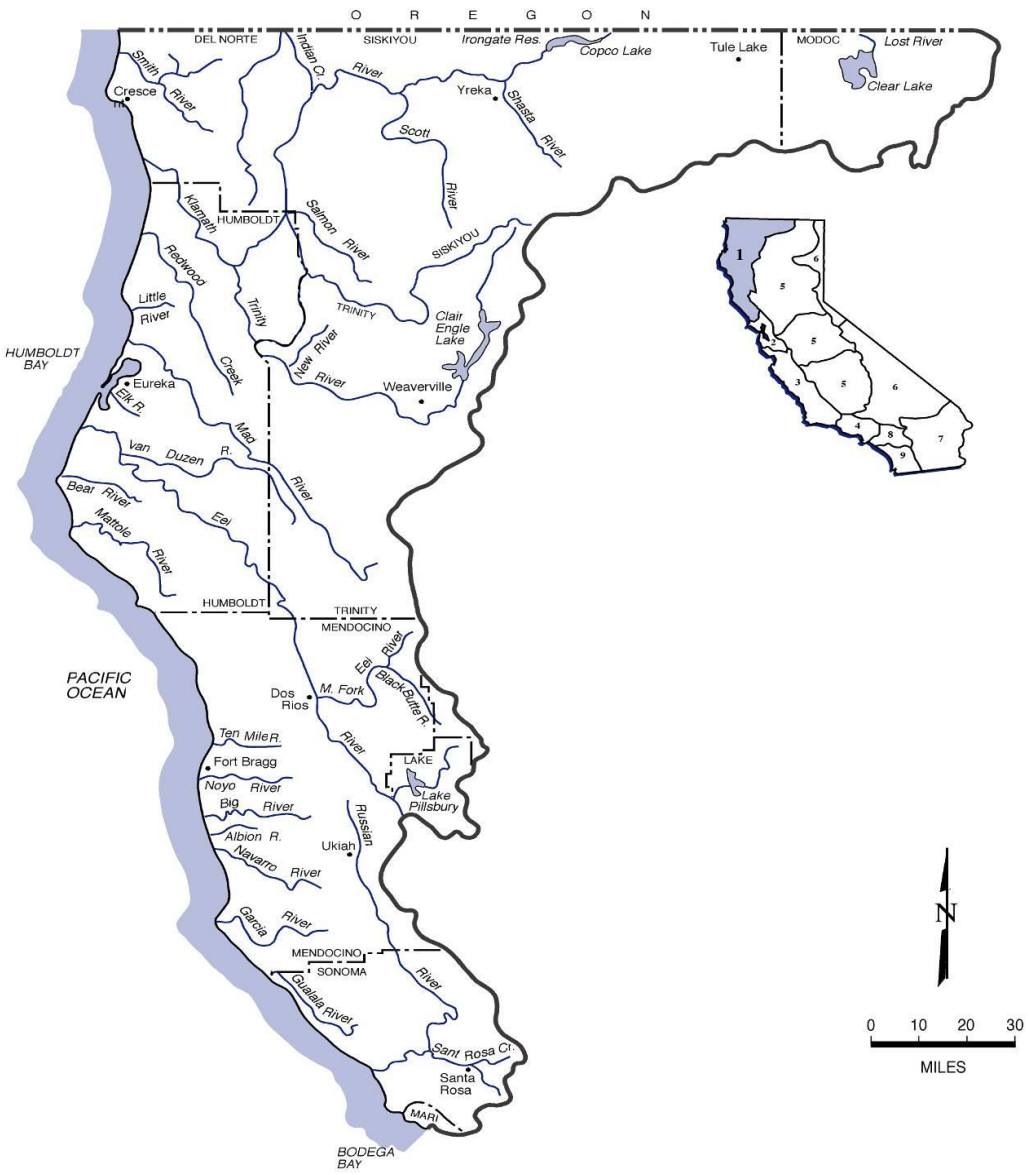
The North Coast Region comprises all watershed basins, including Lower Klamath Lake and Lost River Basins, draining into the Pacific Ocean from the California-Oregon State line southern boundary and includes the watershed of the Estero de San Antonio and Stemple Creek in Marin and Sonoma Counties (Figure 3, Figure 4). Two natural drainage basins, the Klamath River Basin and the North Coastal Basin, divide the region. The region covers all of Del Norte, Humboldt, Trinity, and Mendocino Counties, major portions of Siskiyou and Sonoma Counties, and small portions of Glenn, Lake, and Marin Counties. It encompasses a total area of approximately 19,390 square miles, including 340 miles of coastline and remote wilderness areas, as well as urbanized and agricultural areas.

Beginning at the Smith River in northern Del Norte County and heading south to the Estero de San Antonio in northern Marin County, the region encompasses a large number of major river estuaries. Other North Coast streams and rivers with significant estuaries include the Klamath River, Redwood Creek, Little River, Mad River, Eel River, Noyo River, Navarro River, Elk Creek, Gualala River, Russian River, and Salmon Creek (this creek mouth also forms a lagoon). Northern Humboldt County coastal lagoons include Big Lagoon and Stone Lagoon. The two largest enclosed bays in the North Coast Region are Humboldt Bay and Arcata Bay (both in Humboldt County). Another enclosed bay, Bodega Bay, is located in Sonoma County near the southern border of the region. Distinct temperature zones characterize the North Coast Region. Precipitation is greater than for any other part of California, and damaging floods are a fairly frequent hazard. Ample precipitation in combination with the mild climate found over most of the North Coast Region has provided a wealth of fish, wildlife, and scenic resources. The numerous streams and rivers of the region contain anadromous fish and the reservoirs, although few in number, support both cold and warm water fish.

Tidelands and marshes are extremely important to many species of waterfowl and shore birds, both for feeding and nesting. Cultivated land and pasturelands also provide supplemental food for many birds, including small pheasant populations. Tideland areas along the north coast provide important habitat for marine invertebrates and nursery areas for forage fish, game fish, and crustaceans. Offshore coastal rocks are used by many species of seabirds as nesting areas.

Major land uses in the region are tourism and recreation; logging and timber milling; aggregate mining; commercial and sport fisheries; sheep, beef and dairy production; and vineyards and wineries. Approximately two percent of California's total population resides in the North Coast region. The largest urban centers are Eureka in Humboldt County and Santa Rosa in Sonoma County.

Eight Areas of Special Biological Significance (ASBS) are located in the North Coast Region: Jughandle Cove (#1), Del Mar Landing (#2), Gerstle Cove (#3), Bodega (#4), Saunders Reef (#5), Trinidad Head (#6), King Range (#7), and Redwoods National Park (#8).



Base map prepared by the Division of Water Rights, Graphics Services Unit

Figure 3. North Coast Region Hydrologic Basin.

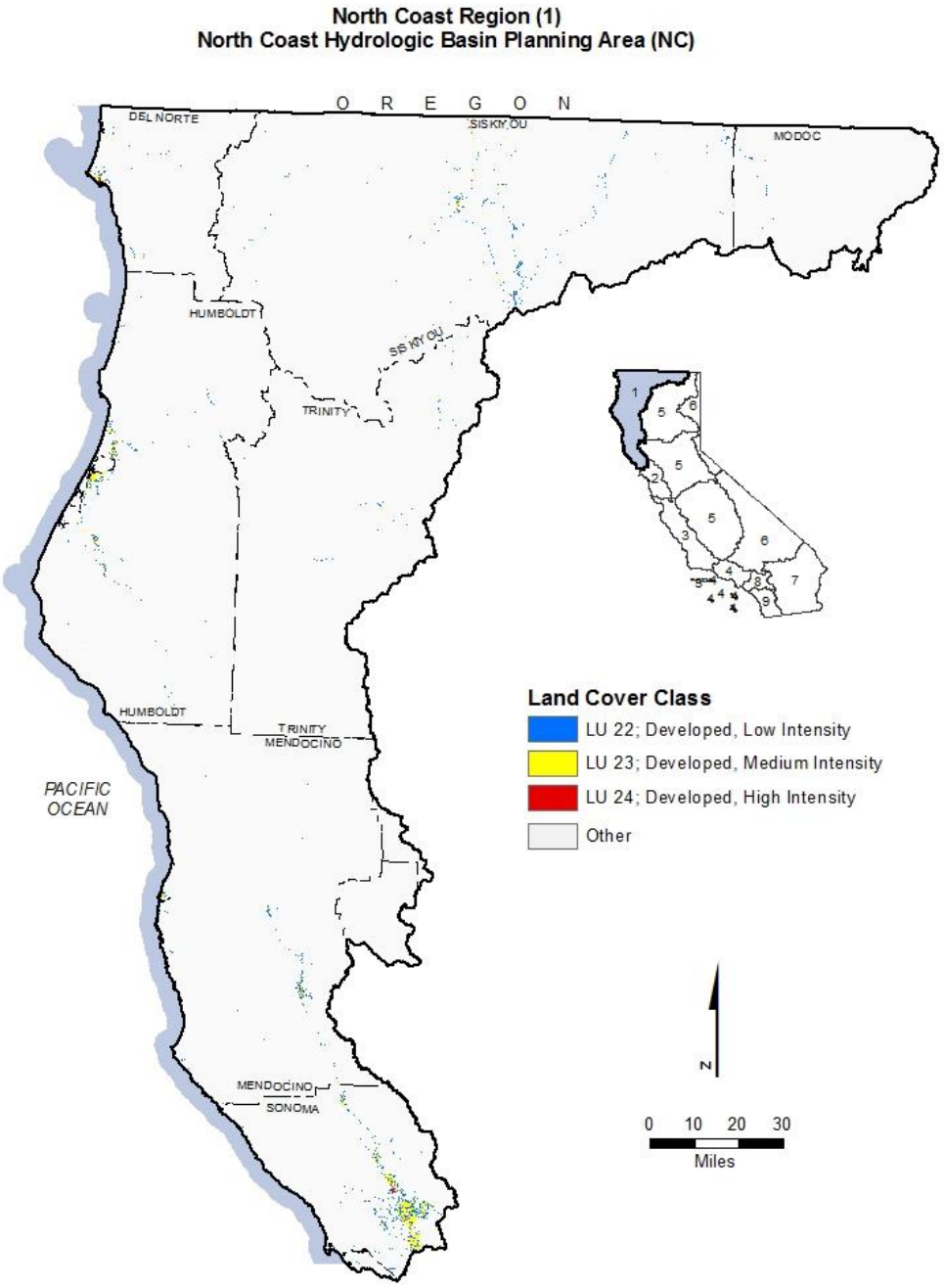


Figure 4. North Coast Region Developed Land Coverage.

3.5 San Francisco Region

The San Francisco Bay Region comprises San Francisco Bay, Suisun Bay beginning at the Sacramento River, and San Joaquin River westerly, from a line which passes between Collinsville and Montezuma Island (Figure 5, Figure 6). The region's boundary follows the borders common to Sacramento and Solano counties, and Sacramento and Contra Costa counties west of the Markely Canyon watershed in Contra Costa County. All basins west of the boundary and all basins draining into the Pacific Ocean between

the southern boundary of the North Coast Region and the southern boundary of the watershed of Pescadero Creek in San Mateo and Santa Cruz counties are included in the region.

The region comprises most of the San Francisco Estuary to the mouth of the Sacramento-San Joaquin Delta. The San Francisco Estuary conveys the waters of the Sacramento and San Joaquin Rivers to the Pacific Ocean. Located on the central coast of California, the San Francisco Bay system functions as the only drainage outlet for waters of the Central Valley. The region includes the fourth largest metropolitan area in the United States, including all or major portions of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma counties.

The San Francisco Water Board has jurisdiction over the part of the San Francisco Estuary, which includes all of the San Francisco Bay segments extending east to the Delta (Winter Island near Pittsburg). Within each section of the San Francisco Bay system lie deepwater areas that are adjacent to large expanses of very shallow water. Salinity levels range from hypersaline to fresh water and water temperature varies widely. The San Francisco Bay system's deepwater channels, tidelands, marshlands, fresh water streams, and rivers provide a wide variety of habitats within the Region. Coastal embayments including Tomales Bay and Bolinas Lagoon are also located in this Region.

The Sacramento and San Joaquin Rivers enter the San Francisco Bay system through the Delta at the eastern end of Suisun Bay and contribute almost all of the fresh water inflow into the Bay. Many smaller rivers and streams also convey fresh water to the Bay system. The rate and timing of these fresh water flows influence the physical, chemical and biological conditions in the Bay. Flows in the region are highly seasonal, with more than 90 percent of the annual runoff occurring during the winter rainy season between November and April.

The San Francisco Estuary is made up of many different types of aquatic habitats that support a great diversity of organisms. Suisun Marsh in Suisun Bay is the largest brackish water marsh in the United States. San Pablo Bay is a shallow embayment strongly influenced by runoff from the Sacramento and San Joaquin Rivers. The Central Bay is the portion of the Bay most influenced by oceanic conditions. The South Bay, with less freshwater inflow than the other portions of the Bay, acts more like a tidal lagoon. Together these areas sustain rich communities of aquatic life and serve as important wintering sites for migrating waterfowl and spawning areas for anadromous fish.

Six ASBS are located in the San Francisco Bay Region: James V. Fitzgerald (#9), Farallon Islands (#10), Duxbury Reef (#11), Point Reyes Headlands (#12), Double Point (#13), and Bird Rock (#14).

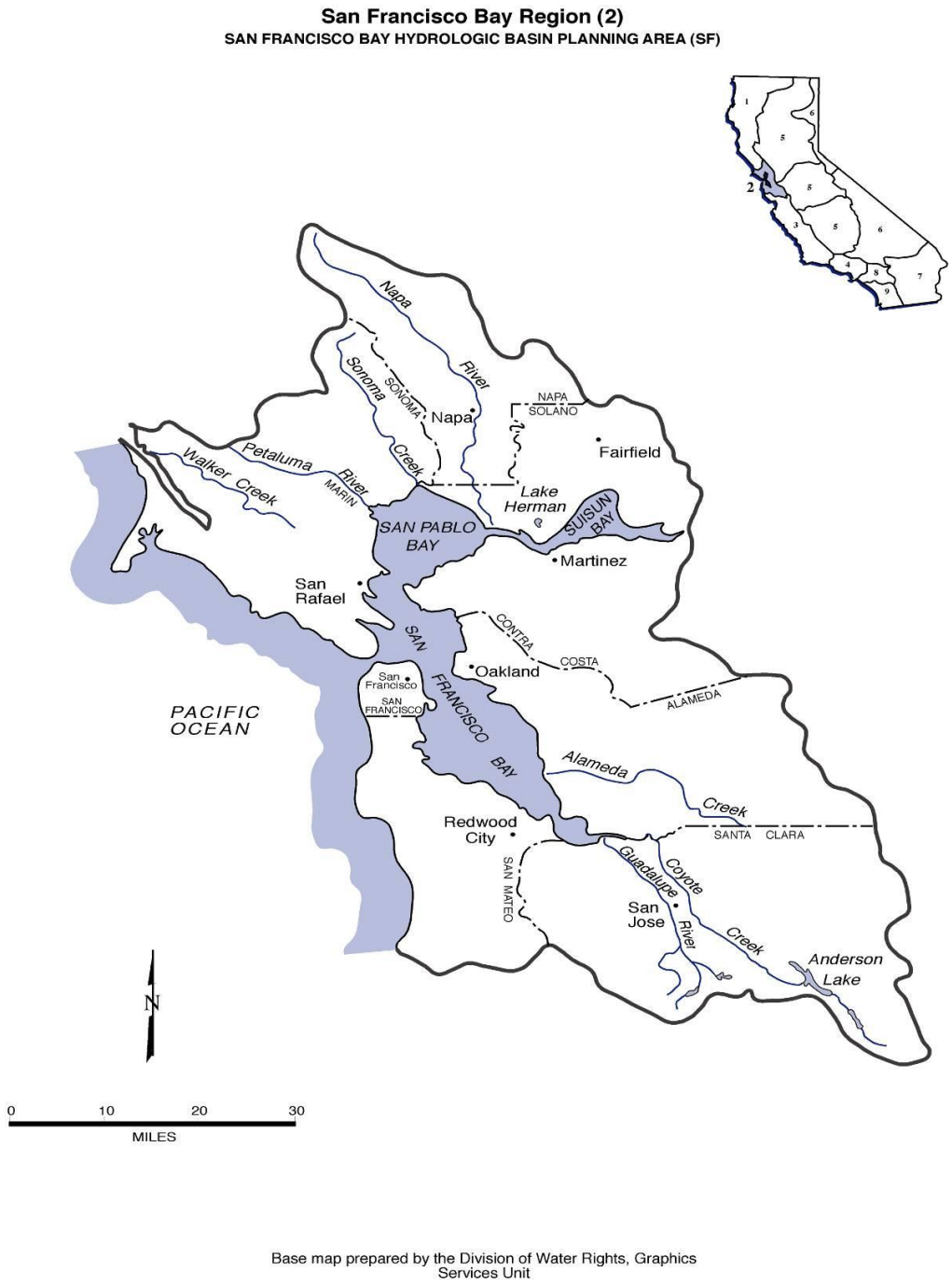


Figure 5. San Francisco Bay Region Hydrologic Basin.

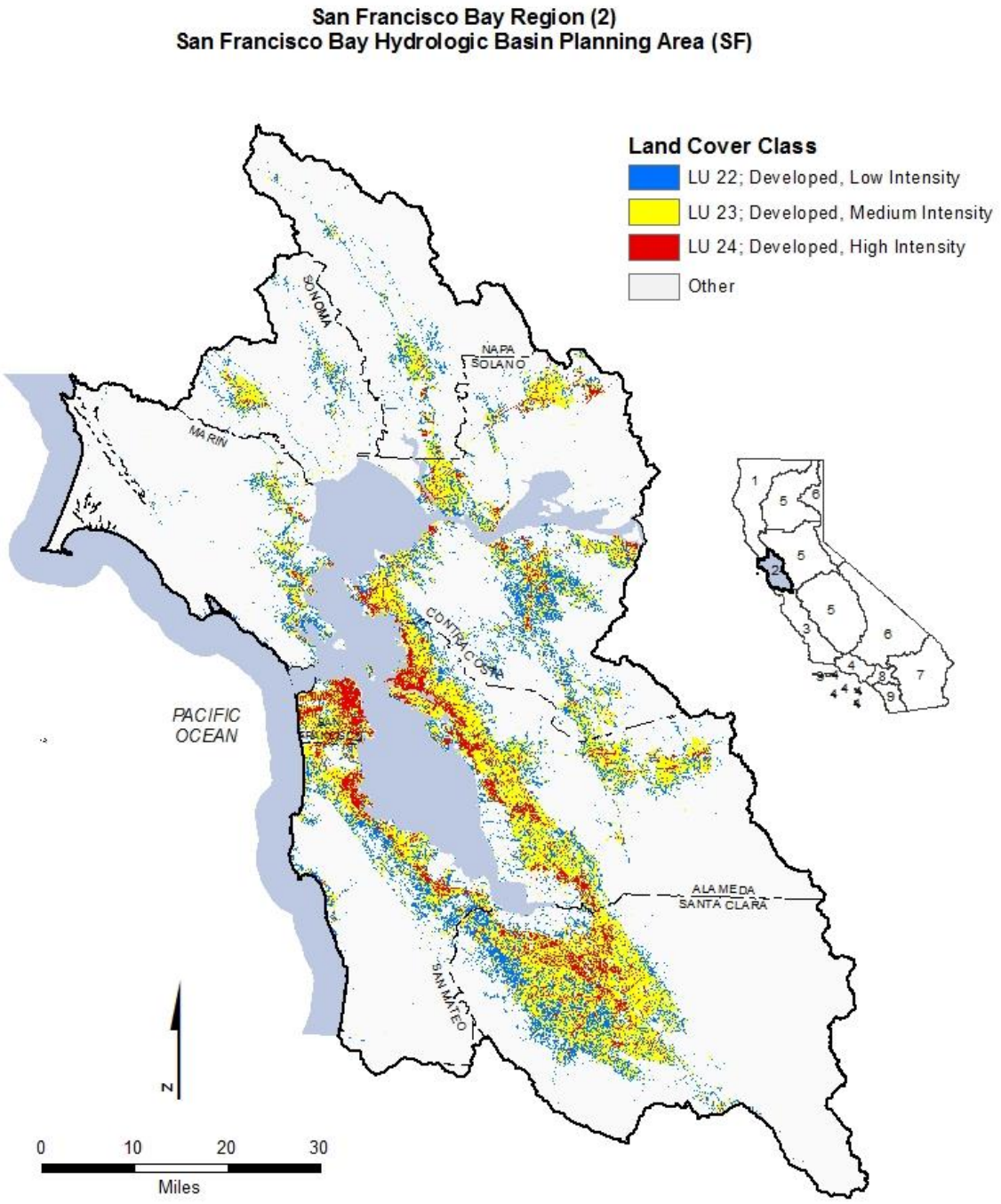


Figure 6. San Francisco Bay Region Developed Land Coverage.

3.6 Central Coast Region

The Central Coast Region comprises all basins (including Carrizo Plain in San Luis Obispo and Kern Counties) draining into the Pacific Ocean from the southern boundary of the Pescadero Creek watershed in San Mateo and Santa Cruz Counties; to the southeastern boundary of the Rincon Creek watershed, located in western Ventura County (Figure 7, Figure 8). The region extends over a 300-mile long by 40-mile wide section of the state's central coast. Its geographic area encompasses all of Santa Cruz, San Benito, Monterey, San Luis Obispo, and Santa Barbara Counties as well as the southern one-third of Santa Clara County, and small portions of San Mateo, Kern, and Ventura Counties. Included in the region are urban areas such as the Monterey Peninsula and the Santa Barbara coastal plain; prime agricultural lands such as the Salinas, Santa Maria, and Lompoc Valleys; National Forest lands; extremely wet areas such as the Santa Cruz Mountains; and arid areas such as the Carrizo Plain.

Water bodies in the Central Coast Region are varied. Enclosed bays and harbors in the region include Morro Bay, Elkhorn Slough, Tembladero Slough, Santa Cruz Harbor, Moss Landing Harbor, San Luis Harbor, and Santa Barbara Harbor. Several small estuaries also characterize the region, including the Santa Maria River Estuary, San Lorenzo River Estuary, Big Sur River Estuary, and many others. Major rivers, streams, and lakes include San Lorenzo River, Santa Cruz River, San Benito River, Pajaro River, Salinas River, Santa Maria River, Cuyama River, Estrella River and Santa Ynez River, San Antonio Reservoir, Nacimiento Reservoir, Twitchel Reservoir, and Cuchuma Reservoir.

Located in the Central Coast Region are 7 ASBS: Año Nuevo (#15); Pacific Grove (#19); Carmel Bay (#34); Point Lobos (#16); Julia Pfeiffer Burns (#18); San Miguel, Santa Rosa, and Santa Cruz Islands (#17); and Salmon Creek Coast (#20).

The land use activities in the basin have been primarily agrarian. While agriculture and related food processing activities are major industries in the region, land uses also include oil production, tourism, and manufacturing. Total population of the region is estimated at 1.22 million people.

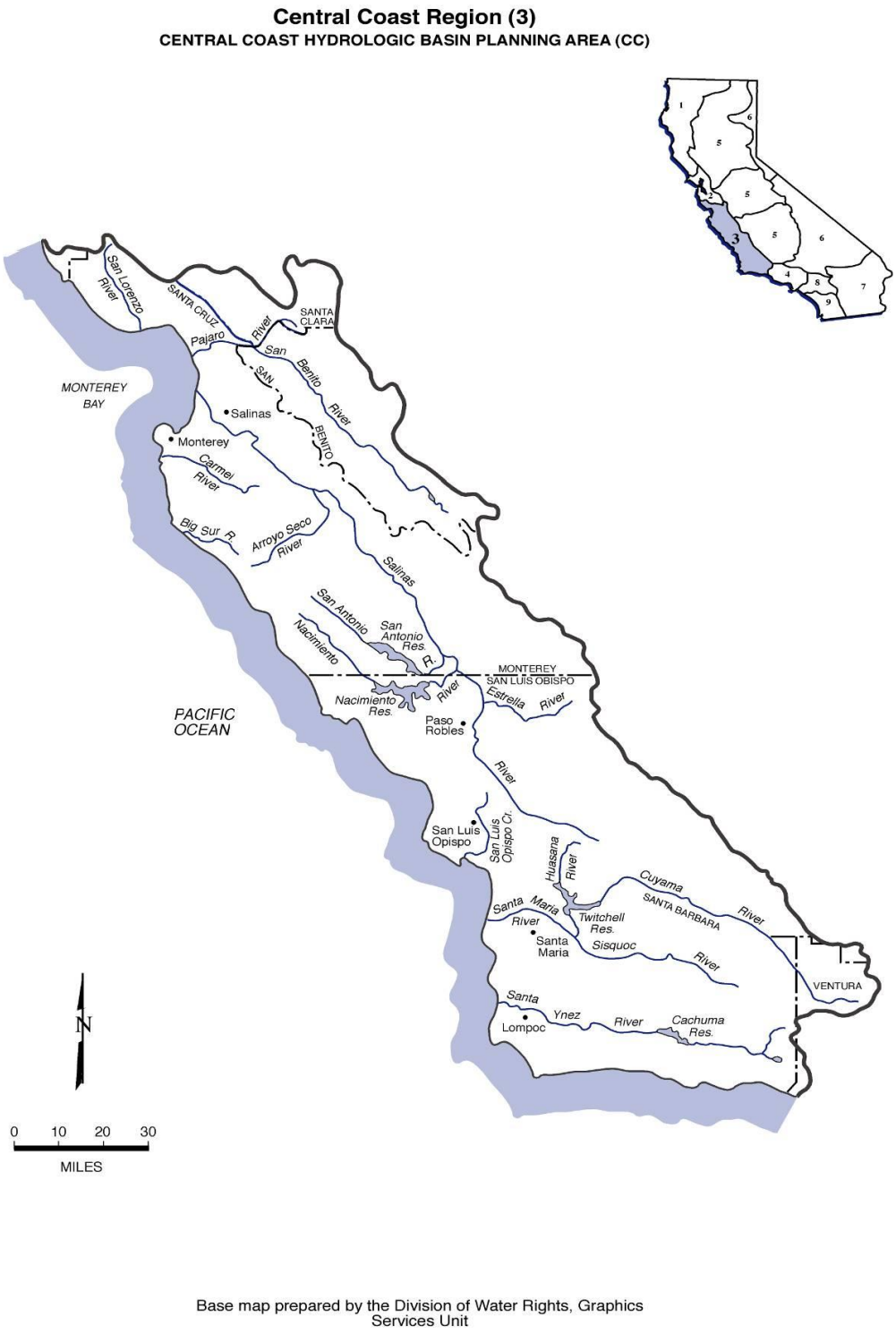


Figure 7. Central Coast Region Hydrologic Basin.

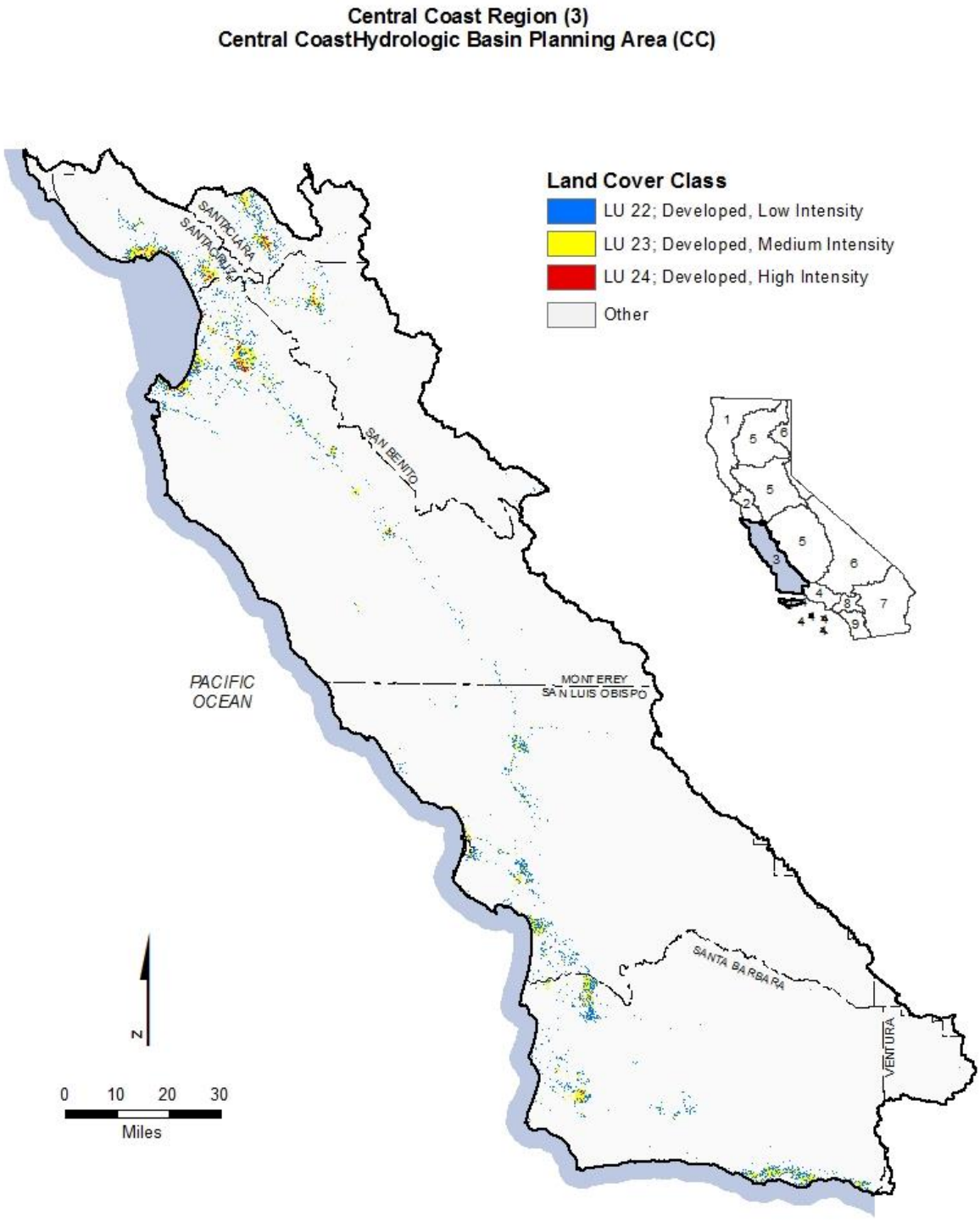


Figure 8. Central Coast Region Developed Land Coverage.

3.7 Los Angeles Region

The Los Angeles Region comprises all basins draining into the Pacific Ocean between the southeastern boundary of the watershed of Rincon Creek, located in western Ventura County, and a line which coincides with the southeastern boundary of Los Angeles County, from the Pacific Ocean to San Antonio Peak, and follows the divide, between the San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages (Figure 9, Figure 10).

The region encompasses all coastal drainages flowing into the Pacific Ocean between Rincon Point (on the coast of western Ventura County) and the eastern Los Angeles County line, as well as the drainages of five coastal islands (Anacapa, San Nicolas, Santa Barbara, Santa Catalina and San Clemente). In addition, the region includes all coastal waters within three miles of the continental and island coastlines. Two large deepwater harbors (Los Angeles and Long Beach Harbors) and one smaller deepwater harbor (Port Hueneme) are contained in the region. There are small craft marinas within the harbors, as well as tank farms, naval facilities, fish processing plants, boatyards, and container terminals. Several small-craft marinas also exist along the coast (Marina del Ray, King Harbor, and Ventura Harbor); these contain boatyards, other small businesses and dense residential development.

Several large, primarily concrete-lined rivers (Los Angeles River and San Gabriel River) lead to unlined tidal prisms which are influenced by marine waters. Salinity may be greatly reduced following rains since these rivers drain large urban areas composed of mostly impermeable surfaces. Some of these tidal prisms receive a considerable amount of freshwater throughout the year from publicly owned treatment works discharging tertiary-treated effluent. Lagoons are located at the mouths of other rivers draining relatively undeveloped areas (Mugu Lagoon, Malibu Lagoon, Ventura River Estuary, and Santa Clara River Estuary). There are also a few isolated coastal brackish water bodies receiving runoff from agricultural or residential areas.

Santa Monica Bay, which includes the Palos Verdes Shelf, dominates a large portion of the open coastal water bodies in the region. Eight ASBS are located in the Los Angeles Region: San Nicolas Island and Begg Rock (#21), Santa Barbara and Anacapa Islands (#22), San Clemente Island (#23), Laguna Point to Latigo Point (#24), Northwest Santa Catalina Island (#25), Western Santa Catalina Island (#26), Farnsworth Bank (#27), and Southeast Santa Catalina (#28).

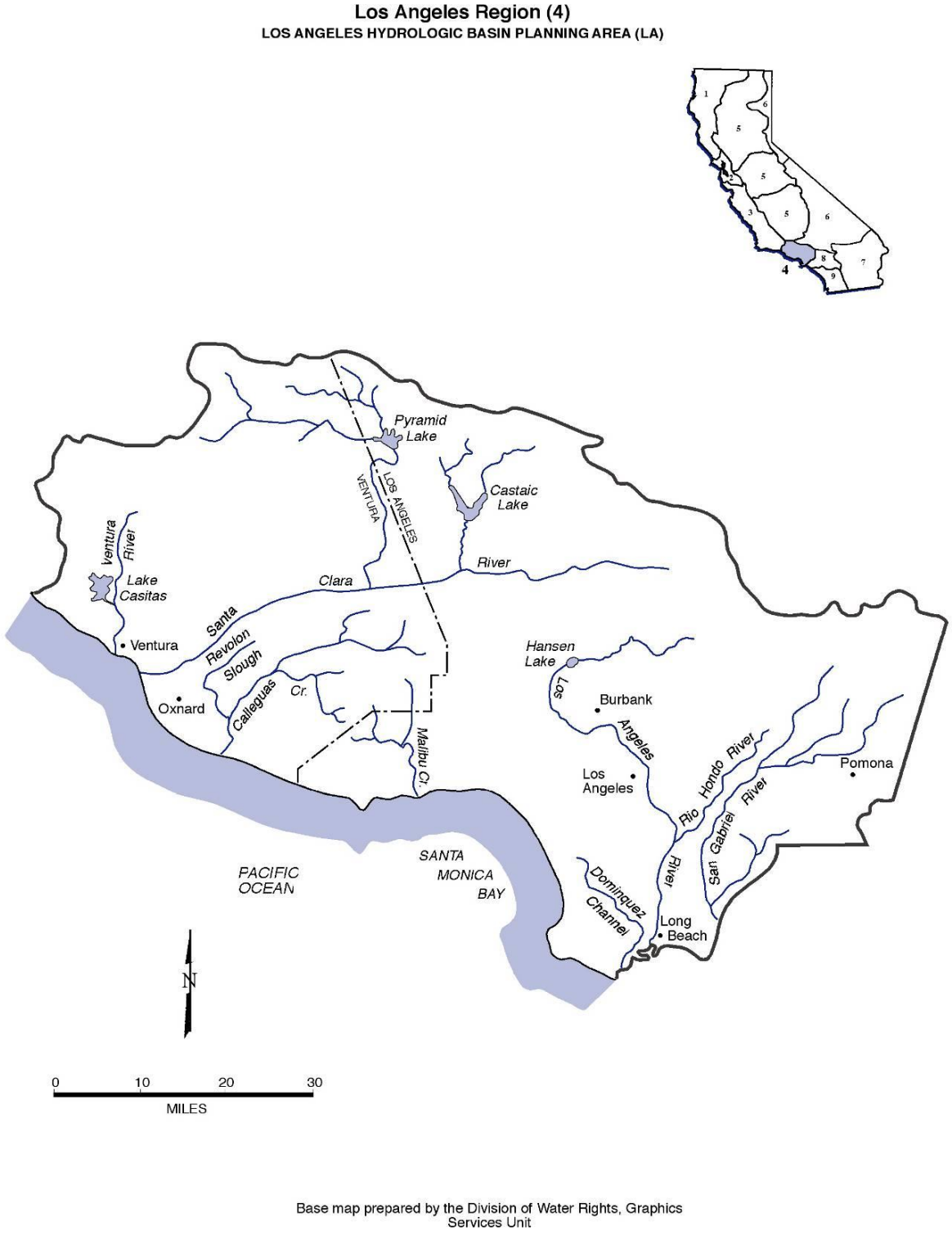


Figure 9. Los Angeles Region Hydrologic Basin.

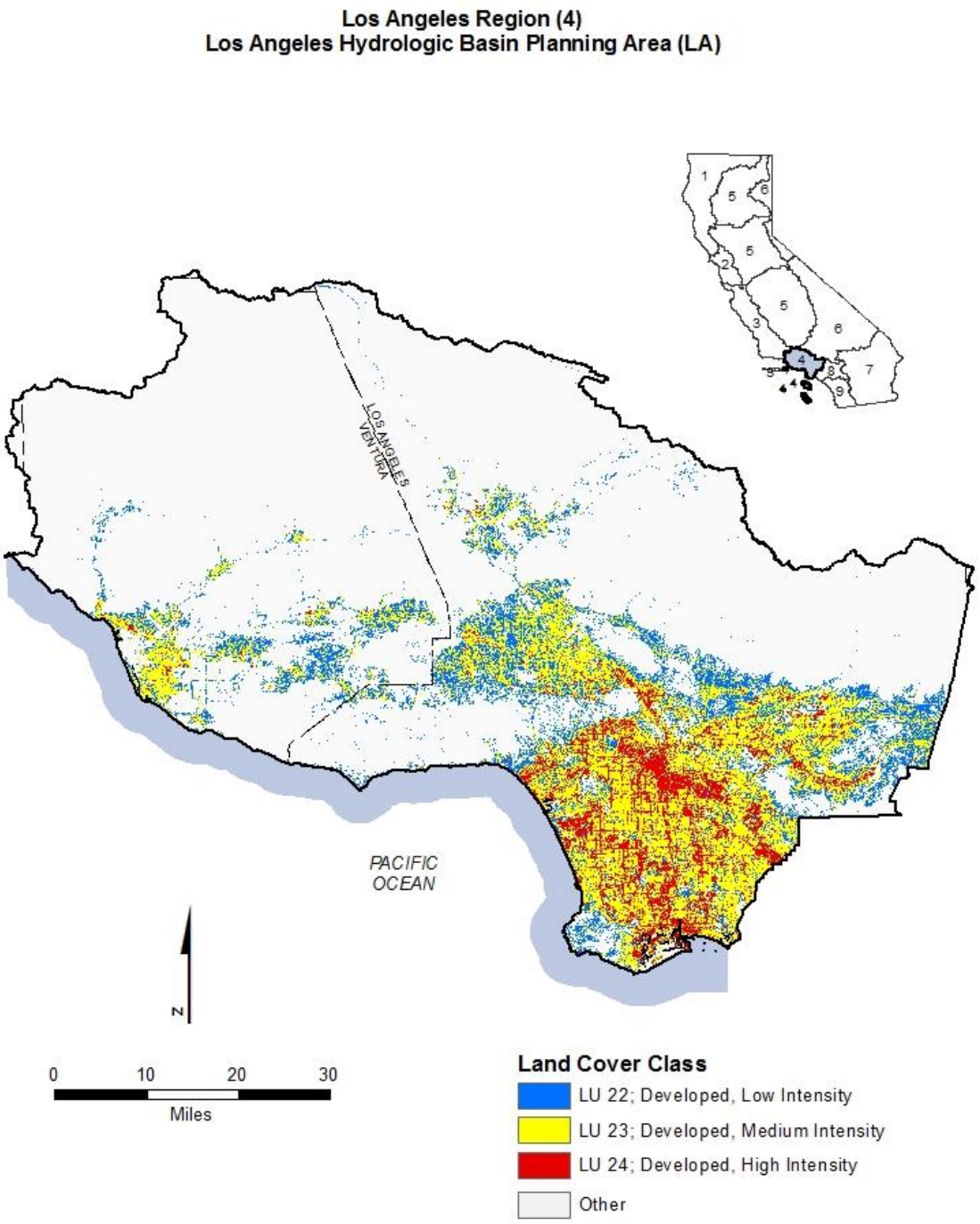


Figure 10. Los Angeles Region Developed Land Coverage.

3.8 Central Valley Region

The Central Valley Region includes approximately 40 percent of the land in California stretching from the Oregon border to the Kern County-Los Angeles County line. The region is divided into three basins. For planning purposes, the Sacramento River and the San Joaquin River Basins are covered under one basin plan, and the Tulare Lake Basin is covered under a separate basin plan.

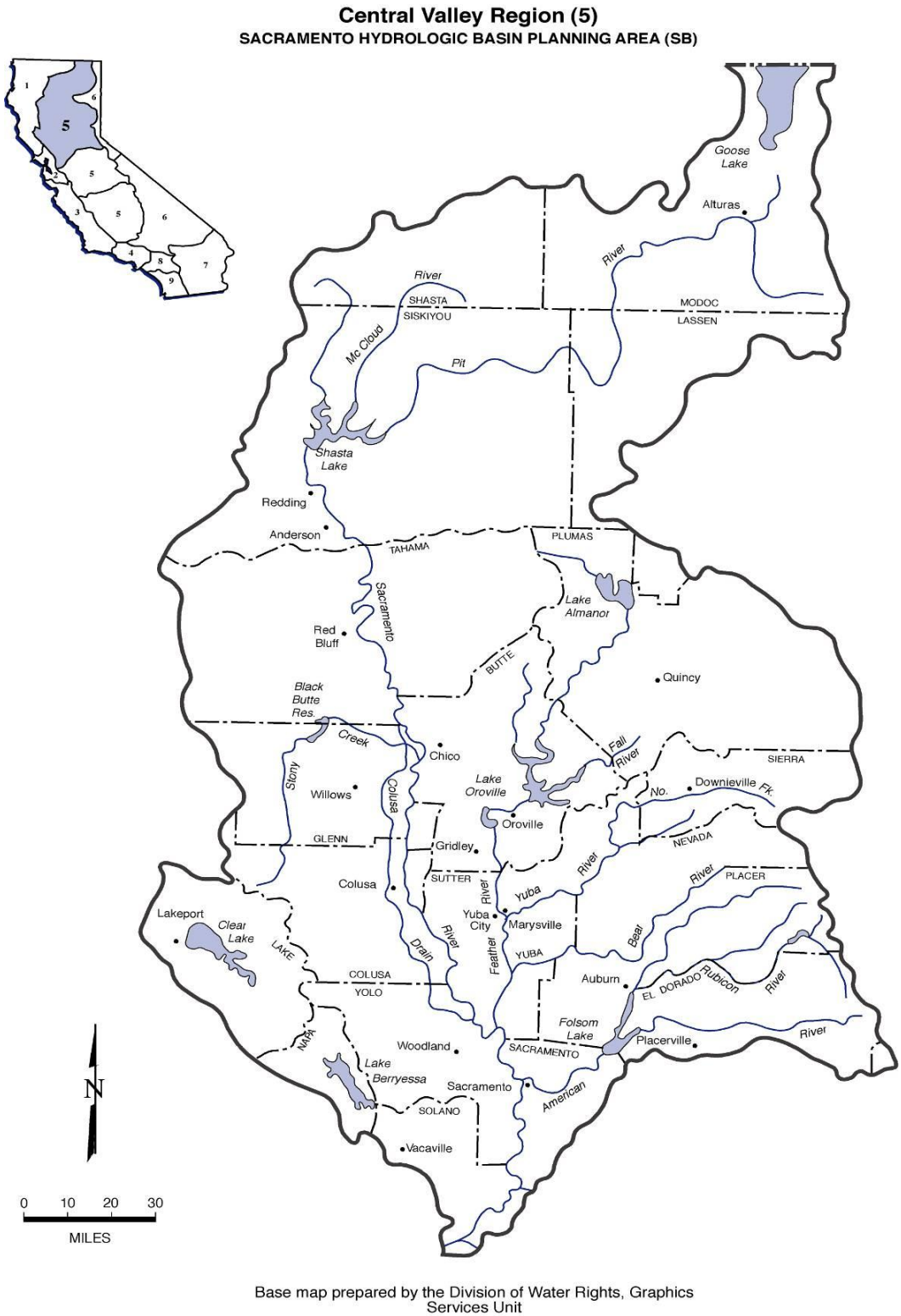
The Sacramento River Basin covers 27,210 square miles and includes the entire area drained by the Sacramento River (Figure 11, Figure 12). The principal streams are the Sacramento River and its larger tributaries: the Pitt, Feather, Yuba, Bear, and American Rivers to the East; and Cottonwood, Stony, Cache, and Putah Creek to the west. Major reservoirs and lakes include Shasta, Oroville, Folsom, Clear Lake, and Lake Berryessa.

The San Joaquin River Basin covers 15,880 square miles and includes the entire area drained by the San Joaquin River (Figure 13, Figure 14). Principal streams in the basin are the San Joaquin River and its larger tributaries: the Consumnes, Mokelumne, Calaveras, Stanislaus, Tuolumne, Merced, Chowchilla, and Fresno Rivers. Major reservoirs and lakes include Pardee, New Hogan, Millerton, McClure, Don Pedro, and New Melones.

The Tulare Lake Basin covers approximately 16,406 square miles and comprises the drainage area of the San Joaquin Valley south of the San Joaquin River (Figure 15, Figure 16). The planning boundary between the San Joaquin River Basin and the Tulare Lake Basin is defined by the northern boundary of Little Pinoche Creek basin eastward along the channel of the San Joaquin River to Millerton Lake in the Sierra Nevada foothills, and then along the southern boundary of the San Joaquin River drainage basin. Main Rivers within the basin include the King, Kaweah, Tule, and Kern Rivers, which drain to the west face of the Sierra Nevada Mountains. Imported surface water supplies enter the basin through the San Luis Drain-California Aqueduct System, Friant-Kern Channel, and the Delta Mendota Canal.

The two northern most basins are bound by the crests of the Sierra Nevada on the east and the Coast Range and Klamath Mountains on the west. They extend about 400 miles from the California-Oregon border southward to the headwaters of the San Joaquin River. These two river basins cover about one fourth of the total area of the state and over 30 percent of the state's irrigable land. The Sacramento and San Joaquin Rivers furnish roughly 50 percent of the state's water supply. Surface water from the two drainage basins meets and forms the Delta, which ultimately drains into the San Francisco Bay.

The Delta is a maze of river channels and diked islands covering roughly 1,150 square miles, including 78 square miles of water area. Two major water projects located in the South Delta, the Federal Central Valley Project and the State Water Project, deliver water from the Delta to Southern California, the San Joaquin Valley, Tulare Lake Basin, the San Francisco Bay Area, as well as within the Delta boundaries.



Base map prepared by the Division of Water Rights, Graphics Services Unit

Figure 11. Central Valley Region, Sacramento Region Hydrologic Basin.

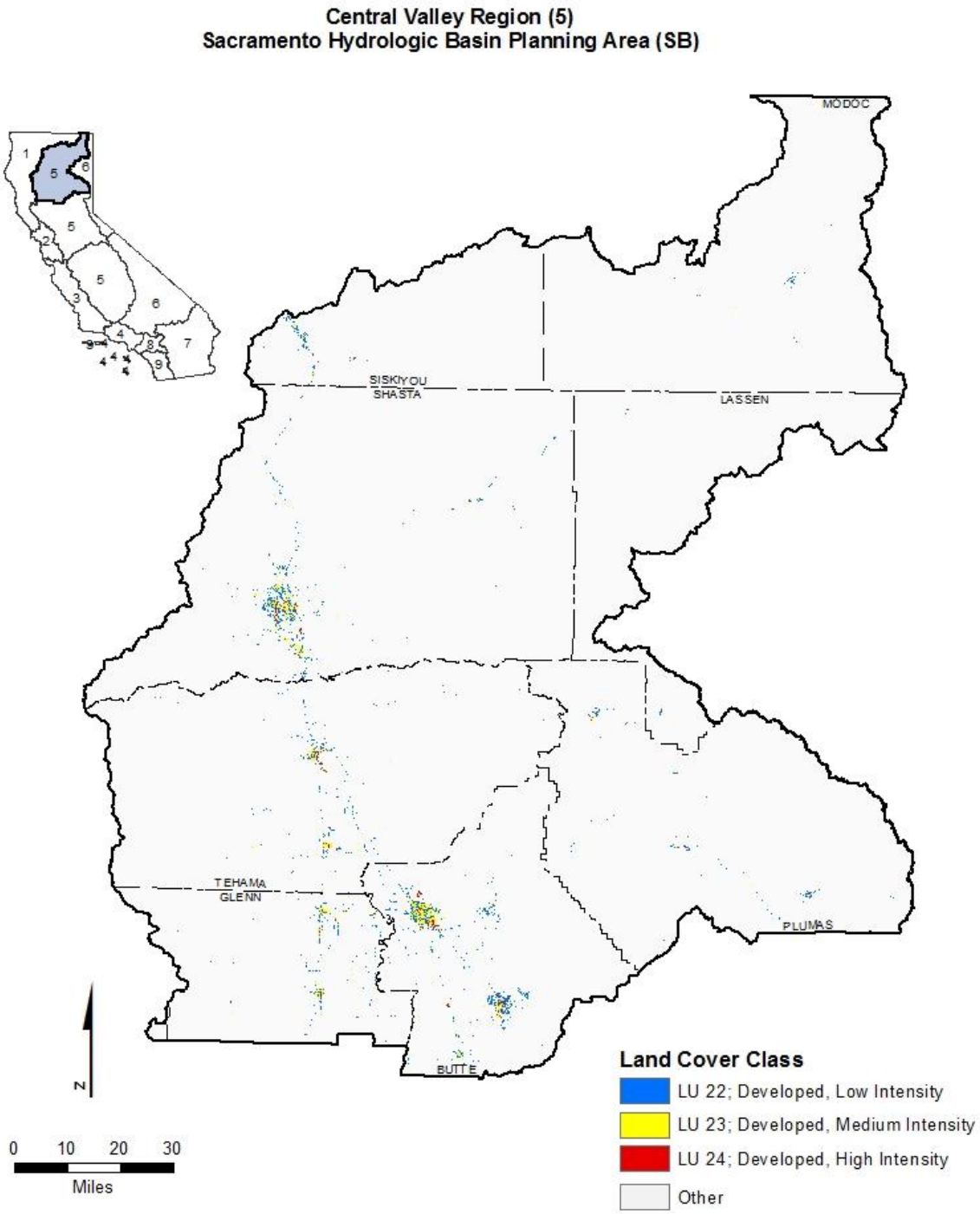


Figure 12. Central Valley Region, Sacramento Region Developed Land Coverage.

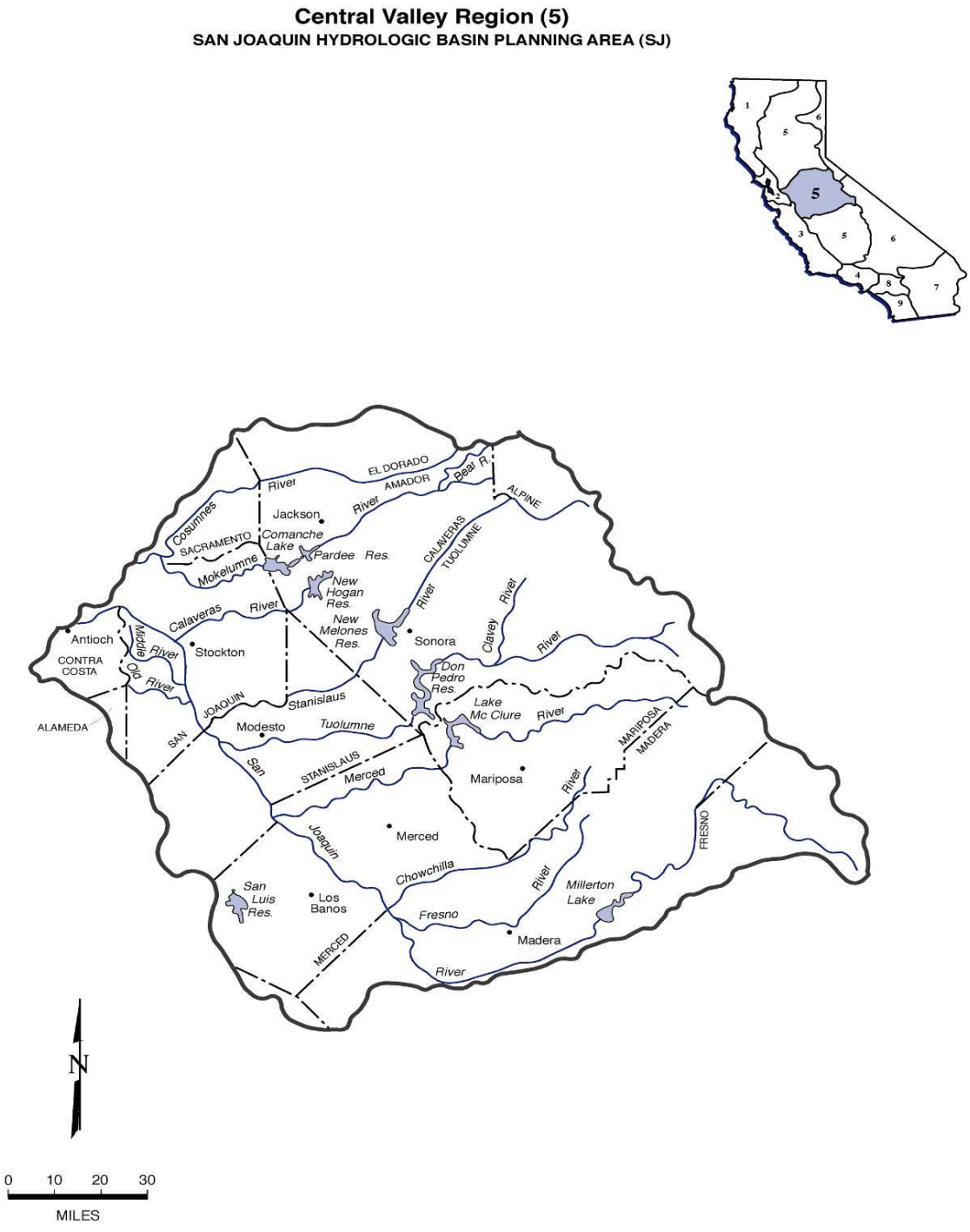


Figure 13. Central Valley Region, San Joaquin Hydrologic Basin.

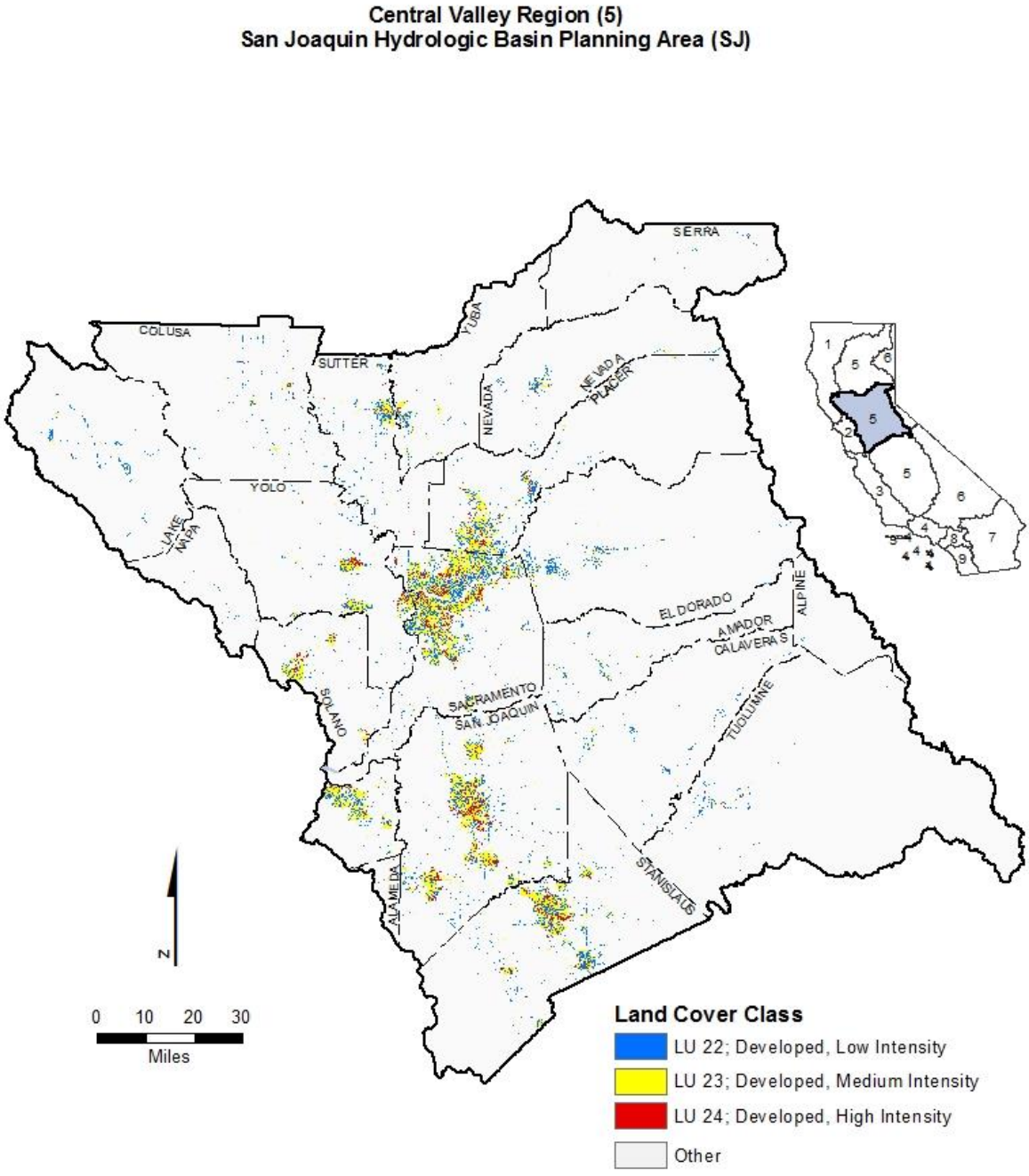


Figure 14. Central Valley Region, San Joaquin Developed Land Coverage.

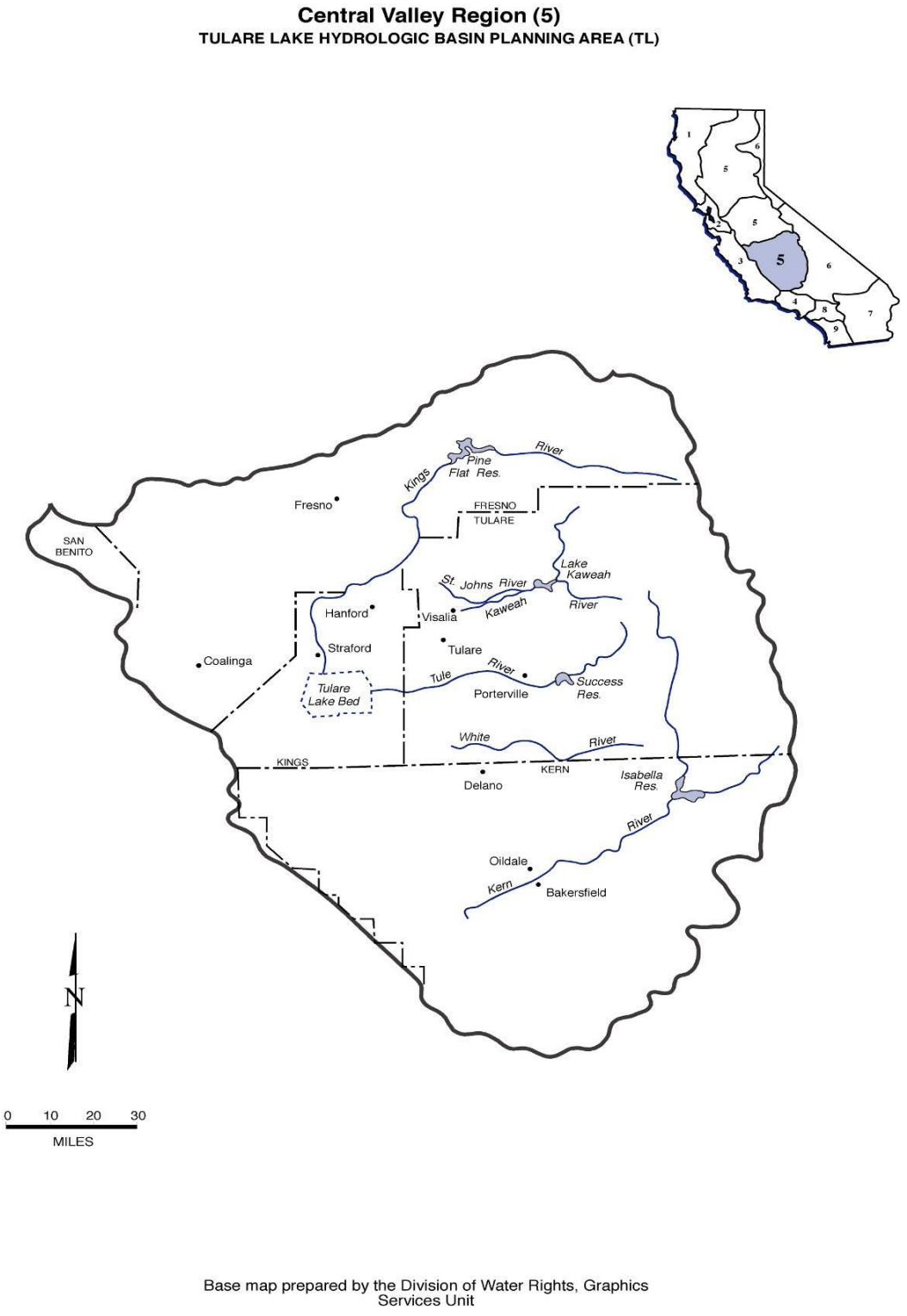


Figure 15. Central Valley Region, Tulare Lake Hydrologic Basin.

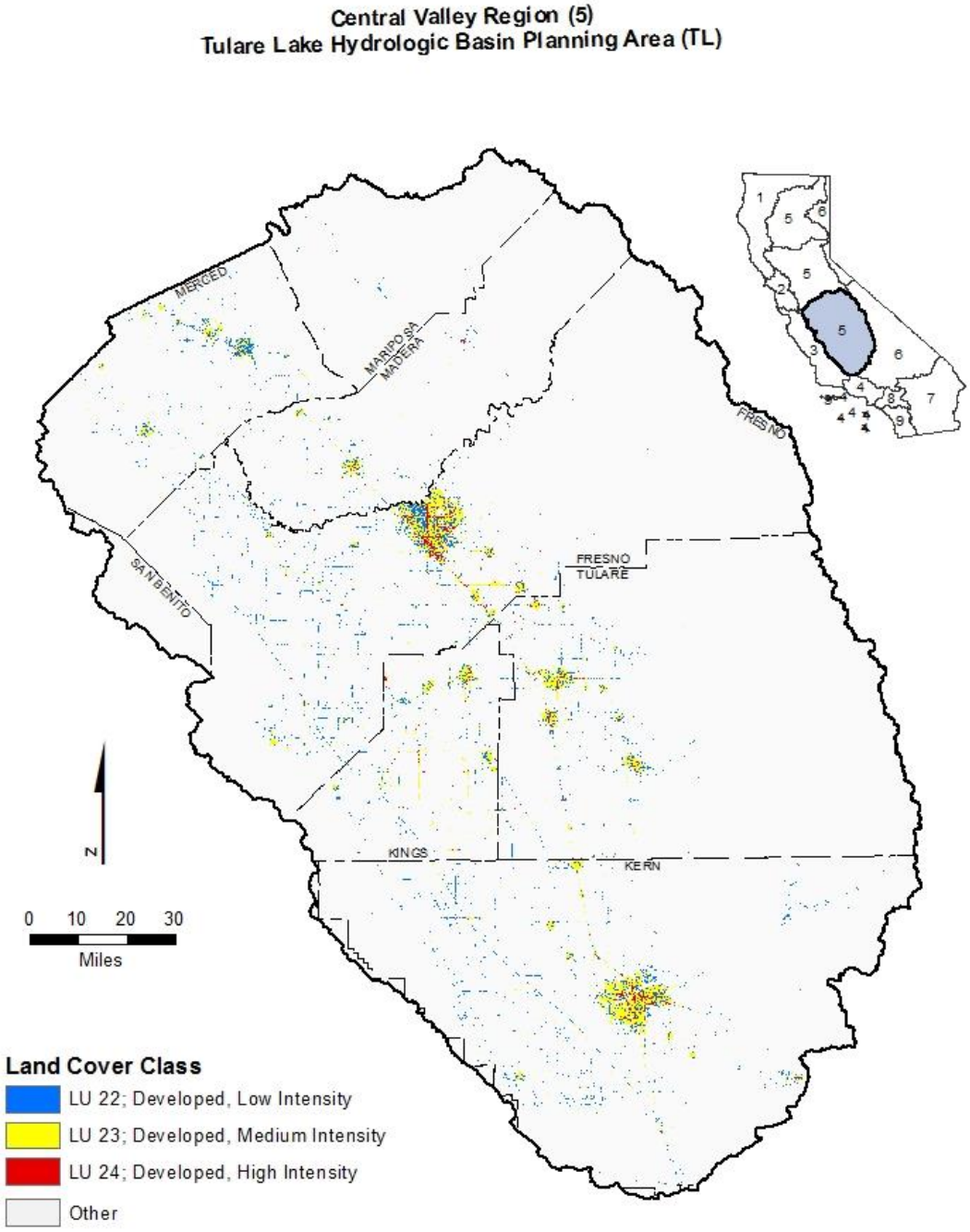


Figure 16. Central Valley Region, Tulare Lake Developed Land Coverage.

3.9 Lahontan Region

The Lahontan Region is divided into North and South Lahontan Basins at the boundary between the Mono Lake and East Walker River watersheds (Figure 17, Figure 18, Figure 19, Figure 20). It is about 570 miles long and has a total area of 33,131 square miles. The Lahontan Region includes the highest (Mount Whitney) and lowest (Death Valley) points in the contiguous United States. The region includes the eastern slopes of the Warner, Sierra Nevada, San Bernardino, Tehachapi and San Gabriel Mountains, and all or part of other ranges including the White, Providence, and Granite Mountains. Topographic depressions include the Madeline Plains, Surprise, Honey Lake, Bridgeport, Owens, Antelope, and Victor Valleys.

The region includes over 700 lakes, 3,170 miles of streams, and 1,581 square miles of groundwater basins. There are 12 major watersheds in the North Lahontan Basin. Among these are the Eagle Lake, Susan River/Honey Lake, Truckee, Carson, and Walker River watersheds. The South Lahontan Basin includes three major surface water systems (the Mono Lake, Owens River, and Mojave River watersheds) and a number of separate closed groundwater basins.

Although annual precipitation amounts can be high (up to 70 inches) at higher elevations, most precipitation in the mountainous areas falls as snow. Desert areas receive relatively little annual precipitation (less than two inches in some locations) but this can be concentrated and lead to flash flooding. The varied topography, soils, and microclimates of the Lahontan Region support a corresponding variety of plant and animal communities. Wetland and riparian plant communities, including marshes, meadows, sphagnum bogs, riparian deciduous forest, and desert washes, are particularly important for wildlife, given the general scarcity of water in the region.

Both developed (e.g., camping, skiing, and day use) and undeveloped (e.g., hiking, fishing) recreation are important land uses in the region. In addition to tourism, other land uses include resource extraction (mining, energy production, and silviculture), agriculture (mostly livestock grazing), and defense-related activities.

Much of the Lahontan Region is in public ownership, with land use controlled by agencies, such as the U.S. Forest Service, National Park Service, and Bureau of Land Management, various branches of the military, the California State Department of Parks and Recreation, and the City of Los Angeles Department of Water and Power. While the permanent resident population (about 500,000 in 1990) of the Region is low, most of it is concentrated in high-density communities in the South Lahontan Basin. In addition, millions of visitors use the Lahontan Region for recreation each year. Rapid population growth has occurred in the Victor and Antelope Valleys, and within commuting distance of Reno, Nevada. Principal communities of the North Lahontan Basin include Susanville, Truckee, Tahoe City, South Lake Tahoe, Markleeville, and Bridgeport. The South Lahontan Basin includes the communities of Mammoth Lakes, Bishop, Ridgecrest, Mojave, Adelanto, Palmdale, Lancaster, Victorville, and Barstow.

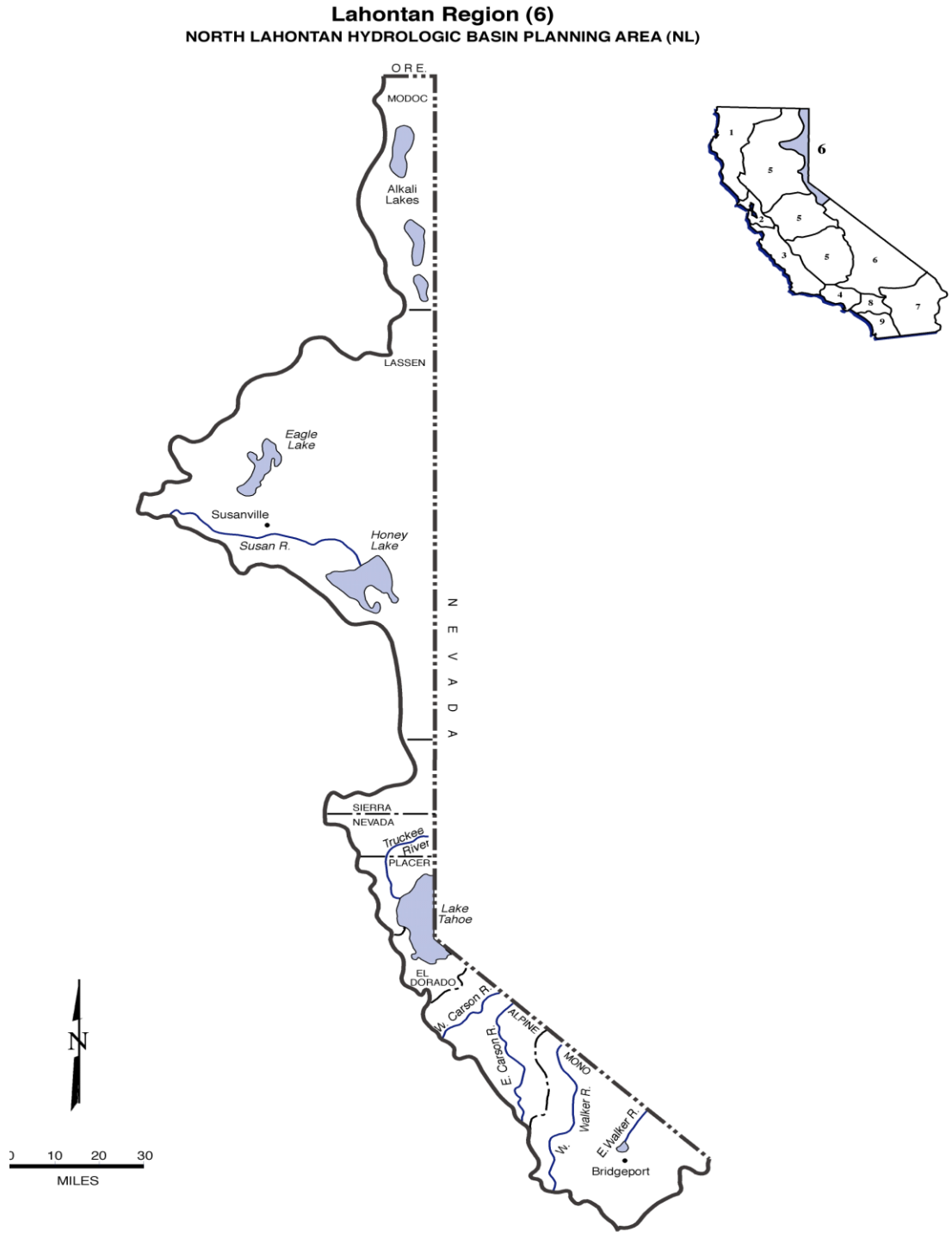


Figure 17. Lahontan Region, North Lahontan Hydrologic Basin.

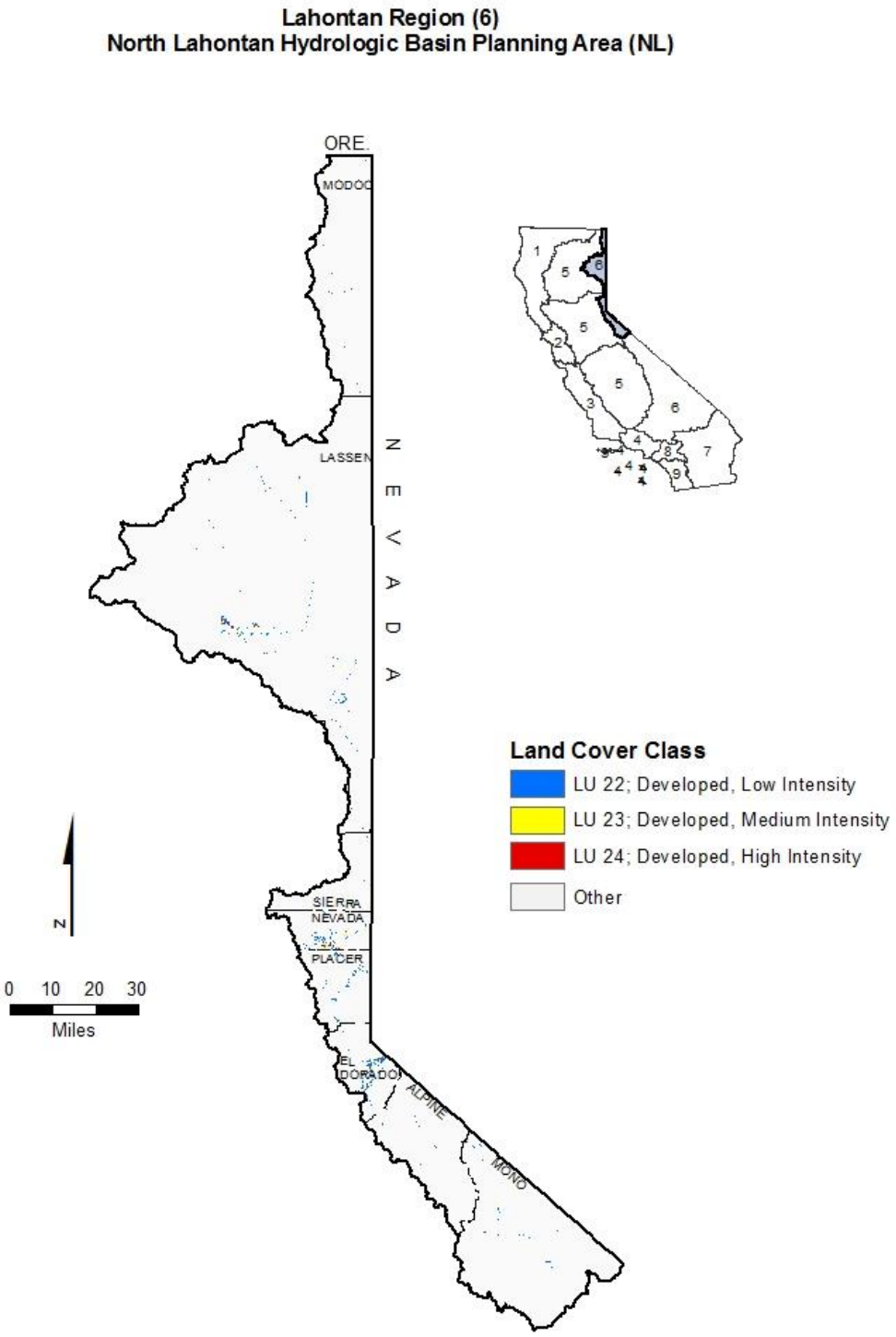


Figure 18. Lahontan Region, North Lahontan Developed Land Coverage.

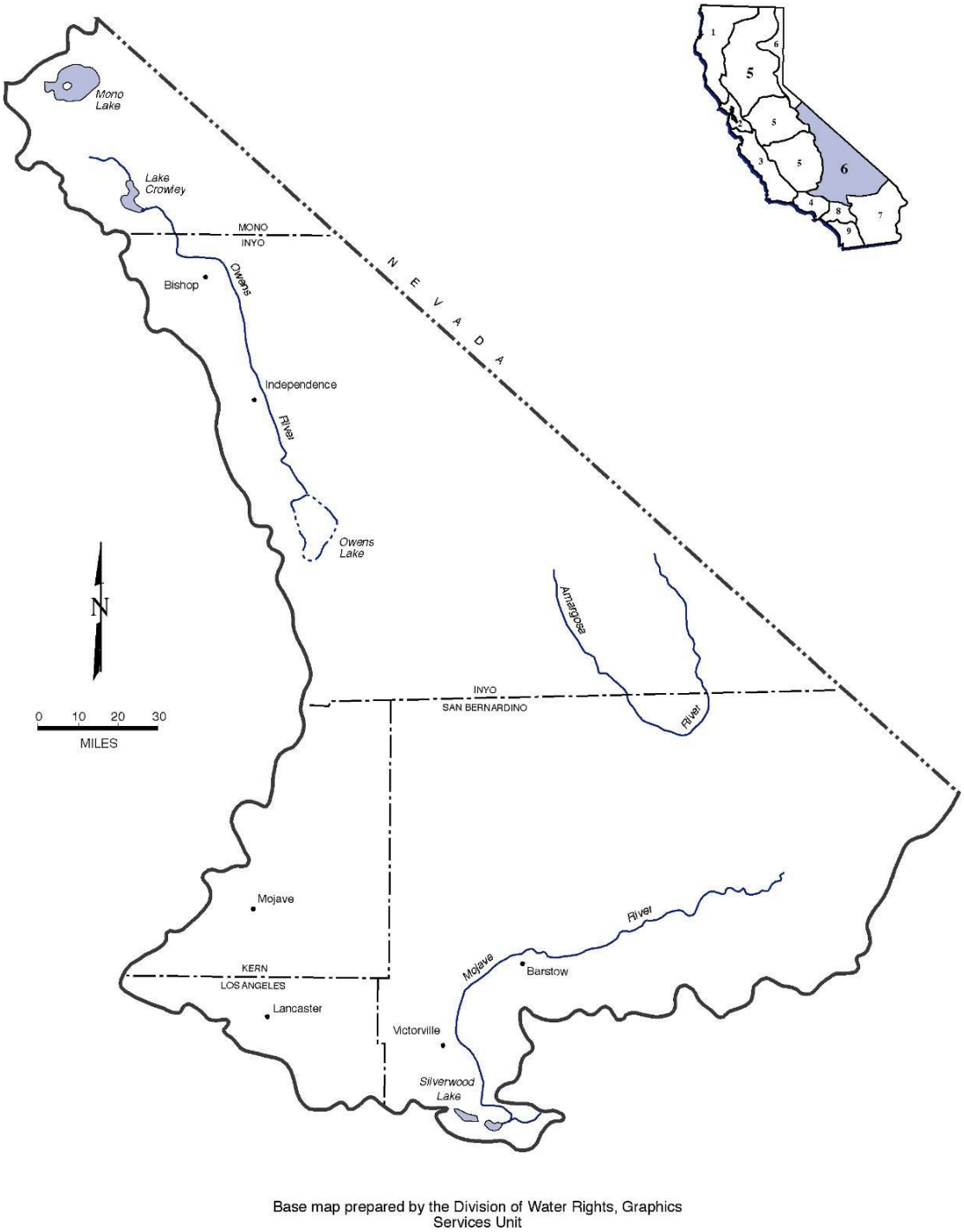


Figure 19. Lahontan Region, South Lahontan Hydrologic Basin.

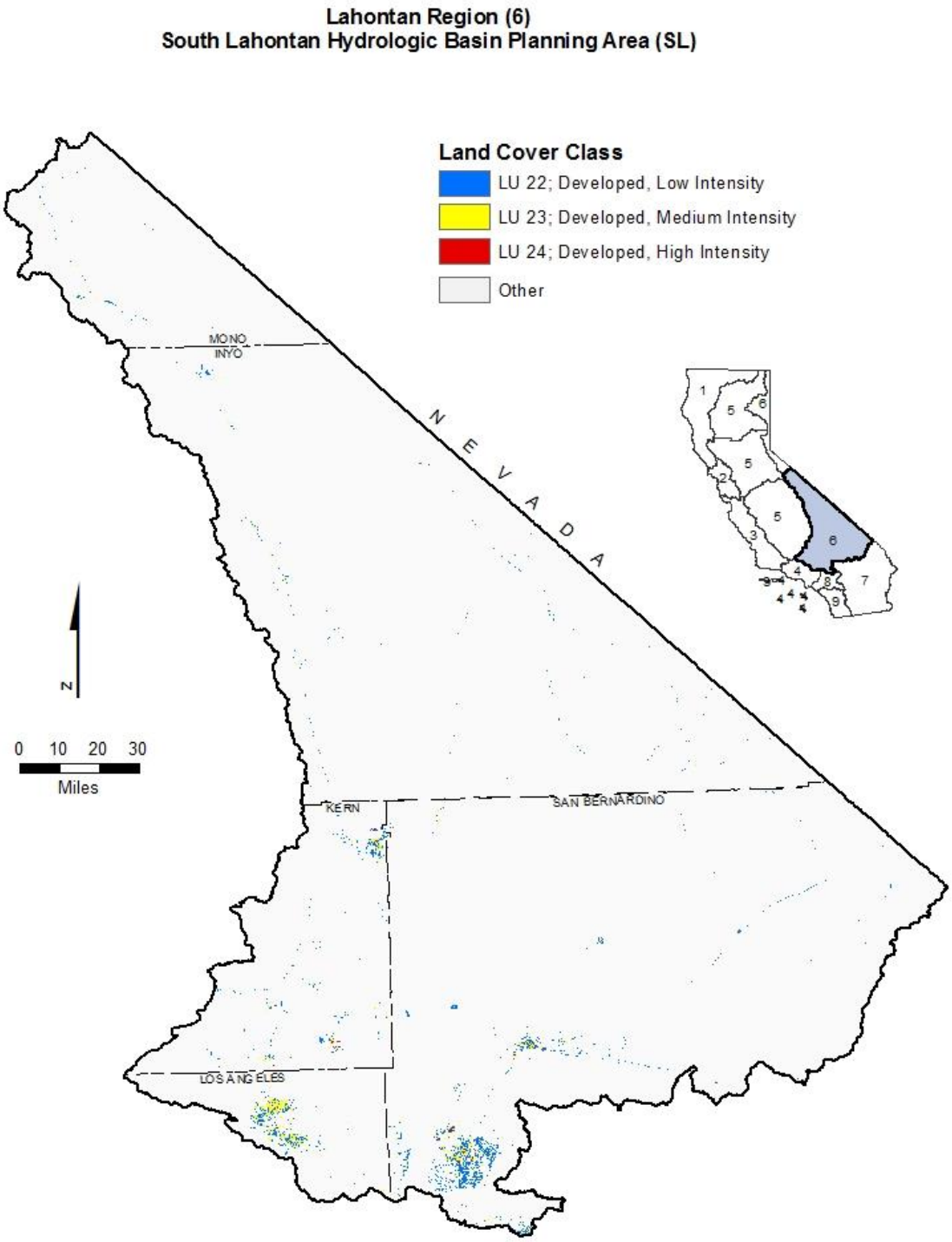


Figure 20. Lahontan Region, South Lahontan Developed Land Coverage.

3.10 Colorado River Basin Region

The Colorado River Basin Region covers approximately 13 million acres (20,000 square miles) in the southeastern portion of California (Figure 21, Figure 22). It includes all of Imperial County and portions of San Bernardino, Riverside, and San Diego Counties. It shares a boundary for 40 miles on the northeast with the State of Nevada. The New York, Providence, Granite, Old Dad, Bristol, Rodman, and Ord Mountain ranges border the region to the north, the San Bernardino, San Jacinto, and Laguna Mountain ranges border the region to the west, the Republic of Mexico borders the Region to the south, and the Colorado River and State of Arizona border the region to the east. Geographically the region represents only a small portion of the total Colorado River drainage area, which includes portions of Arizona, Nevada, Utah, Wyoming, Colorado, New Mexico, and Mexico. A significant geographical feature of the region is the Salton Trough, which contains the Salton Sea and the Coachella and Imperial Valleys. The two valleys are separated by the Salton Sea, which covers the lowest area of the depression. The Salton Sea is California's largest inland body of water and provides wildlife habitat and sport fishery.

Much of the agricultural economy and industry of the region is located in the Salton Trough. There are also industries associated with agriculture, such as sugar refining as well as increasing development of geothermal industries. The Salton Sea serves as a drainage reservoir for irrigation return water and storm water from the Coachella Valley, Imperial Valley, and Borrego Valley, and also receives drainage water from the Mexicali Valley in Mexico. Development along California's 230 mile reach of the Colorado River, which flows along the eastern boundary of the Region, include agricultural areas in Palo Verde Valley and Bard Valley, urban centers at Needles, Blythe, and Winterhaven, several transcontinental gas compressor stations, and numerous small recreational communities. Some mining operations are located in the surrounding mountains. Also the Fort Mojave, Chemehuevi, Colorado River, and Yuma Indian Reservations are located along the River.

The region has the driest climate in California. Snow falls in the region's higher elevations, with mean seasonal precipitation ranging from 30 to 40 inches in the upper San Jacinto and San Bernardino Mountains. The lower elevations receive relatively little rainfall. An average of four inches of precipitation occurs along the Colorado River, with much of this coming from late summer thunderstorms moving north from Mexico. Typical mean seasonal precipitation in the desert valleys is 3.6 inches at Indio and 3.2 inches at El Centro. Precipitation over the entire area occurs mostly from November through April, and August through September, but its distribution and intensity are often sporadic. Local thunderstorms may contribute all the average seasonal precipitation at one time or only a trace of precipitation may be recorded at any locale for the entire season.

The region provides habitat for a variety of native and introduced species of wildlife. Animals tolerant of arid conditions, including small rodents, coyotes, foxes, birds, and a variety of reptiles, inhabit large areas within the region. Along the Colorado River and in the higher elevations of the San Bernardino and San Jacinto Mountains, where water is more abundant, and where deer, bighorn sheep, and a diversity of small animals exist. Practically all of the fishes inhabiting the region are introduced species. The Salton Sea

National Wildlife Refuge and state waterfowl management areas are located in or near the Salton Sea. The refuge supports large numbers of waterfowl in addition to other types of birds. Located along the Colorado River are the Havasu, Cibola and Imperial National Wildlife Refuges. The region provides habitat for certain endangered/threatened species of wildlife including desert pupfish, razorback sucker, Yuma clapper rail, black rail, least Bell's vireo, yellow billed cuckoo, desert tortoise, and peninsular bighorn sheep.

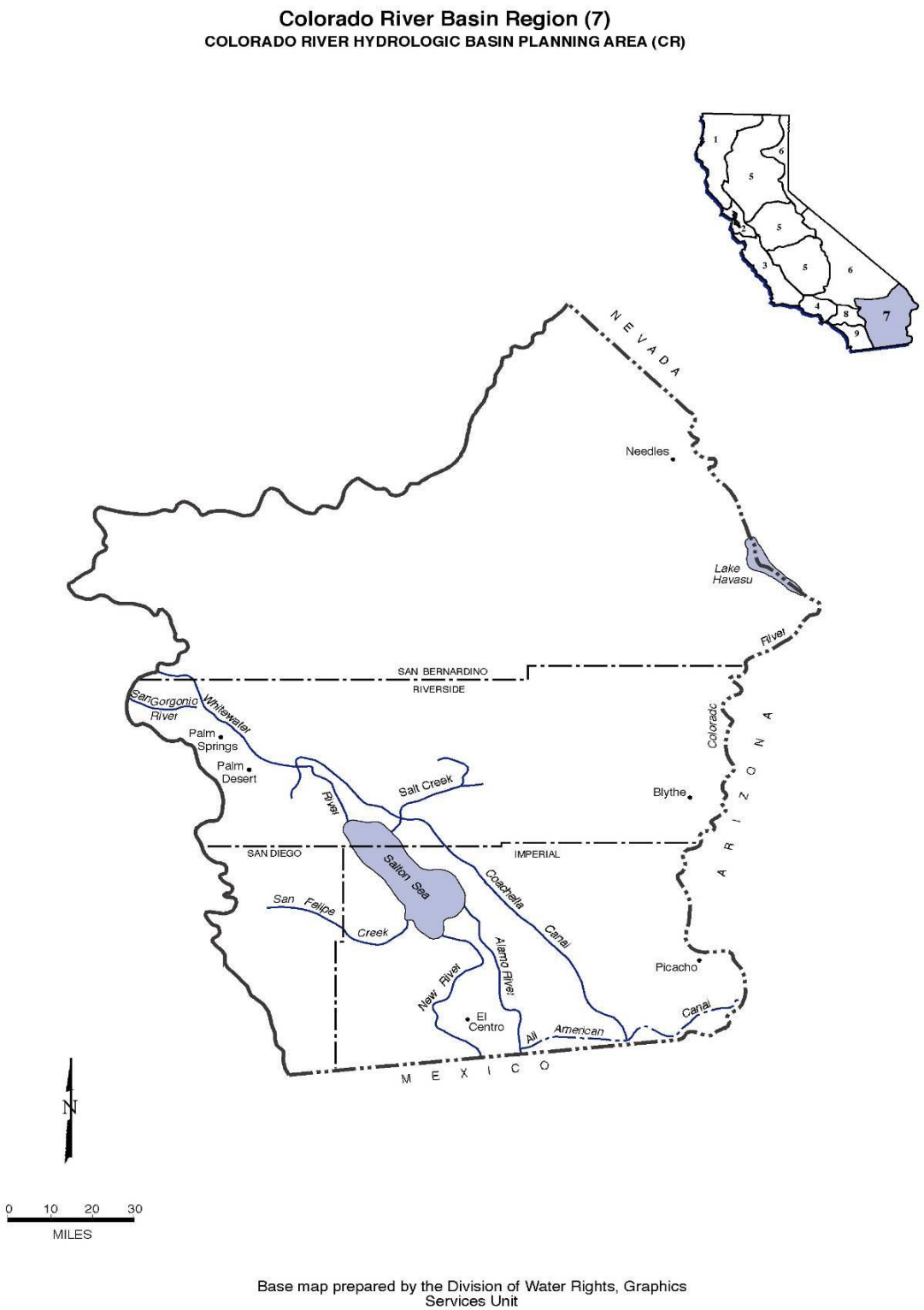


Figure 21. Colorado River Region Hydrologic Basin.

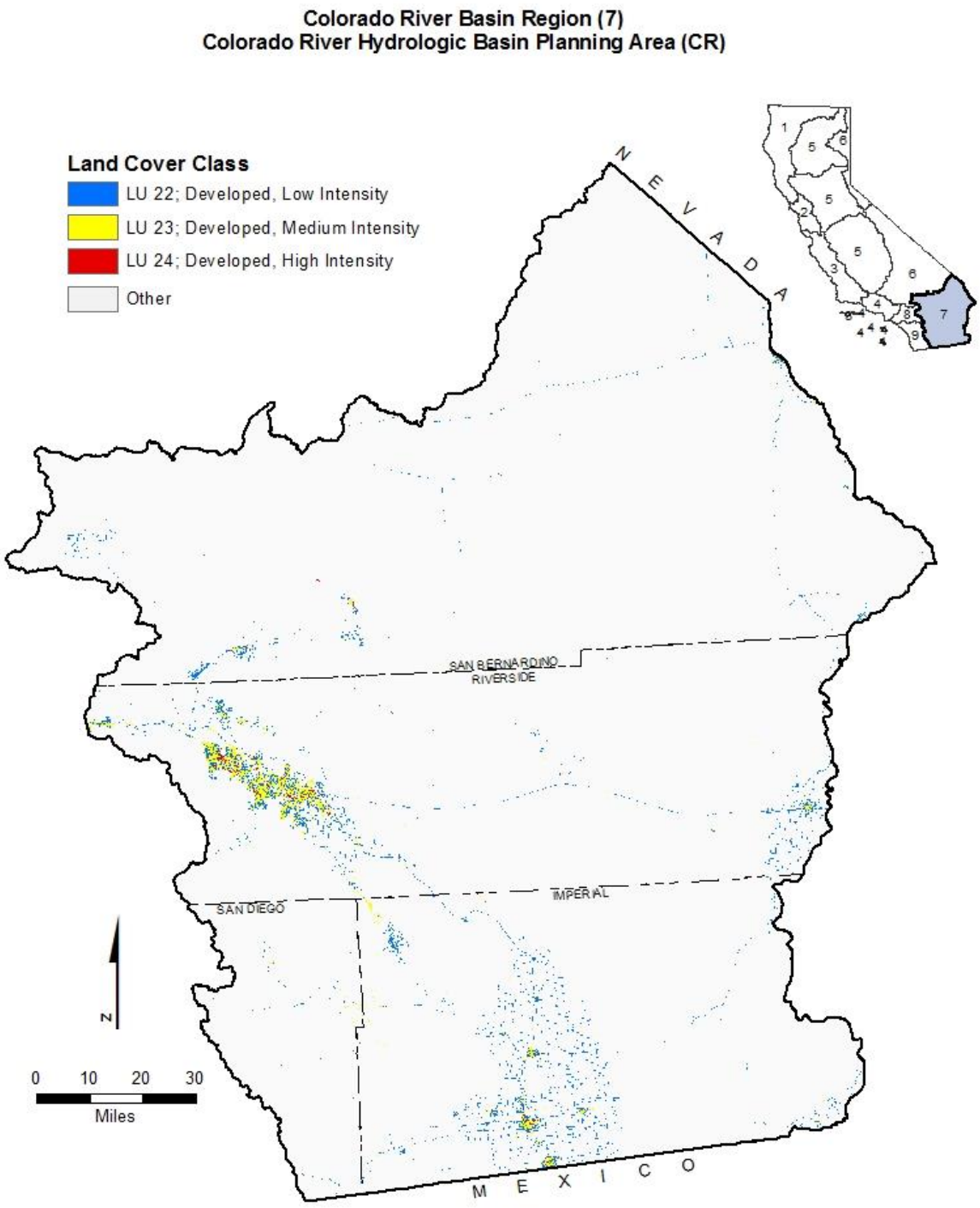


Figure 22. Colorado River Region Developed Land Coverage.

3.11 Santa Ana Region

The Santa Ana Region comprises all basins draining into the Pacific Ocean between the southern boundary of the Los Angeles Region and the drainage divide between Muddy and Moro Canyons, from the ocean to the summit of San Joaquin Hills; along the divide between lands draining into Newport Bay and Laguna Canyon to Niguel Road; along

Niguel Road and Los Aliso Avenue to the divide between Newport Bay and Aliso Creek drainages; and along the divide and the southeastern boundary of the Santa Ana River drainage to the divide between Baldwin Lake and Mojave Desert drainages; to the divide between the Pacific Ocean and Mojave Desert drainages (Figure 23, Figure 24). The Santa Ana Region is the smallest of the nine regions in the state (2,800 square miles) and is located in southern California, roughly between Los Angeles and San Diego. Although small geographically, the region's four million-plus residents (1993 estimate) make it one of the most densely populated regions.

The climate of the Santa Ana Region is generally dry in the summer with mild, wet winters). The average annual rainfall in the region is about 15 inches, most of it occurring between November and March. The enclosed bays in the region include Newport Bay, Bolsa Bay (including Bolsa Chica Marsh), and Anaheim Bay. Principal rivers include Santa Ana, San Jacinto and San Diego. Lakes and reservoirs include Big Bear, Hemet, Mathews, Canyon Lake, Lake Elsinore, Santiago Reservoir, and Perris Reservoir. Two ASBS are located in the Santa Ana Region: Robert E. Badham (#32) and Irvine Coast (also located in the San Diego Region) (#33).

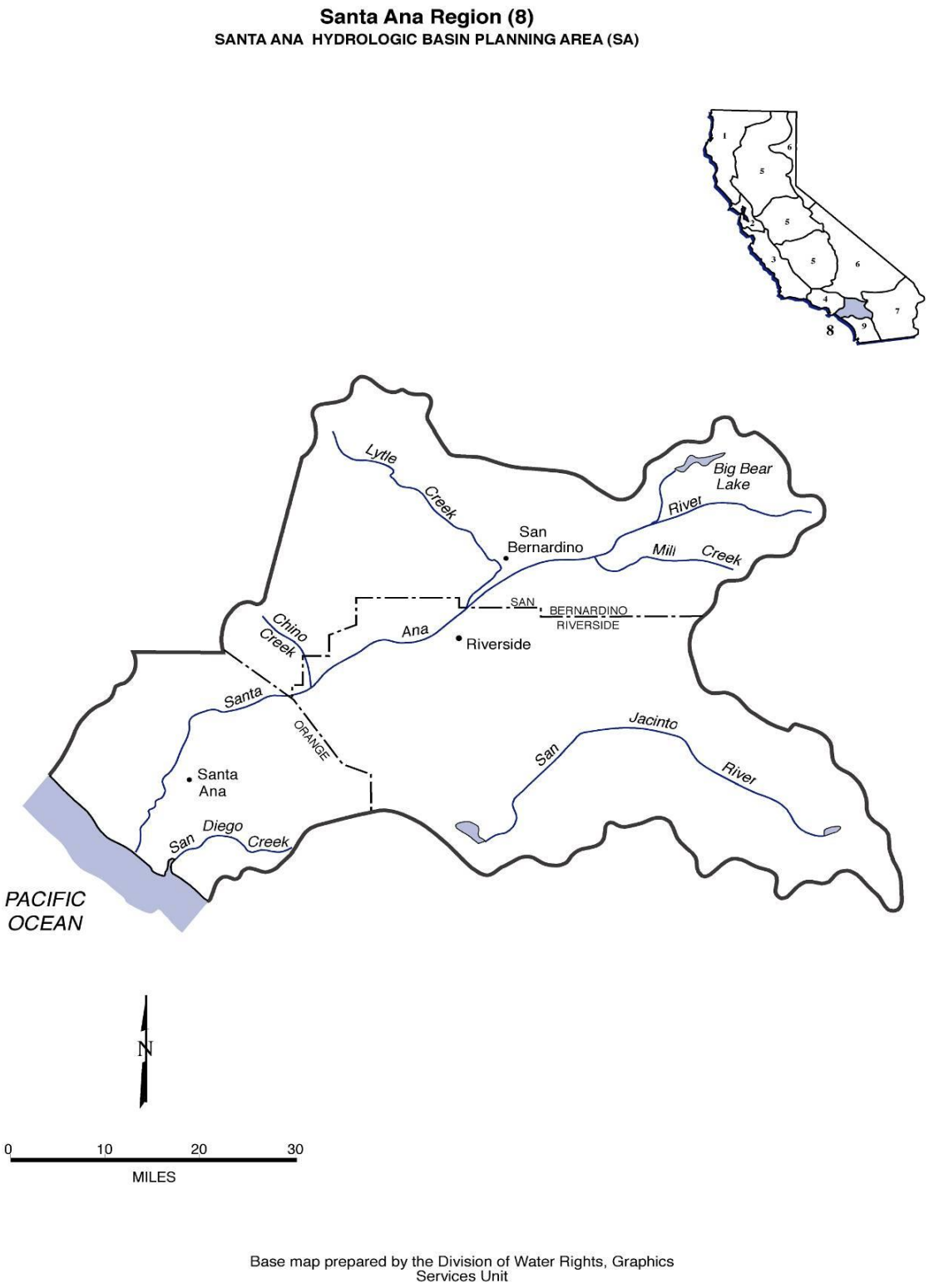


Figure 23. Santa Ana Region Hydrologic Basin.

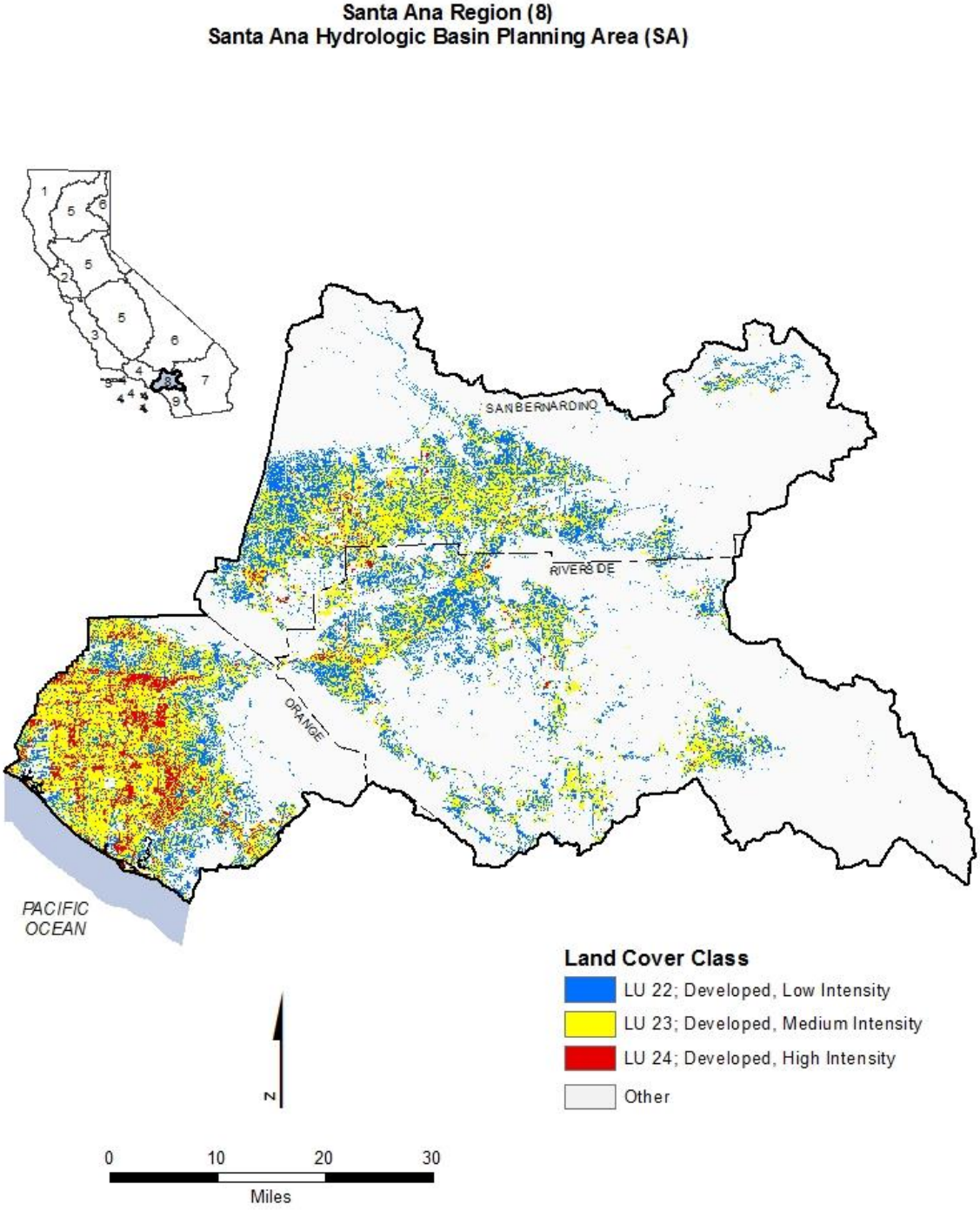


Figure 24. Santa Ana Region Developed Land Coverage.

3.12 San Diego Region

The San Diego Region comprises all basins draining into the Pacific Ocean between the southern boundary of the Santa Ana Region and the California-Mexico boundary (Figure 25, Figure 26). The San Diego Region is located along the coast of the Pacific Ocean from the Mexican border to north of Laguna Beach. The Region is rectangular in shape and extends approximately 80 miles along the coastline and 40 miles east to the crest of the mountains. The Region includes portions of San Diego, Orange, and Riverside Counties. The cities of San Diego, National City, Chula Vista, Coronado, and Imperial Beach surround San Diego Bay in the southern portion of the Region.

The population of the region is heavily concentrated along the coastal strip. Six deep water sewage outfalls and one across the beach from the new border plant at the Tijuana River empty into the ocean. Two harbors, Mission Bay and San Diego Bay, support major recreational and commercial boat traffic. Coastal lagoons are found along the San Diego County coast at the mouths of creeks and rivers.

San Diego Bay is long and narrow, 15 miles in length and approximately one mile across. A deep-water harbor, San Diego Bay has experienced waste discharge from former sewage outfalls, industries, and urban runoff. Up to 9,000 vessels may be moored there. San Diego Bay also hosts four major U.S. Navy bases with approximately 80 surface ships and submarines. Coastal waters include bays, harbors, estuaries, beaches, and open ocean.

Weather patterns are generally dry in the summer with mild, wet winters, with an average rainfall of approximately ten inches per year occurring along the coast.

Deep draft commercial harbors include San Diego Bay and Oceanside Harbor and shallower harbors include Mission Bay and Dana Point Harbor. Tijuana Estuary, Sweetwater Marsh, San Diego River Flood Control Channel, Kendal-Frost Wildlife Reserve, San Dieguito River Estuary, San Elijo Lagoon, Batiquitos Lagoon, Agua Hedionda Lagoon, Buena Vista Lagoon, San Luis Rey Estuary, and Santa Margarita River Estuary are the important estuaries of the region. There are 13 principal stream systems in the region originating in the western highlands and flowing to the Pacific Ocean. From north to south these are Aliso Creek, San Juan Creek, San Mateo Creek, San Onofre Creek, Santa Margarita River, San Luis Ray River, San Marcos Creek, Escondido Creek, San Dieguito River, San Diego River, Sweetwater River, Otay River, and the Tijuana River. Most of these streams are interrupted in character having both perennial and ephemeral components due to the rainfall pattern in the region. Surface water impoundments capture flow from almost all the major stream. Four ASBS are located in the San Diego Region: Irvine Coast (also located in the Santa Ana Region) (#33), La Jolla (#29), Heisler Park (#30), and San Diego-Scripps (#31).

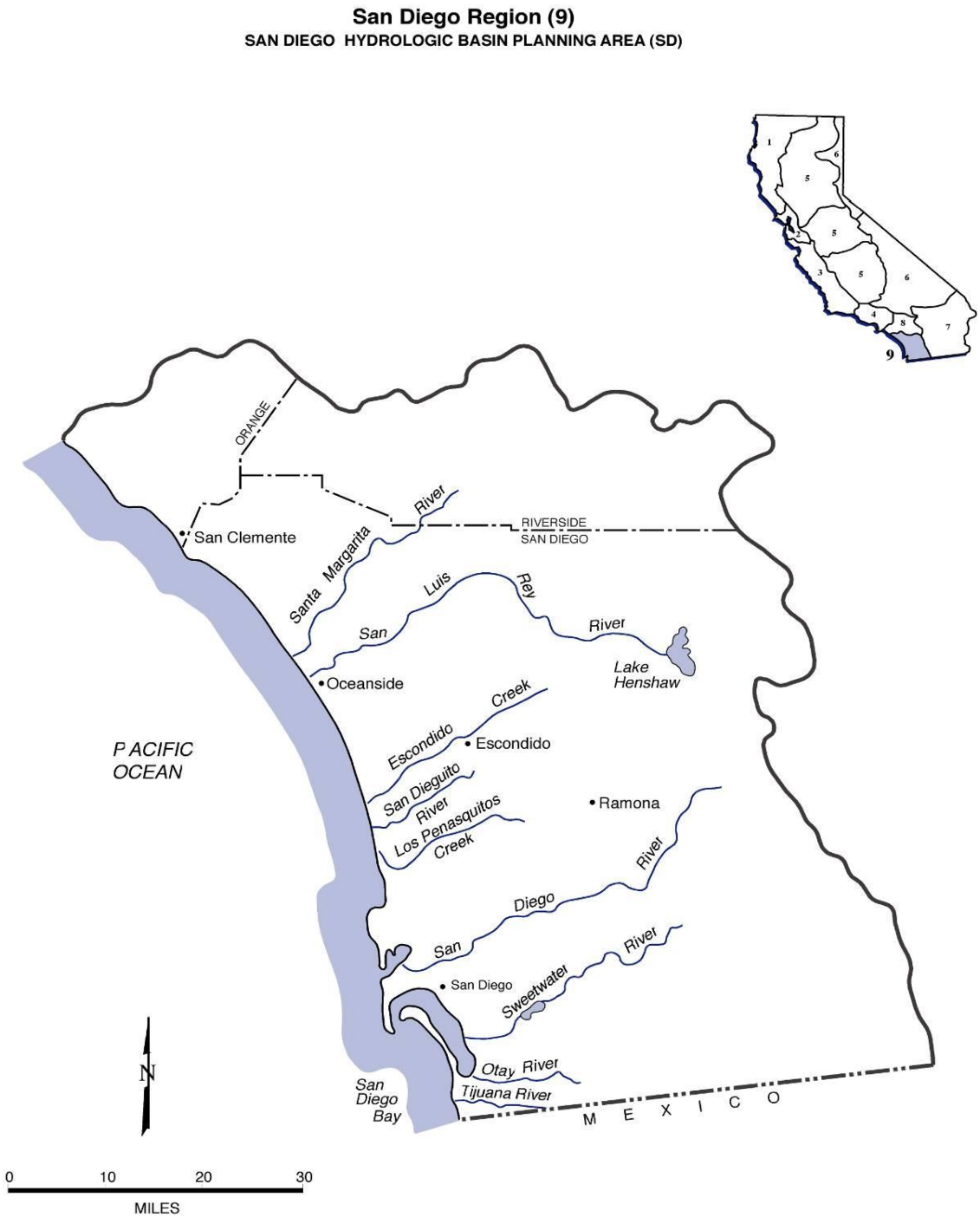


Figure 25. San Diego Region Hydrologic Basin.

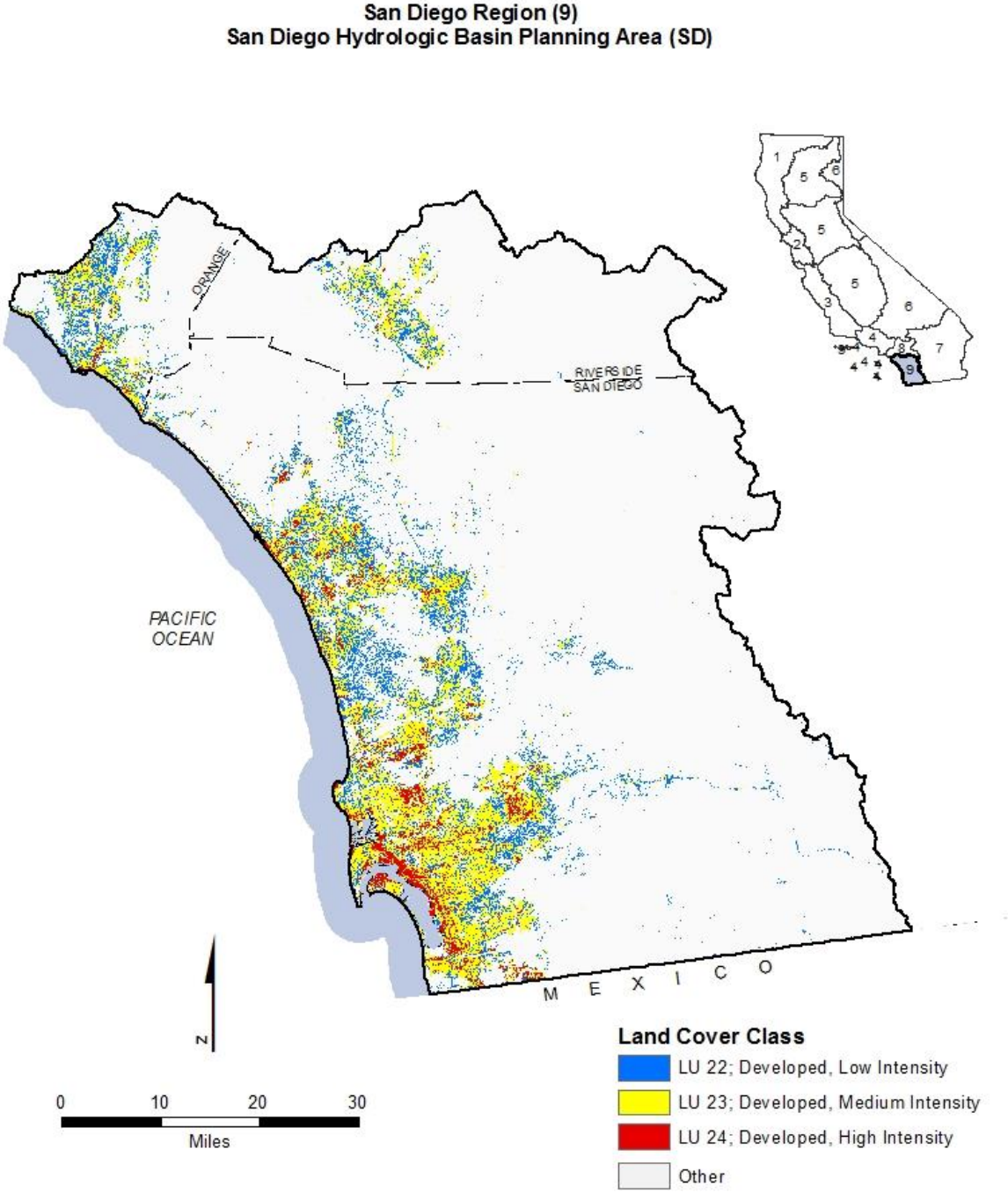


Figure 26. San Diego Region Developed Land Coverage.

4 ANALYSIS OF ISSUES AND CONSIDERATIONS

This section describes the major amendment-related issues identified during the scoping and development process, and provides a discussion of the State Water Board's rationale for the final Trash Amendments as currently proposed in this Final Staff Report. Each issue discussion is organized as follows:

Issue: A brief question framing the issue.

Current Conditions: A description of how the Water Boards currently act on the issue, where applicable.

Considerations: For each issue or topic, at least two considerations are provided. Each consideration is evaluated with respect to the program needs and the appropriate sections within Division 7 of the California Water Code. The considerations presented here also inform the requirement to analyze the reasonable range of alternatives to the project to avoid or reduce any potentially significant adverse environmental impacts, as described in Section 8.

Recommendation: In this section, State Water Board's recommended consideration (or combination of considerations) is identified and proposed for adoption.

4.1 Issue 1: How should the Trash Amendments define "trash"?

Current Conditions:

Waste and litter are currently defined in California law. As defined by the California Water Code, "waste" includes:

> "Sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal." (§ 13050(d))

The California Government Code defines "litter" as:

> "All improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling, or manufacturing." (§ 68055.1(g))

Considerations:

1. **No Project: No definition.** Each Water Board would define "trash" for itself in its respective basin plans. This option potentially would result in a wide variety of definitions, and result in a failure to achieve statewide consistency. Therefore, this approach is not recommended.

2. **Define "trash" by using Basin Plans, California Government Code, and the California Water Code.** This definition would combine the definitions of "litter" in the California Government Code and "waste" in the California Water Code to include litter, waste, and types of trash including but not limited to plastic, expanded styrene, cigarette butts, wood, glass, cardboard, metal, and green waste. The resulting definition would read as follows:

   Trash *means all improperly discarded solid material from any production, manufacturing, or processing operation including, but not limited to, products, product packaging, or containers constructed of plastic, steel, aluminum, glass, paper, or other synthetic or natural materials.*

   This definition includes smaller trash, such as preproduction plastics and other materials. These small forms of trash have an impact on beneficial uses and should be addressed by the objective. This approach is recommended.

3. **Define "trash" by using the California Government Code and the California Water Code, and include size limitation to definition consistent with current technology.** This definition would combine the definitions of "litter" in the California Government Code, with "waste" in the California Water Code to include litter, waste, and other debris of concern such as plastic, expanded styrene, cigarette butts, wood, cardboard, metal, and green waste. The definition would state that it only applies to trash greater than 5 mm in size, consistent with full capture systems.

   Trash *means all improperly discarded solid material over 5 mm in size from any production, manufacturing, or processing operation including, but not limited to, products, product packaging, or containers constructed of plastic, steel, aluminum, glass, paper, or other synthetic or natural materials.*

   The drawback to including a size limitation is that it does not effectively address smaller trash, such as preproduction plastic and other materials that have an impact on beneficial uses. Therefore this approach is not recommended.

Recommendation: Adopt a definition of "trash" with no size limitation (Consideration 2).

4.2 Issue 2: What type of water quality objective for trash should be considered?

The U.S. EPA must approve objectives in statewide water quality control plans. Once the objectives have been approved, they become federally mandated and enforceable. Water quality objectives can be narrative or numeric with discrete targets. A narrative objective is as enforceable as a numeric objective.

Current Conditions:

Although language varies by each regional water board, in general, the basin plans contain narrative water quality objectives that prohibit the presence of floatable, solid, suspended, and settleable materials in amounts that adversely affect beneficial uses.

There are currently 33 existing narrative objectives in the eleven different water quality control plans that apply to the discharge of trash to state waters.

In addition to the water quality standard, as discussed above, the 303(d) listing methodology defines trash as a "nuisance"[11] and states that water segments may be listed as impaired if there is a "significant nuisance condition compared to reference conditions." The existing trash TMDLs establish numeric targets of zero trash based on the interpretation of the narrative water quality objectives in the Los Angeles and Colorado River Basin Plans. Thus, the water bodies with 303(d) listings for trash are found to lack an assimilative capacity for any amount of trash (Los Angeles Water Board 2000; 2004; 2007a; 2007b; 2007c; 2007d; 2007e; 2007f; 2008g; 2010).

Furthermore, multiple assessment methods, using varying objectives, have been implemented by the Regional Water Boards. Assessment parameters presented in the *Rapid Trash Assessment Method Applied to Waters of the San Francisco Bay Region: Trash Measurements in Streams* included: level of trash, actual number of trash items found, threat to aquatic life, threat to public health, illegal dumping and littering, and accumulation of trash (Surface Water Ambient Monitoring Program 2007).

Considerations:

1. **No Project: No new objective.** The Water Boards would have to continue to rely on existing basin plans and Ocean Plan, which do not contain trash-specific narratives; instead the objectives refer to trash-related pollutants and other pollutants such as foam and sediment in general terms (i.e., floatable, suspended, and settleable material). Similarly, there currently is no water quality objective specifically for trash in the Ocean Plan and ISWEBE Plan. In addition, the existing regional water boards' basin plan narrative objectives lack consistency. Therefore, this approach is not recommended.

2. **Create a statewide numeric water quality objective of "zero trash."** This objective would create a new statewide numeric water quality objective of "zero trash." The numeric objective could be adopted in individual basin plans by regional water boards or by the State Water Board in statewide water quality control plans (i.e., the Ocean Plan and ISWEBE Plan).

   Specifically, this objective would require that all surface waters not contain trash. Effectively, this performance-based numeric objective would result in an absolute

[11] According to California Water Code (§ 13050(m)), nuisance is defined as anything which meets all of the following requirements:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(3) Occurs during, or as a result of, the treatment or disposal of wastes.

trash discharge prohibition. Such a discharge prohibition could be implemented in phases to address high trash generating areas first. These areas would be determined by either: (1) state-defined categorical areas or, (2) municipalities or responsible jurisdictions.

A numeric objective of "zero trash" could be an efficient regulatory tool because the measurement of compliance is clearly defined. This option would establish a quantitative objective as a statewide numeric standard. While zero trash is the desirable goal, it may not be a feasible numeric objective. On a feasible level, a single piece of trash found in a water body may or may not constitute impairment, and it may or may not be aesthetically unpleasing. Therefore, this approach is not recommended.

3. **Standardize the existing narrative objectives that vary among the water quality control plans.** Individual regional water boards have existing narrative objectives in their basin plans associated with trash. The standardized narrative objective would reflect the concept that the waters of the state shall be *free from floatable, settleable, and suspended materials.*

   Under this alternative, the State Water Board would adopt an order directing each Regional Water Board to adopt a standardized narrative objective in each basin plan through individual amendments. This would be a complex and resource intensive activity, and there is no guarantee that the narrative objectives ultimately adopted would be consistent from region to region. Therefore, this approach is not recommended.

4. **Establish a new statewide narrative objective specifically for trash in the Ocean Plan and ISWEBE Plan.** This option would create a new statewide narrative objective specifically addressing trash with standardized language in all statewide water quality control plans. The objective would be amended into the Ocean Plan and ISWEBE Plan. Statewide water quality control plans supersede basin plans, thereby eliminating the necessity of adopting a narrative objective in each basin plan. This would make more efficient use of Water Board resources. Therefore, this approach is recommended.

Recommendation: Adopt a statewide narrative water quality objective specifically for trash in the Ocean and ISWEBE Plan (Consideration 4).

4.3 Issue 3: Which surface waters should the Trash Amendments be applicable to?

Current Conditions:

There are 73 listed impairments for trash in California waters. TMDLs have been developed to date in the Los Angeles Region and the Colorado River Basin Region. In the Colorado River Basin, a TMDL for trash was adopted for the New River (at the international boundary) that included a numeric target of zero trash (Colorado River Basin Water Board 2006). In the Los Angeles Region, fifteen TMDLs were adopted for trash and debris by either the Los Angeles Water Board or U.S. EPA (Los Angeles

Water Board 2000; 2004; 2007a; 2007b; 2007c; 2007d; 2007e; 2007f; 2008g; 2010, U.S. EPA 2012a).

Considerations:

1. **No Project.** Water Boards may address trash control through a mixture of regional planning efforts and water body specific TMDLs. Because No Project would not meet the trash objectives to provide a consistent statewide program to address trash in state waters, this approach is not recommended.
2. **Applicable to all surface waters.** In this option, the Trash Amendments would apply to all surface waters covered by the Ocean Plan and the ISWEBE Plan. This would provide statewide consistency for trash control. However, permittees within the Los Angeles Region have made much progress towards compliance with the existing trash and debris TMDLs, so superseding the Los Angeles Water Board's Basin Plan could be counter-productive. Therefore, this approach is not recommended.
3. **Applicable to all surface waters with the exception to those covered by an existing trash and debris TMDL within the jurisdiction of the Los Angeles Water Board.** In this option, the Trash Amendments would apply to all surface waters covered by the Ocean Plan and the ISWEBE Plan with the exception of those covered by an existing trash and debris TMDLs within the Los Angeles Region. The fifteen trash TMDLs in the Los Angeles Region would continue to have more stringent provisions than the final Trash Amendments. This option is not intended to reduce statewide consistency for trash controls, as the Trash Amendments would propose similar set of compliance measures as the trash and debris TMDLs. Instead, the final Trash Amendments would build on lessons learned from the extensive trash control efforts in the Los Angeles Region. However, the final Trash Amendments would direct the Los Angeles Water Board to reconsider the scope of its trash TMDLs within one year of the Trash Amendments' effective date to consider focusing its permittees' trash control efforts on high trash generation areas rather than all areas within each permittee's jurisdiction. The reconsideration would occur for all existing trash TMDLs, except for the Los Angeles River Watershed and Ballona Creek Trash TMDLs, because those two TMDLs are approaching final compliance deadlines of September 30, 2016 and September 30, 2015, respectively. Because this approach creates statewide consistency regarding the concept of trash controls in state water while acknowledging the progress made in the Los Angeles Region, this approach is recommended.

Recommendation: The Trash Amendments should apply to all surface waters in the state with the exception of those waters within the jurisdiction of the Los Angeles Water Board that have existing trash and debris TMDLs. The Los Angeles Water Board should reconsider the scope of all existing trash TMDLs, except for the Los Angeles River Watershed and Ballona Creek Trash TMDLs (Consideration 3).

4.4 Issue 4: What should the scope of a discharge of prohibition for trash, including preproduction plastic[12], be?

Current Conditions:

There is no statewide prohibition of discharge of trash to state waters. Instead, various programs exist in parts of the state to address the elimination of trash from state waters. Region-specific NPDES permits, such as in the San Francisco Bay Region, have existing requirements to minimize trash, and trash and debris TMDLs in the Los Angeles Region have similar implementation measures. Trash control measures can range from structural controls (e.g., partial capture systems and full capture systems) to institutional controls (e.g., increased street sweeping, enforcement of litter laws, and adoption of municipal ordinances prohibiting specific products), and combinations of controls.

Through AB 258, the "Preproduction Plastic Debris Program" became effective in the California Water Code (§ 13367) on January 1, 2008. This tasks the Water Boards to implement a program to control discharges of preproduction plastics from point and nonpoint sources. Preproduction plastic can be improperly discharged during transport, packaging, and processing when proper housekeeping practices are not employed. Once spilled or released into the environment, their small size of 5 mm or less can preclude effective cleanup. In compliance with Water Code section 13367(d), the IGP contains minimum BMPs to regulate plastic manufacturing, handling, or transportation facilities.

Considerations:

1. **No Project.** The Water Boards would continue to regulate trash through either TMDLs and/or region-specific NPDES permit requirements. For preproduction plastics, the Water Boards would continue to implement AB 258 through the IGP permit, which does not cover discharges from locations such as railroad trans-loading stations. Because No Project would not meet the trash objectives to provide a consistent statewide program to address trash in state waters, this approach is not recommended.

2. **Implement the water quality objective through a conditional prohibition of discharge.** Under this option, the water quality objective for trash would be implemented through a conditional prohibition of discharge of trash directly into waters of the state or where trash may ultimately be deposited into waters of the state. The prohibition of discharge would apply to both permitted and non-permitted dischargers. Non-permitted dischargers would either comply with prohibition of discharge or be subject to direct enforcement action. Dischargers with NPDES storm water permits (i.e., MS4 Phase I, MS4 Phase II, Caltrans, IGP, and CGP), WDRs, and waivers of WDRs would comply with the prohibition through a plan of implementation contained in the respective permits. The plan

[12] California Water Code section 13367 states that "preproduction plastic includes plastic resin pellets and powdered coloring for plastics."

of implementation would provide options for permittees to choose from a variety of treatment and institutional controls to minimize the discharge of trash.

There are a wide variety of treatment and institutional controls that have been found to be effective in reducing or eliminating trash in waters. Treatment control options include full capture systems, partial capture systems, LID, and multi-benefit projects. Institutional controls are non-structural BMPs, such as street sweeping, trash collection, anti-litter educational outreach programs, and regulatory source controls.

In addition, the prohibition of discharge would specifically apply to the discharge of preproduction plastic by all manufacturers and transporters of preproduction plastics, and manufacturers that use preproduction plastics.

The conditional prohibition of discharge allows for the implementation of the water quality objective for trash through Water Board permits or through direct enforcement of non-permitted dischargers. Additionally, this option provides flexibility to permittees to determine the most effective means of trash control in light of site conditions, types of trash, and the resources available for maintenance and operation. Therefore, this approach is recommended.

3. **Outright prohibition of discharge for preproduction plastic.** This option would prohibit the discharge of preproduction plastic to waters of the state. Preproduction plastic can be as small as one millimeter, and as such it would not be caught by full capture system. Once released into the environment, drainage system, or waterway, their small size prevents effective cleanup. Because this approach does not build upon implementation efforts achieved in the IGP, a stronger alternative is recommended below.

4. **Use both the existing Industrial General Permit and an outright prohibition of discharge for preproduction plastic.** In this option, the prohibition of discharge for preproduction plastic could continue to be implemented through the IGP, as well as directly through the enforcement of the prohibition of discharge on facilities and industrial activities that are not subject to the IGP. This provides the widest and most efficient approach to controlling the discharge of preproduction plastic, and is therefore recommended.

Recommendation: The Trash Amendments should implement the water quality objective through a conditional prohibition of discharge of trash (Consideration 2). The existing IGP and an outright prohibition of discharge should be used to address the prohibition of discharge of preproduction plastic (Consideration 4).

4.5 Issue 5: Where should trash control measures be employed?

Current Considerations:

In the Los Angeles Region, fifteen TMDLs were adopted for trash and debris by either the Los Angeles Water Board and/or U.S. EPA (Table 16). The existing trash and debris TMDLs targets all land uses within the scope of the TMDL, regardless of the

trash generations rates within those land uses. In 2001, the City of Los Angeles Watershed Protection Division performed a geographical analysis of trash generation in the City of Los Angeles. The study showed that trash is most severe in Downtown LA and nearby communities where commercial, industrial, and residential land uses are predominant (City of Los Angeles 2002). According to the 2004 Trash Baseline Monitoring results in Los Angeles County, the highest trash-generating land-uses were high-density residential, mixed use urban, commercial, and industrial land uses in the Ballona Creek and Los Angeles River Watershed, respectively (County of Los Angeles Department of Public Works 2004a; 2004b).

Under the San Francisco Bay MRP, permittees are developing and implementing Short-Term Trash Load Reduction Plans. The Bay Area Stormwater Management Agencies Association (BASMAA) worked collaboratively with the San Francisco Bay MRP permittees to develop a regionally consistent method to establish baseline trash loads from their municipality. The resulting BASMAA Baseline Trash Generation Rates Project assisted the permittees in establishing a baseline by which to demonstrate progress towards trash load reduction goals. The project determined that the four land uses with the highest trash generation rates are (1) retail and wholesale, (2) high-density residential, (3) K-12 schools, and (4) commercial/services and industrial. It also developed a conceptual model for trash generation rates (EOA, Inc. 2012a). The project focused on developing baseline generation rates and categorizing the permittees' jurisdictions as high, medium, and low trash generation rates. This allows the San Francisco Bay MRP permittees to strategize and focus trash controls to effectively achieve trash load reductions. The results of the Los Angeles and San Francisco studies indicate that trash is generated at higher rates in highly populated and/or highly visited areas that attract high volumes of vehicular and pedestrian traffic.

Considerations:

1. **No Project: No prioritization regarding the location of trash controls.** In this option, there is no prioritization regarding of the location of trash control for permitted storm water dischargers. This option lacks statewide clarity and consistency for the permitting authority and permittees. Therefore, this approach is not recommended.
2. **All storm drains in all land uses regardless of trash generation rates.** In this option, all areas under the jurisdiction of the permitted storm water dischargers would require trash controls. This option would provide statewide consistency, specifically with the trash and debris TMDLs in the Los Angeles Region. However, trash reduction measures would be required in locations with low trash generation rates, and therefore very little negative impact. This option would be resource intensive when compared to the benefit derived. Therefore, this approach is not recommended.
3. **Focus trash controls on areas with high trash generation rates.** In this option, implementation of the prohibition of discharge would be focused on areas with high trash generation rates.

   The studies from the development and implementation of the trash and debris TMDLs in the Los Angeles Region found that the land uses of highest trash

generation are high density residential, commercial, and industrial land uses (County of Los Angeles Department of Public Works 2004a, Los Angeles Regional Water Board 2007f). While each municipality and country has different land use definitions and codes, an approximate 15-30 dwelling units per acre definition for high density residential is offered as an example of the dwelling unit standards used in local general plans by the Governor's Office of Planning and Research in its 2003 General Plan Guidelines (Governor's Office of Planning and Research 2003). For MS4 Phase I and Phase II permittees high trash generating land use areas or what the final Trash Amendments refer to as "priority land uses" would include: high density residential, commercial, industrial, mixed urban, and public transportation areas. Additionally, a permittee would have the ability to propose alternative equivalent land uses to continue to focus limited resources to the areas with the highest trash generation rates.

Caltrans has jurisdiction over a linear system, and the high trash generating areas under its jurisdiction are different than the priority land uses for a municipality. Based on Caltrans trash studies and consultation (Caltrans 2000, Caltrans 2004), the Adopt-A-Highway program, and the Keep California Beautiful program, the "significant trash generating areas" for Caltrans could include areas such as: (1) highway on- and off- ramps in high-density residential, commercial, mixed urban, and industrial land uses; (2) rest areas and park-and-rides; (3) state highways in commercial and industrial land uses; and (4) other mainline highway segments that can be identified by Caltrans through pilot studies and/or surveys.

In comparison to MS4 Phase I, MS4 Phase II, and Caltrans permittees, industrial facilities or construction sites with NPDES permits are substantially smaller in size. Thus, IGP and CGP permittees would have the ability to control trash for all storm water discharges and authorized non-storm water discharges in their jurisdiction.

Because the Los Angeles and San Francisco studies teach that prioritization of the areas with the highest trash generation rates will substantially reduce the discharge of trash to surface waters while maximizing the allocation of trash control resources, this approach is recommended.

Recommendation: Focus trash controls to areas with high trash generation rates (Consideration 3).

4.6 Issue 6: What implementation measures should be employed for trash control in NPDES storm water permits (i.e., point sources)?

Current Considerations:

Trash is currently addressed through the water quality objectives in basin plans and water body specific TMDLs (Table 15). There is a lack of statewide consistency regarding how the water quality objectives are implemented in NPDES permits. Each NPDES storm water permit has a varying set of requirements, ranging from minimal institutional controls, such as street sweeping and education, to control of the entire jurisdiction's discharge of trash through treatment and institutional controls.

For example, in the Los Angeles Region, fifteen TMDLs were adopted for trash and debris by either the Los Angeles Water Board and/or U.S. EPA (Table 16). Implementation plans for point source responsible parties to achieve waste load allocations vary slightly but are based on phased percent reduction goals that can be achieved either implementing full capture systems within all land uses or implementing other treatment and/or non-structural BMPs to comply with the TMDL. Under the San Francisco Bay MRP, compliance with the discharge prohibition and trash-related receiving water limitations is met through a timely implementation of control measures, BMPs and any trash reduction ordinances or mandatory full trash capture systems to reduce trash loads from MS4s by set percent reductions over three phases.

State Water Board MS4 Phase II (Order No. 2013-001) and Caltrans (Order No. 2012-0011) permits have street sweeping and education requirements. The CGP prohibits the discharge of any debris from construction sites, and encourages the use of more environmentally safe, biodegradable materials on construction sites to minimize the potential risk to water quality. The IGP contains minimum BMP provisions to regulate the discharge of preproduction plastic from manufacturing, handling, or transportation facilities.

Considerations:

1. **No Project: No establishment of implementation measures for NPDES storm water permits.** An absence of implementation measures in the final Trash Amendments would mean that no trash control guidance would be provided to the Water Boards when reissuing their NPDES storm water permits. MS4 Phase I and MS4 Phase II permits could require the reduction of trash in their storm water discharges to the Maximum Extent Practicable. IGP and CGP permittees would be left to a myriad of different standards depending on the site, receiving waters, listing and TMDL status, and basin plan language, resulting in unclear permitting requirements and the potential for trash discharges to not be effectively prohibited.

   This approach is not recommended because of the potential lack of consistency regarding trash control across NPDES storm water permits.

2. **Require the sole use of full capture systems.** Under this option, all permitted storm water dischargers would implement the use of full capture systems to reduce and eliminate trash discharged into the water bodies of California. The definition of full capture systems could mirror the same definition as provided in the Los Angeles River Watershed trash TMDL (Los Angeles 2007f). The definition is as follows:

   > *"A full capture system is treatment control (either a single device or a series of devices) that traps all particles that are 5 mm or greater, and has a design treatment capacity that is either: a) of not less than the peak flow rate, Q, resulting from a one-year, one-hour, storm in the subdrainage area, or b) appropriately sized to, and designed to carry at least the same flows as, the corresponding storm drain."*

Installation of full capture systems would demonstrate compliance for the relevant drainage area, provided that the full capture systems were adequately designed, sized, installed, and maintained. The installation of a full capture system by a permittee would not establish any presumption that the system was adequately sized, and the Water Boards would reserve the right to review sizing or other data in the future to validate that a system would satisfy the definition of a full capture system. Maintenance records indicating trash loads removed and overall system efficiency would be reported regularly and made available for inspection by the regional water boards and public viewing.

The maintenance of such systems on private properties, especially those which have been demonstrated to have extensive internal drainage systems with multiple storm drain inlets (e.g., schools, sports complexes, residential/ industrial/ commercial developments) would also be addressed in this option.

This option would require that all NPDES storm water permittees to install full capture systems without other options to control trash. This option does not take into consideration particular conditions within jurisdictions or sites. This could cause an undue burden on areas and communities that would better benefit from focusing their resources on more cost-effective methods of trash control. Therefore, this approach is not recommended.

3. **Require the sole use of institutional controls.** In this option, NPDES storm water permits would contain requirements that permittees comply with the prohibition of discharge through the sole use of institutional controls (such as street sweeping, clean-up events, education programs, additional public trash cans and increased collection frequency expanded recycling and composting efforts, and adoption of regulatory source controls). This option would meet the goal of preventing trash from entering state waters and provide statewide consistency. However, permittees should have flexibility to determine the most effective means of controlling trash because of particular conditions of sites, types of trash, and the resources available for maintenance and operation. Therefore, this approach is not recommended.

4. **Establish a dual alternative "compliance Track" approach.**

In this option, implementation of the prohibition of discharge would be tailored for each NPDES storm water permit category.

MS4 Phase I and Phase II Permits

For MS4 Phase I and Phase II permits, implementation of the prohibition of discharge would focus on areas with high trash generation rates. Based on Los Angeles and San Francisco studies, the municipal areas with high trash generation rates are identified as "priority land uses". The "priority land uses" would consist of high density residential, industrial, commercial, mixed urban and public transportation stations or equivalent alternative land uses.

As each Phase I and Phase II MS4 has individual site-specific characteristics, permittees could comply with the prohibition of discharge of trash through one of two compliance Tracks.

Under Track 1, permittees would install a network of full capture systems for all storm drains that capture runoff from one or more "priority land uses".

Under Track 2, permittees would install, operate, and maintain a combination of controls (structural and institutional), as long as the combination of controls achieves the same performance results as compliance under Track 1, namely full capture system equivalency. Structural controls could include any combination of full capture systems, other treatment controls, such as LID, and multi-benefit projects.

Caltrans

For the Caltrans permit, implementation of the prohibition of discharge world focus on "significant trash generating areas", which may include area such as: on- and off-ramps in "priority land uses", rest areas and park-and-rides, state highways in commercial and industrial land uses and other segments identified by Caltrans. As Caltrans is a linear system, exclusive use of full capture systems might not be appropriate to achieve the water quality objective for trash. Caltrans would comply with requirements similar to Track 2 to develop and execute an implementation plan to install, operate, and maintain full capture systems, other treatment controls (e.g., partial capture systems and LID), or institutional controls, and/or multi-benefit projects.

IGP/CGP

In comparison to jurisdictions under MS4 Phase I, Phase II and Caltrans permits, industrial facilities or construction sites with NPDES permits are substantially smaller in size. Thus, IGP and CGP permittees would comply with an outright prohibition of discharge trash from all storm water discharges and authorized non-storm water discharges. If the industrial or construction permittee, however, can demonstrate that it is unable to comply with the outright prohibition of discharge, then the permittee may comply through one of two Tracks.

Under Track 1, the permittee would install, operate, and maintain full capture systems for storm drains that service the facility or site.

Under Track 2, the permittee would develop and execute an implementation plan that committed to any combination of controls, such as full capture systems, other treatment controls (e.g. partial capture systems and LID), institutional controls, and/or multi-benefit projects to achieve the same performance results as installation, operation and maintenance of full capture systems would achieve.

A dual alternative "compliance Track" approach tailored to each NPDES storm water permit category would provide flexibility to permittees to determine the

most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation. This option is therefore recommended.

Recommendation: Implement the water quality objective and prohibition of discharge with a dual alternative "compliance Track" approach tailored to each NPDES storm water permit category (Consideration 4).

4.7 Issue 7: What implementation measures should be employed for trash from nonpoint sources (such as open space recreational areas)?

Current Conditions:

Currently, many open space recreational land uses, such as beaches, marinas, campgrounds, and picnic areas experience intensive use and littering. These are often not covered by MS4 permits.

In the Los Angeles Region, the fifteen trash and debris TMDLs address discharges from nonpoint sources through load allocations. At present, the load allocations are implemented through a conditional waiver from waste discharge requirements. Nonpoint source dischargers may achieve compliance with the load allocations by implementing a minimum frequency of assessment and collection/best management practice (MFAC/BMP) program. The MFAC/BMP Program includes an initial minimum frequency of trash assessment and collection and suite of structural and/or non-structural BMPs.

Considerations:

1. **No Project: No establishment of implementation measures for nonpoint sources.** Without statewide implementation measures for trash control for nonpoint sources, nonpoint sources of trash would continue to either lack implementation provisions or contain load allocation within individual water body TMDLs. Because No Project would not meet the trash objectives to provide a consistent statewide program to address trash in state waters, this approach is not recommended.

2. **Assessment, collection and management practices for trash control would be required of all nonpoint source dischargers.** Nonpoint source dischargers would be required to develop and implement a program of management practices for control of trash within a WDR or a waiver of WDR. Management practices could include enforcement of litter laws, education, recycling programs, more or better trash receptacles, and/or more frequent servicing of trash receptacles. Assessment, collection and management practices may include initial and annual assessments of trash generation, a determination of collection frequency necessary to meet the water quality objective, and a suite of structural and/or nonstructural management practices that prevent trash from entering or accumulating in waters of the state.

   The discharger would be required within a WDR or a Waiver of a WDR to facilitate the initial annual assessment collection and disposal of all trash found in or adjacent to surface waters, including along shorelines, channels, or

river/stream banks, and would implement an initial suite of BMPs based on current trash management practices in land areas that are found to be sources of trash to a water body.

Considering regions with large publicly owned rural areas, it may be most appropriate to address nonpoint source trash on federal and state-owned lands through State Water Board Management Agency Agreements or Memoranda of Understanding with the corresponding land management agencies and/or through statewide waivers or discharge permits.

In regards to responsible jurisdictions, the responsibility of collection and disposal of trash extends to upstream land owners as well as shoreline owners.

One drawback to requiring this approach in all jurisdictions is that most open space land usage is not a significant generator of trash. Requiring this level of effort for large swaths of public land would not be cost-effective or result in significant trash reductions. Certain high usage nonpoint source areas, however, such as beaches, marinas, campgrounds, and picnic areas, often experience substantial littering. Therefore, this approach is not recommended.

3. **Trash control measures for nonpoint source dischargers would be each Water Boards' discretion.** Statewide, nonpoint source discharges of trash cause less of an impact to state water than do point sources; however, at the local or regional level nonpoint sources can be a substantial source of trash. These areas may include high usage campgrounds, picnic areas, beach recreation areas, and marinas, which can be subject to WDRs or conditional waivers of WDRs. These types of areas would be assessed by the Water Boards to determine if trash controls are necessary. For such areas determined to require trash controls within a WDR or waiver of a WDR, management practices could include enforcement of litter laws, education, recycling programs, more or better trash receptacles, and/or more frequent servicing of trash receptacles. This approach is recommended as it targets regional regulation of the discharge of trash from locations with high trash generating rates.

Recommendation: Trash control measures for nonpoint sources that generate large amounts of trash at the local or regional level would be at the Water Boards' discretion (Consideration 3).

4.8 Issue 8: How should the Trash Amendments address time schedules?

Current Conditions:

In accordance with the California Water Code section 13242, implementation programs for achieving water quality objectives shall include a description of necessary actions, a time schedule for actions to be taken, and a description of surveillance to be undertaken to determine compliance with the water quality objectives. All compliance schedules in NPDES storm water permits (i.e., MS4 Phase I, MS4 Phase II, Caltrans, IGP, and CGP) need to follow the Policy for Compliance Schedules in NPDES Permits as adopted by the State Water Board on April 15, 2008 (Resolution No. 2008-0025). TMDL compliance schedules are adopted by the applicable regional water board.

Considerations:

1. **No Project: No time schedule.** This option would leave policies and practices as they are currently under permits and TMDLs. If this option is selected, then compliance schedules would continue to vary among regions, resulting in statewide inconsistency. Therefore, this approach is not recommended.

2. **Require immediate compliance.** Immediate compliance could be required for all permittees except those operating under existing trash and debris TMDLs in the Los Angeles Region. This alternative may be unpopular with permittees that are unfamiliar with trash monitoring and implementation and may find immediate compliance difficult to achieve; their inability to meet the proposed objective may result in enforcement actions that might otherwise have been avoided through the adoption of compliance schedules. Therefore, this approach is not recommended.

3. **Adopt a single statewide time schedule for all categories of permits.** This alternative would designate a single specific time schedule during which all permittees, regardless of category, would be required to implement necessary controls in order to achieve compliance. For example, all permittees may be required to come into full compliance within a single permit cycle. This might require a planning and funding burden for municipalities committing to the installation of certified full capture systems. Due to the differences in the size and scope of the jurisdiction of storm water permittees, this approach is not recommended.

4. **Adopt different statewide time schedules for different categories of permits.** This alternative would designate specific amounts of time during which different categories of NPDES permittees would be required to achieve compliance. For MS4 permittees with regulatory authority over priority land uses, compliance schedules would be set at ten years of the effective date of the first implementing permit with a cap of fifteen years from the effective date of the Trash Amendments for achieving full compliance. Ten years would allow for up to two permitting cycles. The second permit could build on the first permit with lessons learned from permittees' trash control efforts. The fifteen year cap provides certainty of a full-compliance end date, and also gives Water Boards up to five years to incorporate trash requirements into their respective permits. For Caltrans, the time schedule would be based on the effective date of the implementing NPDES permit with a ten-year compliance schedule. For permittees under the IGP and CGP, full compliance would be accomplished as specified by the time schedule set in the first implementing permit. To allow for differences in NPDES permit types, this approach is recommended.

Staff Recommendation: Adopt different statewide time schedules for different categories of permits (Consideration 4).

4.9 Issue 9: Should time extensions be provided for employing regulatory source controls?

Current Conditions:

California is the leader in implementing local ordinances with goals of reducing trash. The two types of local government ordinances focus on single-use disposable items, such as expanded polystyrene foam and single-use carryout bags. At least 65 jurisdictions have either banned extended polystyrene foam food containers completely or have prohibited use by government agencies or at public events. A few jurisdictions that have banned or partially banned polystyrene for takeout food packaging, which includes the City and County of San Francisco, Los Angeles County, Sonoma County, the City of Malibu, and the City of Berkeley. In 2006, the City and County of San Francisco passed a ban on single-use carryout bags in grocery stores and pharmacies. Since then, at least 72 local jurisdictions adopted city and county ordinances for single-use carryout bags. Most ordinances have a paper bag fee (10-25 cents) as well as a ban on plastic due to the desire to promote reusable bags as the bag of choice.

Considerations:

1. **No Project: No allowance for time extensions to create incentives for employing regulatory source controls.** Regulatory source controls are a subset of the suite of institutional controls that a MS4 permittee may utilize to control trash under Track 2. Therefore, additional time for final compliance may not be warranted to create an incentive for adoption of an ordinance that may also be employed for final compliance with the prohibition of discharge.

2. **Provide a time extension for new regulatory source control ordinances.** The aim of adopting regulatory source controls is to remove a specific type of item from the waste stream. Regulatory source controls require intensive collaboration and support among local governments, public, and retailers. This process can take several years to adopt and become effective. Providing a time extension for final compliance would provide an additional incentive for a local government to pass regulatory source control ordinances. Under this consideration, the time extension would only be afforded to municipal permittees that pass an ordinance following the effective date of the Trash Amendments. Limiting the time extension to only new regulatory source controls would have the effect of penalizing municipalities that have already adopted regulatory source control ordinances to control trash.

3. **Provide a time extension for regulatory source control ordinances enacted up to three years prior to the effective date of the Trash Amendments.** Because regulatory source controls require intensive collaboration and support among local governments, public, and retailers, and can take several years to adopt and become effective, providing a time extension for final compliance would provide an additional incentive for a local governments to adopt regulatory source control ordinances. Extending the time extension to municipalities that have passed regulatory source controls prior to the effective date of the Trash Amendments provides statewide consistency and equal benefits to all municipal

permittees who have taken effort to reduce trash with regulatory source controls. For the time extension to be granted, however, a regulatory source control would need to take effect with three years of the effective date of the Trash Amendments in order to achieve performance results with the compliance schedule.

Recommendation: This Issue is being proposed as an option for State Water Board consideration in order to receive public comment and feedback on the pros and cons of this Issue. After receiving public input on the potential advantages and disadvantages to this approach, the recommendation is to not allow time extensions for a MS4 permittee's adoption of regulatory source controls (Consideration 1).

4.10 Issue 10: How should the Trash Amendments structure monitoring and reporting of trash control efforts?

Current Conditions:

In accordance with the California Water Code section 13242, implementation programs for achieving water quality objectives shall include a description of necessary actions, a time schedule for actions to be taken, and a description of surveillance to be undertaken to determine compliance with the water quality objectives.

Considerations:

1. **No Project: No monitoring or reporting required above what is already required.** This approach would be consistent with any monitoring or reporting that is currently required by regional water boards. Although it would not cost permittees any additional resources, it would be insufficient to evaluate compliance with the final Trash Amendments and would run counter to California Water Code section 13242. Therefore, this approach is not recommended.

2. **Monitoring and cleanup in receiving waters by all permittees, regardless of method of compliance.** There are several approaches to monitoring that may be employed:

    a. **Minimum frequency of assessment and collection (MFAC).** The MFAC program includes an initial minimum frequency of trash assessment and collection. The MFAC program would include collection and disposal of all trash found in the receiving waters and shoreline. The initial minimum frequency may be established based on seasonal use of the area, regionally-specified storm sizes, and after major public events at certain locations, such as the county fairgrounds.

    b. **Establishment of Daily Generation Rate.** An area's trash discharges may be estimated using a mass balance approach, based on the daily generation rate for the specific area. The daily generation rate is the average amount of trash deposited within a specified drainage area over 24-hour period. The daily generation rate can be used in a mass balance to estimate the amount of trash discharged during a rain event.

The daily generation rate may be determined by local jurisdictions from direct measurement of trash deposited in the drainage area during any 30-day period from June 22nd to September 22nd of a given year and recalculated every year thereafter. This three-month period is assumed to encompass high outdoor activity when trash is most likely to be deposited on the ground.

Accounting of daily generation rate as well as trash removal via street sweeping, catch basin clean outs, garbage and cigarette butt receptacles, etc. would be tracked in a central spreadsheet or database to facilitate the calculation of discharge for each rain event. The spreadsheet and/or database would be available to the Water Boards for inspection during normal working hours. The database/spreadsheet system would allow for the computation of calculated discharges and could be coordinated with enforcement.

c. **Alternate compliance monitoring programs.** Water Boards could approve, at their discretion, alternative compliance monitoring programs upon finding that an alternative program would provide a scientifically-based estimate of the amount of trash discharged from the storm drain system.

These approaches are not prescriptive as each permittee will have a unique implementation strategy, and the monitoring approach needs to be suited for each strategy.

3. **Monitoring and reporting tailored to the type of compliance.**

As the compliance options vary among NPDES permits for storm water discharges, the monitoring and reporting options could be tailored to the type of compliance. Within this option under consideration, the balance between the need for consistency and flexibility would be achieved through standardized objectives in the monitoring program. The final Trash Amendments could establish minimum monitoring and reporting provisions, and Water Boards could include more extensive provision in implementing permits.

MS4 permittees complying under Track 1 would provide a report to the applicable Water Board demonstrating installation, operation, and maintenance of full capture systems on an annual basis. MS4 permittees complying under Track 2 would develop and implement annual monitoring plans to demonstrate effectiveness of the controls and compliance with full capture system equivalency. This requires that permittees collect monitoring data about existing trash levels prior to implementation of institutional controls to set a baseline for comparison to trash levels after implementation of controls. Monitoring reports developed by MS4 Permittees should consider the following questions:

1) What type of and how many treatment controls, institutional controls, and/or multi-benefit projects have been used, and in what locations?

2) How many full capture systems have been installed (if any), and in what locations have they been installed, and what is the individual and cumulative area served by them?
3) What is the effectiveness of the total combination of treatment controls, institutional controls, and/or multi-benefit projects employed by the permittee?
4) Has the amount of trash discharged from the MS4 decreased from the previous year? If so, by how much? If not, explain why.
5) Has the amount of trash in the MS4's receiving water(s) decreased from the previous year? If so, by how much? If not, explain why.

Caltrans should develop and implement annual monitoring plans to demonstrate effectiveness of the controls and compliance with full capture system equivalency. Monitoring reports developed by Caltrans should consider the following questions:

1) What type of and how many treatment controls, institutional controls, and/or multi-benefit projects have been used, and in what locations?
2) How many full capture systems have been installed (if any), and in what locations have they been installed, and what is the individual and cumulative area served by them?
3) What is the effectiveness of the total combination of treatment controls, institutional controls, and multi-benefit projects employed by Caltrans?
4) Has the amount of trash discharged from Caltrans' MS4 decreased from the previous year? If so, by how much? If not, explain why.
5) Has the amount of trash in the receiving waters decreased from the previous year? If so, by how much? If not, explain why.

Industrial and construction permittees would not have specific monitoring requirements. The controls and measures used to comply with the prohibition of discharge can be required to be reported and included in the Storm Water Pollution Prevention Plan.

The tailored approach would provide flexibility to Water Board permit writers to design monitoring programs that reflect the compliance methods elected by permittees along with regional characteristics. For statewide consistency, all monitoring programs would be striving to answers the same fundamental questions. Therefore, this approach is recommended.

Recommendation: Monitoring and reporting should be tailored to the type of compliance (Consideration 3).

5 REASONABLY FORESEEABLE METHODS OF COMPLIANCE

The final Trash Amendments do not specify a manner of compliance and accordingly, the actual compliance strategies would be selected by the local agencies and other permittees. Although the final Trash Amendments do not mandate the manner of compliance, the State Water Board's SED for the proposed project is required to include an analysis of the reasonably foreseeable methods of compliance with the project (see 23 CCR 3777; Pub. Res Code § 21159). Several of the reasonably foreseeable methods of compliance are well known, and a discussion of a reasonable range of these methods of compliance and design parameters is presented below. In addition, the possible environmental effects that could be caused by these compliance methods are presented in Section 6.

During the development of the final Trash Amendments, numerous stakeholder and public meetings were held during which the manner of compliance was discussed. Some of the most likely measures discussed included treatment controls (e.g., partial capture systems and full capture systems) and institutional controls (e.g., increased street sweeping, enforcement of litter laws, and development of municipal ordinances prohibiting food packaging with polystyrene materials). This section provides a description of storm water systems and of sites where treatment controls might be placed to comply with the final Trash Amendments. In addition, this section discusses treatment control alternatives, such as catch basin inserts and vortex separators, and institutional control alternatives, such as street sweeping, public education, and ordinances.

5.1 Treatment Controls - Storm Drain Systems

Underground storm drains are typically designed to carry the runoff from up to a ten-year storm event. Open channels are typically designed to carry the runoff from up to a 50-year storm event, and in some cases, this design flow rate is increased to accommodate debris laden flows. The rate of runoff a drain can safely convey, expressed in cubic feet per second, is called its peak capacity. While a drain's capacity would not diminish over the years, the amount of runoff generated by a given storm event can increase over the years. This potential increase could be due to a number of factors including: an increase in the amount of development and impervious surfaces within the tributary area, and the addition of smaller upstream tributary drains that deliver runoff more quickly to the collecting drain. The potential for such increases at a particular site is a consideration in the applicability of a particular treatment control method of compliance with the final Trash Amendments.

Storms are commonly referred to by their "frequency." For example: a one-year storm event, having a long-term probability of happening at least once a year is a very common occurrence. On the other hand, a 50-year storm event is a much rarer occurrence, with a long-term probability of occurring only once in 50 years. The actual rate of runoff from storms of a given size or frequency depends on a number of factors, including the intensity and duration of the rainfall, the size of the tributary area, the topography, the soil types within the tributary drainage area, and the overall connected imperviousness of the tributary area.

5.1.1 Reasonably Foreseeable Methods of Compliance: Design and Installation of Devices for Trash Removal

The treatment controls likely to be used for compliance with the final Trash Amendments are devices that would be installed in existing storm drains. Older storm drains may be physically limited in expansion capability and maintenance right-of-way and the complying permittees must consider these factors when designing and siting new trash devices within existing facilities.

A factor to consider when designing and siting devices is drain capacity. For instance, if a treatment control is to be installed mid-drain, the storm drain system must have sufficient capacity, or the storm drain must be modified to maintain sufficient capacity. Start-of-pipe devices such as catch basin opening screens and excluders or end-of-pipe devices such as trash racks, fabric mesh socks and wire screens, may have less impact on hydraulic drain capacity under certain hydraulic conditions than devices installed mid-pipe. The smaller the amount of flow a retrofitted device or system must treat; the less hydraulic impact it will have on the storm drain system as a whole.

In addition, the definition of "full capture system" in the final Trash Amendments includes reference to capturing trash particles that are the size of 5 mm or greater. The 5 mm size limit is approximately the diameter of a pencil or cigarette butt. A smaller particle size implies a smaller filtering mesh or screen size, and a smaller mesh or screen size implies more resistance to the flow passing through it. When designing and siting controls, assuming that a certain percentage of a screen would be blocked by trash during a storm event, the total area of the screen openings would have to be larger than the area of the drain's cross section by that percentage.

In addition to the requirement of removing litter with a size of 5 mm, the design of a full capture system should take into account reliability and performance sensitivity under varying loads. Based on current industry standards for existing facilities, a typical full capture system is expected to meet the following minimum criteria:

- It must not adversely affect the level of flood protection provided by the drainage system;
- It should be vector-resistant, or not pond water for more than 48 hours after the end of a storm;
- It should not worsen water quality by re-suspending trash, sediments, or bacteria, or by leaching heavy metals or semi-volatile organic compounds;
- It should have no plastic or fiberglass interior parts that would break or shatter in the path of direct flow;
- Its pipes, conduits and vaults should not be more than 32 feet below ground, and should be easily accessible by a vacuum truck hose for clean-out, be reasonably accessible by a qualified maintenance worker, have provisions for confined space entry and safety guard rails around the rim; and
- It should provide means to block off the inflow and tail water backflow to isolate the device for safe maintenance and repair of the unit.

5.1.2 Catch Basins and Catch Basin Inserts

Treatment controls likely to be used for compliance with the final Trash Amendments may include installation of catch basins or inserts within existing catch basins. A catch basin or storm drain inlet is an inlet to the storm drain system that typically includes a grate or curb opening where storm water enters the catch basin, and a sump to capture sediment, debris and associated pollutants. They are also used in combined sewer watersheds to capture floatables and settle some solids. Catch basins act as pretreatment for other treatment practices by capturing large particles. The performance of catch basins at removing sediment and other pollutants depends on the design of the catch basin (e.g., the size of the sump), and routine maintenance to retain the storage available in the sump to capture sediment.

Catch basins are used in drainage systems throughout the United States. Many catch basins, however, are not designed for trash capture. Ideal application of catch basins as a reasonably foreseeable method of compliance with the final Trash Amendments is as pretreatment to another storm water management practice. Retrofitting existing catch basins may help to improve their performance substantially. A reasonably foreseeable method of compliance may include a simple retrofit of catch basins to ensure that all catch basins have a hooded outlet to prevent floatable materials, such as trash and debris, from entering the storm drain system.

The performance of catch basins is related to the volume in the sump (i.e., the storage in the catch basin below the outlet). Optimal catch basin sizing criteria which relates all catch basin dimensions to the diameter of the outlet pipe.

Maintenance of the installed catch basins is expected to include trash removal if a screen or other debris capturing device is used, and removal of sediment using a vactor truck. Operators will need to be properly trained in catch basin maintenance. When sediment fills greater than 60 percent of their volume, catch basins reach steady state. Therefore, storm flows may then bypass treatment and may also re-suspend sediments trapped in the catch basin. Regular clean-outs will typically be required to retain the volume in the catch basin sump available for treatment of storm water flows.

At a minimum, catch basins would be expected to be cleaned once or twice per year to maintain effectiveness (Aronson et al. 1993). Two studies suggest that increasing the frequency of maintenance can improve the performance of catch basins, particularly in industrial or commercial areas. One study of 60 catch basins in Alameda County, California, found that increasing the maintenance frequency from once per year to twice per year could increase the total sediment removed by catch basins on an annual basis (Mineart and Singh 1994). These results suggest that, at least for industrial uses, more frequent cleaning of catch basins would improve removal efficiency. The cost of operation and maintenance would, however, be expected to increase with installation of catch basins (or inserts).

Within a catch basin, a "catch basin insert" may also be perforated metal screens placed horizontally or vertically within a catch basin. There are a multitude of inserts of various shapes and configurations. One device suitable for compliance with the final Trash Amendments is a grated plastic box or metal screen that fits directly into the

curbside catch basin. As the storm water passes through the box, trash, rubbish, and sediment remain in the box while storm water exits.

Metal screening inserts may be deployed in a vertical or horizontal configuration within the catch basin for the retention of trash. These inserts would be expected to maximize much of the existing catch basin volume and concurrently pass through flow.

Catch basin screens design is expected to be open to curb flow in order to reduce the potential for flooding during wet weather. For example, American Storm Water has a catch basin screen with an automatic retractable screen gate design which can be adjusted to "un-lock" and open up to storm water curb flow from 20 percent to 60 percent of curb height. This device which is termed the “Surf Gate” is also designed with a special "locking" application, which keeps children safe and large debris from getting into the catch basin.

Grate inserts may also be utilized as a compliance method and are typically found in parking lots, alleys, and sloping streets. Inserts installed in these basins mainly capture trash smaller than an inch due to the standardized grating spacing. Inserts designed for curb opening basins would be best suited for capturing larger debris like water bottles and plastics bags, as the opening under the curb may range from four to eight inches.

5.1.3 Vortex Separation Systems

The treatment controls likely to be used for compliance with the final Trash Amendments may include installation of vortex separation system units. Vortex separation systems units are designed to capture almost all trash deposited into a storm drain system. A vortex separation system unit diverts the incoming flow of storm water and pollutants into a pollutant separation and containment chamber. Solids within the separation chamber are kept in continuous motion, and are prevented from blocking the screen so that water can pass through the screen and flow downstream. Solid pollutants including trash, debris and coarse sediments are retained in a centrally located solids catchment chamber with the heavier solids ultimately settling into the base of the unit or sump. This would be expected to be a permanent device that would be retrofitted for oil separation as necessary. Outfitting a large drainage with a number of large vortex separation system units may be less costly than using a larger number of small vortex separation system units.

An example of vortex separation system technology is the Continuous Deflective Separation unit, developed by Continuous Deflective Separation Technologies, Inc. When applied to storm water, the Continuous Deflective Separation unit is designed to capture and retain sediments, floatable and settleable trash and debris over a wide range of flow conditions (up to 300 cubic feet per second). The fine screens used in storm water applications vary in size from 1.2 – 4.7 millimeter (0.048 - 0.185 inches). The Continuous Deflective Separation units are placed underground and would be expected to be utilized in highly urbanized areas where space is limited. In general, a Continuous Deflective Separation unit typically occupies about 4-1/2 square feet of surface area for each cubic feet per second that it treats, with the bulk of the installation being well below grade. The solids would be removed using a vactor truck, a removable basket, or a clam shell depending on the user's preference and size of the unit. For new installations, it is expected that continued monitoring of the condition of

the unit would be required after every runoff event for the first 30 days. Based on the behavior of the unit relative to storm events, inspections may be scheduled on projections using storm events vs. pollutant buildup. For ongoing operation, unit inspections are expected to occur at least once every 30 days during the wet weather season. As part of the expected maintenance, floatables would be removed and the sump cleaned when the sump is above 85 percent full. Also, at least once a year, it is expected that the unit would be pumped down and the screen carefully inspected for damage and to ensure that the screen is properly fastened.

The City of San Jose analyzed the relative capital and operation/maintenance cost of small devices (connector pipe screens and automatic retractable screens at the curb) and the hydrodynamic separator capturing trash from an area of 1000 acres, over 10 and 20-year time frames, accounting for repair and replacement of small units and increases in labor costs. The City of San Jose found that small devices were more economical in the first decade, but the cost advantage disappears in the second decade (San Francisco Estuary Partnership 2014).

5.1.4 Trash Nets

A treatment control likely to be used for compliance with the final Trash Amendments may include installation of trash nets. These are devices that use the natural energy of the flow to trap trash, floatables and solids in disposable mesh nets. One type of trash net, developed by Fresh Creek Technologies, Inc. may be reasonably foreseeable as a method of compliance because it was certified by the Los Angeles Water Board on April 29, 2004 for use on the Los Angeles River Watershed TMDL (Dickerson 2004). Currently, three modular models are available from Fresh Creek Technologies, Inc.:

- The *In-Line Netting* TrashTrap® model is a modular chamber containing the capture apparatus for holding the disposable nets. The system is installed in-line with the outfall pipe. A prefabricated chamber minimizes site work and cost. Inline units are underground and out of sight, particularly well-suited for densely populated locations.
- The *End-of-Pipe Netting* TrashTrap® model is installed at the end of the pipe. These units are often installed as a retrofit to an existing outfall structure. When this opportunity exists, the End-of-Pipe system is highly cost effective.
- The *Floating Netting* TrashTrap® model is a modular pontoon structure that floats at the end of the outfall. Floating units are an economical solution where site conditions (minimum water depth of two feet and a relatively sheltered site) permit its use. They are often installed with only minor modifications to the existing site.

Model selection and sizing of trash nets would be based on site-specific criteria including peak volume, peak velocity, and trash/floatables volume. Modularity and capacity of the installation would be achieved by varying the number of nets in the system. Installations, consistent with current practice, are expected to range from single net units to systems with 10 nets handling flows above 3,000 cubic feet per second. The standard mesh net would handle flows up to 30 cubic feet per second or 22 million gallons per day and velocities up to five feet per second at the mouth of the

net. A truck with a hoist for changing the nets, and a container for holding the full nets would be expected for servicing trash nets. A crew of two accomplishes the net change out in a matter of a few minutes. Road access to the site would be required for the service vehicle.

The *End-of-Pipe* nets are another control that is reasonably foreseeable as a method of satisfying the final Trash Amendments because of the low cost, the ease of maintenance, and also because the devices can be relocated after a set period at one location (provided the pipe diameters are the same). With limited funding, installation could be spread over several land uses and lead to valuable monitoring results. For smaller systems the total installation time can be as short as one day. Since the devices require attachment to the end of a pipe, this can severely reduce the number of locations within a drainage system that can be monitored. In addition, these nets cannot be installed on very large channels (seven feet in diameter is the maximum).

5.1.5 Gross Solids Removal Devices

A treatment control likely to be used for compliance with the final Trash Amendments may include installation of Gross Solids Removal Devices. Several types of these devices were developed by Caltrans to be retrofitted into existing highway drainage systems or implemented in future highway drainage systems. Gross Solids Removal Devices are structures that would remove litter and solids five millimeters (0.25 inches nominal) and larger from the storm water runoff using various screening technologies. Overflow devices would be expected to be incorporated; usual design of the overflow release device is based upon the design storm for the roadway. Though designed to capture litter, the devices would also be expected to capture vegetation debris. The devices described below are generally limited to accept flows from pipes 30 inches in diameter and smaller.

To assess the feasibility of utilizing Gross Solids Removal Devices, Caltrans developed a Pilot Program with multiple phase pilot studies. A pilot study generally consisted of one or more devices that were developed from concept, advanced through design and installation, and placed in service for two years of testing to evaluate overall performance (Caltrans 2003). Based on the Pilot Program, three types of Gross Solids Removal Devices have been shown the most promising and are therefore considered within the reasonably foreseeable methods of compliance: linear radial and two versions using an inclined screen. On October 7, 2004, the Los Angeles Water Board certified two Caltrans' Gross Solids Removal Devices, Linear Radial – Configuration 1 (LR1 I-10) and Inclined Screen – Configuration 1 (IS1 SR-170), to comply with the Ballona Creek and Los Angeles River Trash TMDLs (Bishop 2004).

Linear Radial Device

This device is relatively long and narrow, with flow entering one end and exiting the other end. It is suited for narrow and flat rights-of-way with limited space. It utilizes modular well screen casings with 5 mm (0.25-inch nominal) louvers and is contained in a concrete vault, although it also could be attached to a headwall at a pipe outfall. While runoff flows enter into the screens, they pass radially through the louvers and trap litter in the casing. A smooth bottom to convey litter to the end of the screen sections is required, so a segment of the circumference of each screen is uncovered. The

louvered sections have access doors for cleaning with vacuum truck or other equipment. Under most placement conditions the goal would be to capture within the casing one year's volume of litter. This device has been configured with an overflow/bypass for larger storm events and if the unit becomes plugged.

Inclined Screen Devices

Two Inclined Screen Devices have been developed. Each device requires about one meter (three feet) of hydraulic head and is better suited for fill sections. In the Type 1 device, the storm water runoff flows over the weir and falls through the inclined bar rack. The screen has five millimeter maximum spacing between the bars. Flow passes through the screen and exits via the discharge pipe. The trough distributes influent over the inclined screen. Storm water pushes captured litter toward the litter storage area. The gross solids storage area is sloped to drain to prevent standing water. This device has been configured with an overflow/bypass for larger storm events and if the unit becomes plugged. It has a goal of litter capture and storage for one year. The Type 2 Inclined Screen only comes in a sloped sidewall version.

5.2 Institutional Controls

The non-structural actions likely to be used for compliance with the final Trash Amendments include institutional controls. These types of actions are methods to control trash loading to state waters and may include enforcement of existing litter laws, increased street sweeping, cleaning of storm water conveyance structures, such as catch basins and storm drain inlets, and ordinances.

Institutional controls may also offer societal benefits that are associated with reducing litter in our city streets, parks and other public areas. For example, institutional controls employed by the City of Los Angeles for the Los Angeles River Watershed trash TMDL have demonstrated a 12.5 percent reduction in the total WLA (Black & Veatch 2012). Institutional controls can typically be implemented in a relatively short period of time. The capital investment required to implement institutional controls is generally less than for full capture systems.

The final Trash Amendments define "institutional controls" as follows:

> Institutional controls are non-structural best management practices (i.e., no structures are involved) that may include, but not be limited to, street sweeping, sidewalk trash bins, collection of the trash, anti-litter educational and outreach programs, producer take-back for packaging, and ordinances.

"Regulatory source controls" was previously included within the definition of institutional controls in the proposed Trash Amendments as one of the several treatment controls that could be utilized by MS4 permittees with regulatory authority over priority land uses to comply with the prohibition of trash under Track 2. In turn, "regulatory source controls" was previously defined in the proposed Trash Amendments as:

> Institutional controls that are enforced by an ordinance of the municipality to stop and/or reduce pollutants at their point of generation so that they do not come into contact with storm water. Regulatory source controls could consist of, but not be limited to, bans of single use consumer products.

Regulatory source controls were generally proposed as a tool for MS4 permittees to enact ordinances. A primary type of regulatory source control contemplated by this Policy was a bag ban ordinance to prohibit retailers from distributing carry-out plastic bag. The proposed final Trash Amendments omit regulatory source controls (and its definition) as a method for demonstrating Track 2 compliance.

The proposed Final Staff Report retains "ordinances," however, as a permissible type of institutional control an MS4 permittee could employ to achieve compliancy with Track 2 (even though the proposed final Trash Amendments removed "regulatory source controls" as a permissible method). Contrary to ordinances or laws that prohibit distribution of plastic carry-out bags, which are typically accompanied with requirements and/or incentives to utilize reusable bags to avoid a product-substitution effect (such as Senate Bill 270), other types of product bans enacted by an ordinance, such as take-out items, may involve a substitution of the banned item. Mere substitution would not result in reduced trash generation if such product substitution would be discarded in the same manner as the banned item. Any such product ban enacted by an ordinance that would not reduce trash would not assist in achieving compliance. It is possible that an MS4 permittee's adoption of other types of ordinances could include anti-litter laws or bans on smoking that would meet the requirements.

5.2.1 Enforcement of Litter Laws

An institutional control that would likely to be used for compliance with the final Trash Amendments would be enforcement of existing liter laws. By enforcing litter laws in sensitive areas or in areas that generate substantial amounts of litter, an ultimate source of trash loading to a given water body would be reduced or eliminated. Ordinances that prohibit litter are already in place in most municipalities. For example, the Los Angeles City Municipal Code prohibits the disposal of trash anywhere such trash could pollute the storm drain system:

> No person shall throw, deposit, leave, cause or permit to be thrown, deposited, placed, or left, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, gutter, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private lot of land in the City so that such materials, when exposed to storm water or any runoff, become a pollutant in the storm drain system (City of Los Angeles Municipal Code § 64.70.02.C.1(a)).

Ensuring compliance with existing statewide and local litter laws and ordinances would eliminate the substantial adverse environmental and economic impacts from the litter, and the need for additional structural or institutional controls that generate their own nominal adverse environmental impacts.

5.2.2 Street Sweeping

An institutional control that would likely to be used for compliance with the final Trash Amendments would be continuation of or increasing street sweeping. Street sweeping minimizes trash loading to storm drain systems and water bodies by removing trash from streets and curbs. Maintaining a regular street sweeping schedule reduces the buildup of trash on streets and prevents trash from entering catch basins and the storm drain system. Street sweeping can also improve the appearance of roadways and urban areas. There are three types of street sweepers expected to be utilized for compliance with the final Trash Amendments: mechanical, vacuum filter, and regenerative air sweepers (U.S. EPA 2012b).

- Mechanical sweepers use a broom to remove particles from the street curb and a water spray to control dust. The removed particles are carried by a cylindrical broom to a conveyor belt and into a storage hopper (Federal Highway Administration 2012).

- Vacuum-assisted sweepers also use brooms to remove particles. The removed particles, however, are saturated with water and transported by a vacuum intake to the hopper. Vacuum-assisted dry sweepers use a specialized brush that allows the vacuum system to recover almost all particulate matter. A continuous filtration system prevents very fine particulate matter from leaving the hopper and trailing on the street behind the sweeper (Federal Highway Administration 2012).

- Regenerative air sweepers blow air onto the pavement and immediately vacuum it back to entrain and capture accumulated sediments. A dust separation system regenerates air for blowing back onto the pavement (Federal Highway Administration 2012).

No definitive independent studies have yet been staged to determine the best sweeping system (U.S. EPA 2012b). It is expected, however, that local agencies may use a combination of types of street sweeper to maximize efficiency (CASQA 2003a). In the Los Angeles Region, use of certain sweeper types is dictated by South Coast Air Quality Management District Rule 1186, which requires local agencies to acquire or use only respirable particulate matter certified sweepers beginning January 1, 2000. Furthermore, Rule 1186.1 requires local agencies to acquire alternative fuel or less polluting street sweepers beginning July 1, 2002 (South Coast Air Quality Management District 2006).

Increasing the frequency of street sweeping in areas with high traffic volume and trash accumulation would further reduce trash loading to the waterways. Increases in street sweeping are expected before the rainy season begins. A successful street sweeping program would be expected to include accurate recordkeeping of curb-miles swept, proper storage and disposal of street sweepings, regular equipment maintenance, and

parking policies that restrict parking in problematic areas and notify residents of sweeping schedules (CASQA 2003a).

Using modern and efficient street sweepers may reduce the need for other structural storm water controls and may prove to be more cost-effective than certain structural controls, especially in more urbanized areas with greater areas of pavement (U.S. EPA 2012b).

5.2.3 Storm Drain Cleaning

Another institutional control that would likely to be used for compliance with the final Trash Amendments would be continuation of or increasing cleaning of storm drain systems. Routine cleaning of the storm drain system reduces the amount of trash entering water bodies, prevents clogging, and ensures the flood control capacity of the system. Cleanings may occur manually or with pump eductors, vacuums, or bucket loaders. A successful storm drain cleaning program would be expected to include regular inspection and cleaning of catch basins and storm drain inlets, increased inspection and cleaning in areas with high trash accumulation, accurate recordkeeping, cleaning immediately prior to the rainy season to remove accumulated trash, and proper storage and disposal of collected material (CASQA 2003a).

5.2.4 Public Education

An additional institutional control that would likely to be used for compliance with the final Trash Amendments would be continuation of or increasing public education programs. Public education can be an effective implementation alternative to reduce the amount of trash entering water bodies. The public is often unaware that trash littered on the street ends up in receiving waters, much less the cost of abating it.

Community outreach is expected to be one way to educate the public about the effects of littering on the quality of receiving waters. Local agencies would provide educational materials to the public via television, radio, print media (e.g., brochures, flyers, and community newsletters), information hotlines outreach to educators and schools, community event participation, and support of volunteer monitoring and cleanup programs. Storm drain inlet stenciling would be another means of educating the public about the direct discharge of storm water to receiving waters and the effects of littering and dumping on receiving water quality. Stenciling can be conducted in partnership with other agencies and organizations to garner greater support for educational programs (U.S. EPA 2005).

Public education programs are already in place in some jurisdictions. Under the Los Angeles County Municipal Storm Water Permit, for example, permittees are required to implement educational storm water outreach programs (Order No. R4-2012-0175). The residential component of this program includes:

- Conducting storm water pollution prevention public service announcements and advertising campaigns.
- Distribute public education materials regarding the proper handling of waste materials.

- Maintaining a storm water website that includes educational material and opportunities for the public to participate in storm water pollution prevention and clean-up activities.
- Using culturally diverse educational strategies.

Public education materials have already been developed and are available through the Erase the Waste campaign, sponsored by the Water Boards. Erase the Waste is a public education program, working to reduce harmful storm water pollution and improve the environment of the region's coastal and inland communities. The campaign started in Los Angeles County, and materials produced during its three-year run have now been packaged for state and nationwide use. It is built around the theme, *Erase the Waste* – a positive, empowering theme that encourages all residents and stakeholders to take ownership of their communities, help reduce and prevent storm water pollution from the local landscape and "become part of the pollution solution."

The Water Boards have made available the *California Storm Water Toolbox*[13] which includes the following tools for residents, community and civic groups, educators, municipalities and public agencies:

- Advertisements, posters, collateral materials and a comprehensive Neighborhood Action Kit in English, Spanish, Chinese, Korean and Vietnamese – a comprehensive "how-to" guide to community-focused pollution prevention.
- A landmark Water Quality Service Learning Model for grades four through six that meets the state's curriculum standards.
- The Water Quality Detectives After-School Program, an adapted version of the curriculum for middle school and after school setting.
- The California Storm Water Resource Directory, an online inventory of storm water materials developed in partnership with CASQA.

5.2.5 Ordinances

Ordinances are a municipal regulation and type of institutional control. Ordinances can range from litter laws, smoking bans, to product bans. Ordinances may focus on eliminating or reducing the sources of trash by removing potential products from the waste stream. These methods focus on preventing pollution versus employing methods of controlling pollution. Across California, cities, counties, and the state have litter laws and other existing ordinances. In addition to the enforcement of existing litter laws, reasonably foreseeable methods of achieving compliance could include new litter laws and other ordinances. Contrary to ordinances or laws that prohibit distribution of plastic carry-out bags, which are typically accompanied with requirements and/or incentives to utilize reusable bags to avoid a product-substitution effect (such as Senate Bill 270), other types of product bans enacted by ordinance, such as take-out items, may involve a substitution of the banned item. Mere substitution would not result in reduced trash

[13] The *California Storm Water Toolbox* is accessible at: http://www.waterboards.ca.gov/water_issues/programs/outreach/erase_waste/index.shtml#toolbox.

generation if such product substitution would be discarded in the same manner as the banned item. Any such product ban enacted by an ordinance that would not reduce trash would not be an allowable Track 2 method to assist in achieving compliance. It is possible that an MS4 permittee's adoption of other types of ordinances could include mandatory fees on disposable item (like cups) that encourage customers to bring red-usable, and anti-littler laws or bans on smoking that would meet the requirements.

5.3 Overview of Installation, Operation and Maintenance Activities for Trash Treatment Controls

This section discusses the installation, and operation and/or maintenance activities associated with the reasonably foreseeable methods of compliance with the final Trash Amendments. This information should provide a frame of reference in determining potential environmental impacts of these alternatives described in Section 6 (Environmental Effects of the Trash Amendments) and Section 8 (Alternatives Analysis). Some reasonably foreseeable installation activities for compliance with the final Trash Amendments would consist of the installation of improvements to the storm drain system to attain "full capture". These improvements include installation of screens and inserts for catch basins, Gross Solids Removal Devices within the alignment of storm drain pipes, and trash collection nets in storm drain outlets. Temporary impacts to natural resources from these types of installation activities typically include air pollution from dust and construction equipment, increased runoff and soil erosion, and installation noise.

Installation of storm drain improvements to comply with the final Trash Amendments would likely be located throughout the developed areas of the state. The final Trash Amendments provide up to ten years to complete the installation of storm drain improvements. The installation would occur at different locations at different periods. Equipment to be installed would likely include filters, metal screen, fabric nets, and Gross Solids Removal Devices. Some of the equipment would be mounted on small steel structures. Equipment weights range from several hundred pounds to 100,000 pounds, therefore the installation rigs would range from small truck-mounted cranes to larger track-mounted units. The equipment would be electrically connected together by cable or by buss (open air copper or aluminum tubes). The installation would be either through the inlets or outlets or with the piping. Gross Solids Removal Device station sites would typically be finished with fencing around the site.

5.3.1 Storm Drain Improvement Installation Staging and Methods

Most sites for installation activities and staging would be in high density residential, mixed urban, commercial, or industrial areas, as well as public transportation stations, and along portions of State highways. Site preparation would include clearing, grubbing and grading with bulldozers and dump trucks. Access roads would be prepared concurrently with the site operations.

Catch Basin Inserts

Improvements to catch basins are expected to include concrete work, installation of filters within the catch basins and installation of screens at the catch basin inlets. These

activities entail concrete demolition and refinishing and field fabrication methods such as welding and mechanical bolting. These improvements would be located in existing catch basins within existing storm drain systems. Construction of new catch basins is not specifically required to comply with the final Trash Amendments, although damaged catch basins may require replacement or new catch basins may be an element of the discretionary compliance program under Track 2. Existing catch basins are located below sidewalks and streets with openings flush with the curb.

Catch basin improvements may include:

- Removal of manhole cover and accessing bottom of catch basin and manually inserting prefabricated catch basin inserts in the bottom or interior of the catch basin.
- Concrete demolition and removal if the entire catch basin needs replacement.
- Catch basin installation – this task pertains to catch basins that require replacement.
- Concrete drilling and welding – this task is required to install fasteners and bracing for screens and brushes at the storm drain inlets. These screens can be welded onto the installed bracing.
- Concrete finishing – to restore site after installation is completed.

Installation of catch basin improvements would likely require the following types of tools: compressor, hand power tools, hand tools, backhoe, welder, light-duty truck.

Gross Solid Removal Device and Vortex Separation System Installation

Gross Solids Removal Devices would be for new installations that are located in transportation rights of way. These devices are typically fabricated off-site and transported to the site for installation. The installation sites are typically not located in areas of sensitive receptors[14]. Installation activities are expected to include:

- Site Preparation – a flat area of sufficient size to locate a concrete equipment pad is required. Vegetation removal might be required, as well as placement of a gravel sub-base for the area. The site should be selected for access by an equipment crane, maintenance vehicles and trash collection vehicles.
- Fencing – security fencing is generally preferred for water quality treatment systems located within existing structures in watersheds. Chain link fencing is often selected which involves installation of fence poles. Fence screens are often used in areas where a Gross Solids Removal Device causes adverse visual impacts.
- Concrete pad – Gross Solids Removal Devices are generally fabricated as modular units that are transported to the site and bolted to a concrete pad. This

[14] Sensitive receptors include, but are not limited to, hospitals, schools, daycare facilities, elderly housing and convalescent facilities. These are areas where the occupants are more susceptible to the adverse effects of exposure to toxic chemicals, pesticides, and other pollutants.

task involves preparing a level sub-base, placement of rebar and forms, and pouring ready-mix concrete to form a pad of sufficient dimensions to support the Gross Solids Removal Devices.

- Gross Solids Removal Device placement – the Gross Solids Removal Devices are placed onto the concrete with an equipment crane and secured with anchor bolts.
- Pipe fitting/connection – the storm drain conveyance piping is connected to the Gross Solids Removal Device with standard plumbing connects such as unions or joints. The connections are leak tested.
- Utility service – for Gross Solids Removal Devices which require electrical service, wiring from a nearby service connector would be made to a switchbox located on the concrete pad. Appropriate conduit and wiring for outdoor service would be used.

Equipment required to install Gross Solids Removal Devices is expected to include: equipment crane, concrete mix truck, hand power tools, hand tools, backhoe, and light duty truck. Caltrans provided descriptions of installation of Gross Solids Removal Device in the report Phase I Pilot Study – Gross Solid Removal Devices (Caltrans 2003).

Trash Nets

Trash nets would be installed at the outlets of storm drains and channels. These locations are typically located within the interior of the storm drain system where there is limited public access. Installation of trash nets includes field joining techniques and may include concrete repair. Trash net installation is expected to include:

- Preparation of concrete for installation of bracing to hold trash nets. Concrete preparation may entail simple cleaning of the concrete surfaces to patching and resurfacing of areas where the trash nets are to be attached.
- Installation of net bracing – net bracing is typically installed with anchor bolts.
- Attachment of the net to the bracing – simple mechanical devices is used to attach the flexible netting to the metal bracing.

Tools required to install trash netting include: hand power tools, hand tools, backhoe, and light duty truck. Impacts to air quality from installation equipment is expected to be minimal and of a short duration, particularly if equipment is tuned and maintained in good working condition to minimize emissions of criteria pollutants and particulates. Noise impacts are expected to also be short term and are expected to be minimized through installation practices, such as using noise barriers and modified work hours.

5.3.2 Maintenance of Treatment Controls and BMPs

Maintenance activities expected to occur for compliance with the final Trash Amendments would include removing trash from catch basins, Gross Solids Removal Devices, and trash nets and providing any mechanical service and repair that may be required. Because each device is limited in the volume of trash that can be collected, it is likely that relatively light-duty trucks can be used. Additionally, there is opportunity to

consolidate the trash collected from catch basins, Gross Solids Removal Devices, and trash nets with other trash to lessen the impacts associated with transport and disposal of trash collected from storm drain improvements.

The impacts from maintenance activities associated with the final Trash Amendments are expected to be minimized through modified work hours and dust suppression methods. Spoils resulting from installation of storm drain improvements are expected to be in relatively small in quantity. These spoils are expected to be disposed of in licensed facilities.

5.4 Low-Impact Development Controls and Multi-Benefit Projects

The Storm Water Program at the Water Boards encourages the management of storm water as a resource as identified in the California Water Code section 10562. The main objective of treating storm water as a resource is to protect and restore those watershed processes that are critical to watershed health. Multi-benefit projects that infiltrate and treat storm water runoff are encouraged within MS4 Phase I and Phase II permits.

The final Trash Amendments would allow for the use of LID as part of Track 2 implementation. LID approaches attempt to mimic a site's predevelopment hydrology through a series of practices including filtering storm water with natural media, detaining storm water for infiltration into the ground, and retaining water onsite for reuse. LID is often implemented through BMPs, including conservation designs, low impact landscaping, and practices promoting improved infiltration, runoff storage, runoff conveyance, and filtration (Metres 2013).

The final Trash Amendments would also allow for the use of multi-benefit projects as part of Track 2 implementation. Multi-benefit projects should be designed to maximize water supply, water quality, and environmental and other community benefits (Wat. Code § 10562(b)(2)). Multi-benefit projects lead to collaborations with other agencies and stakeholders to develop storm water infrastructure that improves storm water, urban runoff quality, and improve wildlife habitat. Multi-benefit projects should focus on regional and watershed-wide benefits.

While LID and multi-benefit projects have not directly addressed trash as a traditional pollutant in the past, additional measures can be included so that such projects specifically address trash. For example, the City of Anaheim, as part of the Brookhurst Street Improvement Project, converted impervious surfaces into a greenbelt area with an earthen swale that accepts storm flows from the street, acts as a natural treatment system, allows for limited infiltration, and drains to an existing storm drain inlet (City of Anaheim 2010). Trash can get captured within the bioswales, which infiltrates the storm water. A multi-benefit project should separate the storm water from the trash, thus removing the ability for trash to be transported to a receiving water body via storm water. The trash that accumulates within the bioswale should still be removed. To capture the remaining trash in storm water, an insert could be placed in the storm drain inlet to prevent trash from entering the storm water system. Another example of a multi-benefit project could be a retention basin, where the primary function is to recharge the local groundwater aquifer. To capture trash in the retention basin, a trash net at the retention basin overflow could be installed to capture any trash leaving the retention

basin when storm water inflow exceeds the capacity of the retention basin. LID and multi-benefit projects provided many environmental benefits from improved water quality, reduced number of flooding events, restored aquatic habitat, improved groundwater recharge, and enhanced urban aesthetics. By incorporating trash controls into LID and multi-benefit projects, a permittee can address numerous water quality pollutants within the urban and storm water landscape.

6 ENVIRONMENTAL EFFECTS OF TRASH AMENDMENTS

6.1 Introduction

The Water Quality Control/208 Planning Program, found in title 23, California Code of regulations sections 3775-3781 has been certified as an exempt regulatory program by the Secretary for Resources (Cal. Code Regs., tit. 14,§ 15251, subd. (g)) and, therefore, the State Water Board is exempt from the requirements of preparing separate documents in compliance with CEQA. However, the State Water Board must conduct an environmental analysis of its actions in a draft SED as part of its approval or adoption according to California Code of Regulations, title 23, section 3777 (see also, Pub. Res. Code § 21159). This Final Staff Report is being used to satisfy this requirement.

CEQA's "certified regulatory program" exemption is limited, however, and the State Water Board in the SED must still comply with CEQA's overall objectives to: inform the decision makers and the public about the potentially significant environmental effects of a proposed project; identify ways that significant adverse environmental impacts may be mitigated; and prevent significant, avoidable adverse environmental impacts by changing the proposed project or requiring mitigation measures. There are certain guiding principles that are contained in the CEQA Guidelines that help to inform the Water Board's certified regulatory process and preparation of the draft SED:

> Forecasting: Drafting an EIR or preparing a Negative Declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can (Cal. Code Regs., tit. 14, § 15144).
>
> Speculation: If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact (Cal. Code Regs., tit. 14, § 15145).
>
> Specificity: the degree of specificity required in an Environmental Impact Report [or an Environmental Impact Report – equivalent document, such as an SED] will correspond to the degree of specificity involved in the underlying activity which is described in the Environmental Impact Report" (Cal. Code Regs., tit. 14, § 15146)
>
> Standards for Adequacy: An EIR (or Negative Declaration) should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR (or Negative declaration) is to be reviewed in the light of what is reasonably feasible. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure (Cal. Code Regs., tit. 14, § 15151).

This section of the Final Staff Report, as well as the Environmental Checklist in Appendix B, identifies and evaluates the potential environmental impacts that may arise from final Trash Amendments and the reasonably foreseeable methods of compliance.

It also discusses mitigation, where applicable, for the identified potentially significant impacts (Cal. Code Regs., tit. 23, § 3777(b)). The implementation alternatives for achieving compliance with the final Trash Amendments are described in detail in Section 8 of this document. Impacts believed to be potentially significant are described in this section, while impacts that are considered less than significant or where there is no effect are described in Environmental Checklist contained in Appendix B. The following resource areas are included in this section, each of which includes a description of potential impacts, and mitigations.

- Section 6.2 Air Quality
- Section 6.3 Biological Resources
- Section 6.4 Cultural Resources
- Section 6.5 Geology/Soils
- Section 6.6 Greenhouse Gas Emissions
- Section 6.7 Hazards and Hazardous Materials
- Section 6.8 Hydrology/Water Quality
- Section 6.9 Land Use/Planning
- Section 6.10 Noise and Vibration
- Section 6.11 Public Services
- Section 6.12 Transportation/Traffic
- Section 6.13 Utilities/Service Systems

6.1.1 Impact Methodology

Any potential environmental impacts associated with the final Trash Amendments depend upon the specific compliance methods selected by the complying permittee, most of whom will be public agencies subject to their own CEQA obligations (see Pub. Res. Code § 21159.2). This document identifies broad mitigation approaches that could be considered at a statewide level. Consistent with Public Resources Code section 21159 and the State Water Board's certified regulatory program, the document does not engage in speculation or conjecture, but rather considers the potential environmental impacts of the final Trash Amendments and reasonably foreseeable methods of compliance, the feasible mitigation measures, and feasible alternatives (including alternative means of compliance) which would meet the project objectives and avoid or reduce the potentially significant impacts of the proposed project.

Within each of the subsections listed above, this document evaluates the potentially significant impacts of the proposed project and each implementation alternative relative to the subject resource area. The implementation alternatives evaluated in this document are evaluated on a statewide level for impacts for each resource area. Project-level analysis is expected to be conducted by the appropriate public agencies prior to implementation of project specific methods of compliance with the final Trash Amendments. The environmental analysis in this document assumes that the project specific methods of compliance with the final Trash Amendments would be designed, installed, and maintained following all applicable state and local laws, regulations, and ordinances. Several handbooks are available and currently used by municipal agencies

that provide guidance for the selection and implementation of BMPs (CASQA 2003a; 2003b, Water Environment Research Foundation 2005, Caltrans 2010).

6.1.2 Level of Analysis

The State Water Board is the lead agency for the final Trash Amendments, while the responsible agencies identified in Section 2.11 (Agencies Expected to use this Staff Report in their Decision Making and Permits) may be the lead agency for CEQA compliance for approval and implementation of a project specific method of compliance with the final Trash Amendments.

The State Water Board does not specify the actual means of compliance by which permittees choose to comply with the final Trash Amendments. However, as required by the State Water Board's certified regulatory program, this draft SED analyzes the potential environmental impacts of the final Trash Amendments and the reasonably foreseeable methods of compliance on a statewide level. The specificity of the "activity" described in this draft SED related to the reasonably foreseeable methods of compliance is of a general nature and the level of analysis of the potentially significant adverse environmental effects is commensurate with that level of detail. At the time of approval of a project-specific compliance project where the detail of the method of compliance is known, a project-level environmental analysis may be performed by the local approval agency.

Project-level impacts of the reasonably foreseeable methods of compliance will necessarily vary depending on the choice of compliance and the size, location, and type of discharger and the environmental resources in and around the project site. It would be speculative to estimate the specific impacts of the final Trash Amendments caused by implementation of a project-specific compliance method. It is possible that, at a specific site with particularly sensitive environmental resources, implementation with compliance measures in either in Track 1 or 2 could cause potentially significant impacts as compared to baseline conditions. Since it is speculative to estimate the type, size, and location of any particular compliance method (e.g., type of construction activities and type of resources adversely affected by those activities), this evaluation makes no attempt to quantify the impacts associated with implementation or maintenance of a particular compliance method.

Per the requirements of the State Water Board's environmental regulations, the resource analysis in this section includes:

- An identification of any significant or potentially significant adverse environmental impacts of the proposed project;
- An analysis of reasonable alternatives to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts; and
- An environmental analysis of the reasonably foreseeable methods of compliance, including:
    - An identification of the reasonably foreseeable methods of compliance with the project;

- An analysis of any reasonably foreseeable significant adverse environmental impacts associated with those methods of compliance;
- An analysis of reasonably foreseeable alternative methods of compliance that would have less significant adverse environmental impacts; and
- An analysis of reasonably foreseeable mitigation measures that would minimize any unavoidable significant adverse environmental impacts of the reasonably foreseeable methods of compliance. (23 CCR § 3777)

6.1.3 Environmental Setting

CEQA directs that the environmental setting normally be used as the baseline for determining significant impacts of a proposed project (Cal. Code Regs., tit.14, § 15125, subd. (a)). Section 3 presents a broad overview of the environmental setting for the state of California related to the final Trash Amendments. As such, the environmental setting and baseline for determining impacts is presented at a general level as each regional water board and permittee may address trash with a range of treatment and institutional controls. The following resource sections present additional specific setting information relevant to the assessment of environmental impacts of the final Trash Amendments.

6.2 Air Quality

Daily emissions and pollutant concentrations are two ways to quantify air pollution. The term “emissions” means the quantity of pollutant released into the air and has unit of pounds per day (lbs /day). The term “concentrations” means the amount of pollutant material per volumetric unit of air and has unit of parts per million (ppm) or micrograms per cubic meter ($\mu g/m^3$).

Criteria Pollutants

The Air Resources Board has established state ambient air quality standards (state standards) to identify outdoor pollutant levels considered safe for the public. After state standards are established, state law requires Air Resources Board to designate each area as attainment, nonattainment, or unclassified for each state standard. The area designations, which are based on the most recent available data, indicate the healthfulness of air quality throughout the state. In addition to state standards, the federal Clean Air Act requires U.S. EPA to set national ambient air quality standards (federal standards or national standards). The Air Resources Board makes area designations for ten pollutants: ozone, suspended particulate matter (PM10 and PM2.5), carbon monoxide, nitrogen dioxide, sulfur dioxide, sulfates, lead, hydrogen sulfide, and visibility reducing particles. Ambient air quality standards define clean air, and are established to protect even the most sensitive individuals in our communities. An air quality standard defines the maximum amount of a pollutant that can be present in outdoor air without harm to the public's health.

The gaseous criteria pollutants, particulate matter, and toxic air contaminants, and the associated adverse health effects of these air quality contaminants are summarized below.

Carbon Monoxide

Exposure to high concentrations of carbon monoxide, a colorless and odorless gas, reduces the oxygen-carrying capacity of the blood, and therefore can cause dizziness and fatigue, impair central nervous system functions, and induce angina in persons with serious heart disease. Carbon monoxide is emitted almost exclusively from the incomplete combustion of fossil fuels. In urban areas, motor vehicles, power plants, refineries, industrial boilers, ships, aircraft, and trains emit carbon monoxide. Motor vehicle exhaust releases most of the carbon monoxide in urban areas. Vehicle exhaust contributes approximately 56 percent of all carbon monoxide emissions nationwide and up to 95 percent in cities. Carbon monoxide is a non-reactive air pollutant that dissipates relatively quickly. As a result, ambient carbon monoxide concentrations generally follow the spatial and temporal distributions of vehicular traffic. Carbon monoxide concentrations are influenced by local meteorological conditions; primarily wind speed, topography, and atmospheric stability. Carbon monoxide from motor vehicle exhaust can become locally concentrated when surface-based temperature inversions combine with calm atmospheric conditions.

Ozone

While ozone serves a beneficial purpose in the upper atmosphere (stratosphere) by reducing potentially harmful ultraviolet radiation, when it reaches elevated concentrations in the lower atmosphere it can be harmful to the human and to sensitive species of plants. Short-term ozone exposure can reduce lung function and increase an individual's susceptibility to respiratory infection. Long-term exposure can impair lung defense mechanisms and lead to emphysema and/or chronic bronchitis. Ozone concentrations build to peak levels during periods of light winds or stagnant air, bright sunshine, and high temperatures. Ideal conditions occur during summer and early autumn. Sensitivity to ozone varies among individuals. About 20 percent of the population is sensitive to ozone, with exercising children being particularly vulnerable. Ozone is formed in the atmosphere by a complex series of chemical reactions under sunlight that involve "ozone precursors." Ozone precursors are categorized into two families of pollutants: oxides of nitrogen and reactive organic compounds. Oxides of nitrogen and reactive organic compounds are emitted from a variety of stationary and mobile sources. While oxides of nitrogen are considered a criteria pollutant, reactive organic compounds are not in this category, but are included in this discussion as ozone precursors. Ozone is the chief component of urban smog and the damaging effects of photochemical smog generally relate to the concentration of ozone. Meteorology and terrain play major roles in ozone formation. The greatest source of smog producing gases is the automobile.

Nitrogen Dioxide

The major health effect from exposure to high levels of nitrogen dioxide is the risk of acute and chronic respiratory disease. Like ozone, nitrogen dioxide typically is not directly emitted, but it is formed through a rapid reaction between nitric oxide and atmospheric oxygen. Nitric oxide and nitrogen dioxide are collectively called oxides of nitrogen and are major contributors to ozone formation. Nitrogen dioxide also contributes to the formation of respirable particulate matter (see discussion of respirable particulate matter below) and fine particulate matter through the formation of nitrate compounds. At atmospheric

concentrations, nitrogen dioxide is only potentially irritating. In high concentrations, the result is a brownish-red cast to the atmosphere and reduced visibility.

Sulfur Dioxide

The major health effect from exposure to sulfur dioxide is acute and chronic respiratory disease. Exposure may cause narrowing of the airways, which may cause wheezing, chest tightness, and shortness of breath. Sulfur dioxide can also react with water in the atmosphere to form acids (or "acid rain"), which can cause damage to vegetation and man-made materials. The main source of sulfur dioxide is coal and fuel oil combustion in power plants and industries, as well as diesel fuel combustion in motor vehicles. Generally, the highest levels of sulfur dioxide are found near large industrial complexes. In recent years, sulfur dioxide concentrations have been reduced by the increasingly stringent controls placed on stationary source emissions of sulfur dioxide and by limiting the sulfur content in fuel. Sulfur dioxide concentrations in southern California have been reduced to levels well below the state and national ambient air quality standards, but further reductions in emissions are needed to attain compliance with ambient air quality standards for sulfates, respirable particulate matter, and fine particulate matter, to which sulfur dioxide is a contributor.

Particulate Matter

Particulate matter pollution consists of very small liquid and solid particles in the air, which can include smoke, soot, dust, salts, acids, and metals. Particulate matter also forms when gases emitted from industries and motor vehicles undergo chemical reactions in the atmosphere. Particulate matter is regulated as respirable particulate matter (inhalable particulate matter less than ten micrometers in diameter). More recently it has been subdivided into coarse and fine fractions, with particulate matter less than 2.5 micrometers in diameter constituting the fine fraction. Major sources of respirable particulate matter include crushing or grinding operations; dust stirred up by vehicles traveling on roads; wood-burning stoves and fireplaces; dust from construction, landfills, and agriculture; wildfires and brush/waste burning; industrial sources; windblown dust from open lands; and atmospheric chemical and photochemical reactions. Fine particulate matter results from fuel combustion (e.g., from motor vehicles, power generation, and industrial facilities), residential fireplaces, and wood stoves. In addition, fine particulate matter can be formed in the atmosphere from gases such as sulfur dioxide, oxides of nitrogen, reactive organic compounds, and ammonia, and elemental carbon. Fine particulate matter is a subset of respirable particulate matter.

The health effects from long-term exposure to high concentrations of particulate matter are increased risk of chronic respiratory disease like asthma and altered lung function in children. Particles with 2.5 to 10 microns in diameter tend to collect in the upper portion of the respiratory system. Particles that are 2.5 microns or less are so tiny that they can penetrate deeper into the lungs and damage lung tissues. These substances can be absorbed into the bloodstream and cause damage elsewhere in the body. Short-term exposure to high levels of particulate matter has been shown to increase the number of people seeking medical treatment for respiratory distress, and to increase mortality among those with severe respiratory problems. Particulate matter also results in reduced visibility. Ambient particulate matter has many sources. It is emitted directly by combustion sources

like motor vehicles, industrial facilities, and residential wood burning, and in the form of dust from ground-disturbing activities such as construction and farming. It also forms in the atmosphere from the chemical reaction of precursor gases.

Toxic Air Contaminants

Toxic air contaminants include air pollutants that can produce adverse public health effects, including carcinogenic effects, after long-term (chronic) or short-term (acute) exposure. One source of toxic air contaminants is combustion of fossil fuels or digester gas. Human exposure occurs primarily through inhalation, although non-inhalation exposure can also occur when toxic air contaminants in particulate form deposit onto soil and drinking water sources and enter the food chain or are directly ingested by humans. Many pollutants are identified as toxic air contaminants because of their potential to increase the risk of developing cancer. For toxic air contaminants that are known or suspected carcinogens, it has been found that there are no levels or thresholds below which exposure is risk free. No ambient air quality standards exist for toxic air contaminants, except that standards for lead, hydrogen sulfide, and vinyl chloride are provided in California Ambient Air Quality Standards. Instead, numerous national, state, and local rules that affect both stationary and mobile emission sources regulate toxic air contaminants emissions. Individual toxic air contaminants vary greatly in the risk they present; at a given level of exposure one toxic air contaminants may pose a hazard that is many times greater than another. Where data are sufficient to do so, a "unit risk factor" can be developed for cancer risk. The unit risk factor expresses assumed risk to a hypothetical population, the estimated number of individuals in a million who may develop cancer as the result of continuous, lifetime (70-year) exposure to 1 $\mu g/m^3$ of the toxic air contaminants. Unit risk factors provide a standard that can be used to establish regulatory thresholds for permitting purposes. This is, however, not a measure of actual health risk because actual populations do not experience the extent and duration of exposure that the hypothetical population is assumed to experience. For non-cancer health effects, a similar factor called a Hazard Index is used.

Areas with monitored pollutant concentrations that are lower than ambient air quality standards are designated as "attainment areas" on a pollutant-by-pollutant basis. When monitored concentrations exceed ambient standards, areas are designated as "nonattainment areas." An area that recently exceeded ambient standards, but is now in attainment, is designated as a "maintenance area." Nonattainment areas are further classified based on the severity and persistence of the air quality problem as "moderate" "severe" or "serious." Classifications determine the applicability and minimum stringency of pollution control requirements.

6.2.1 Regulatory Setting

Federal

The U.S. EPA is the federal agency charged with administering the federal Clean Air Act Amendments of 1990, which established a number of requirements. The U.S. EPA oversees state and local implementation of federal Clean Air Act requirements. The Clean Air Act Amendments require the U.S. EPA to approve State Implementation Plans to meet and/or maintain the national ambient standards. The federal (and California) ambient air quality standards are shown in Table 8.

Table 8. Federal and California Ambient Air Quality Standards.

Pollutant	Averaging Time	California Standards	Federal Standards	
			Primary	Secondary
Ozone	1 Hour	0.09 ppm (180 µg/m^3)	-	Same as Primary Standard
	8 Hour	0.070 ppm (137 µg/m^3)	0.075 ppm (147 µg/m^3)	
Respirable Particulate Matter	24 Hour	50 µg/m^3	150 µg/m^3	Same as Primary Standard
	Annual Arithmetic Mean	20 µg/m^3	-	
Fine Particulate Matter	24 Hour	No Separate State Standard	35 µg/m^3	35 µg/m^3
	Annual Arithmetic Mean	12 µg/m^3	12.0 µg/m^3	15.0 µg/m^3
Carbon Monoxide	1 Hour	20 ppm (23 mg/m^3)	35 ppm (40 mg/m^3)	-
	8 Hour	9.0 ppm (10 mg/m^3)	9 ppm (10 mg/m^3)	
	8 Hour (Lake Tahoe)	6 ppm (7 mg/m^3)	-	-
Nitrogen Dioxide	Annual Arithmetic Mean	0.030 ppm (57 µg/m^3)	0.053 ppm (100 µg/m^3)	Same as Primary Standard
	1 Hour	0.18 ppm (339 µg/m^3)	100 ppm (188 µg/m^3)	-
Sulfur Dioxide	Annual Arithmetic Mean	-	0.030 ppm	-
	24 Hour	0.04 ppm (105 µg/m^3)	0.14 ppm (365 µg/m^3)	-
	3 Hour	-	-	0.5 ppm (1300 µg/m^3)
	1 Hour	0.25 ppm (655 µg/m^3)	75 ppb (195 µg/m^3)	-
Lead	30 Day Average	1.5 µg/m^3	-	-
	Calendar Quarter	-	1.5 µg/m^3	Same as Primary Standard

State

The California Air Resources Board is the state agency responsible for coordinating both state and federal air pollution control programs in California. In 1988, the State Legislature adopted the California Clean Air Act, which established a statewide air pollution control program. The California Clean Air Act's requirements include annual emission reductions, increased development and use of low emission vehicles, and submittal of air quality attainment plans by air districts. The California Air Resources Board has established state

ambient air quality standards, shown in Table 8. Additionally, the California Air Resources Board has established state standards for pollutants that have no federal ambient air quality standard, including sulfate, visibility, hydrogen sulfide, and vinyl chloride.

Local

There are 35 local air districts within the state. Each district (referred to as either an Air Pollution Control District or an Air Quality Management District) is responsible for controlling emissions, primarily from stationary sources of air pollution, within their area. Each district develops and adopts an Air Quality Management Plan, which serves as the blueprint to bring their respective areas into compliance with federal and state clean air standards. Rules are adopted to reduce emissions from various sources.

6.2.2 Thresholds of Significance

Air quality impacts would be considered significant if the final Trash Amendments or reasonably foreseeable methods of compliance would:

- Conflict with or obstruct the implementation of the applicable air quality plan (although there are many applicable air quality plans in the state, this analysis utilized the South Coast Air Quality Management District Plan as the representative air quality plan for assessing impacts).
- Violate any air quality standards or contribute substantially to an existing or projected air quality violation (although there are many applicable air quality standards, depending on the air basin in the state, this analysis utilized the South Coast Air Quality Management District's standards as the representative air quality standards for assessing impacts).
- Expose sensitive receptors to substantial pollutant concentrations.
- Create objectionable odors affecting a substantial number of people.
- Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under any applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors). This impact threshold is addressed in Section 7.2.

6.2.3 Impacts and Mitigation

The Los Angeles Water Board conducted an analysis of potential air quality impacts of the identified alternatives for compliance with the Los Angeles River Trash TMDL (Trash TMDL) (Los Angeles Water Board 2007f). This analysis is incorporated by reference and summarized here. Staff has reviewed this analysis and has concluded that it is an appropriate representation of the potential impacts that could occur in other areas of the state with implementation of the final Trash Amendments, including the reasonably foreseeable methods of compliance.

The South Coast Air Basin (which includes the area covered by the Trash TMDL) is home to more than 42 percent of California's population. Pollutant concentrations in parts of the South Coast Air Basin are among the highest in the nation. South Coast Air Basin

emissions improved between 2005 and 2010 and are expected to further improve and become somewhat constant through 2035 (ARB 2013). With its high population and pollutant concentrations, potential impacts to air quality are likely to be greater in the South Coast Air Basin than in other parts of the state and serves as a maximum possible impact related to air quality. Therefore, potential impacts identified in this analysis would likely be less in all other air basins.

Impact Assessment Methodology

This evaluation addresses impacts that have the potential to occur from the final Trash Amendments, including the reasonably foreseeable methods of compliance, including both short -and long-term activities. The evaluation is based on a calculation of the total emissions from travel of construction and maintenance vehicles that might be affected by implementation of the final Trash Amendments. This comparative evaluation was done instead of examining the emissions from each individual source alone and comparing them to a threshold level.

Vehicle Emissions

Vehicle emissions were calculated in the Trash TMDL analysis using forecasts of total vehicle miles traveled based on data provided in MOBILE6, which is a vehicle emission software developed by U.S. EPA (U.S. EPA 2003; 2004; 2006). MOBILE6 is used for predicting gram per mile emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, carbon dioxide, PM, and toxics from cars, trucks, and motorcycles under various conditions. The data which this calculation is based on are from technical documents of MOBILE6 (U.S. EPA 2003). Considering the type of work involved in implementation of the final Trash Amendments, the calculation assumed that non-tampered heavy-duty diesel vehicles (HDDV Class 6) would be used for installation/construction/maintenance activities. The mileage was assumed to be 50,000 miles, which is the median mileage for HDDVs. The year of vehicle was assumed to be 2001+ for hydrocarbons, carbon monoxide, oxides of nitrogen, and sulfur dioxide and 1994+ for particulate matter.

Based on assumptions above, the exhaust emission rates were found to be 2.1, 9.92, and 6.49 grams per mile for hydrocarbons, carbon monoxide, and oxides of nitrogen, respectively. The particulate matter standard for HDDVs is 0.1 g/bhp-hr. By applying a conversion factor of 1.942 bhp-hr/mi (from Update Heavy-Duty Engine Emission Conversion Factors for Mobile6 – Analysis of BSFCs and Calculation of Heavy-Duty Engine Emission Conversion Factors), the exhaust emission rate for particulate matter was found to be 0.1942 grams per mile. There was no exhaust emission rate information available for SO_x in MOBILE6. Instead by using diesel fuel sulfur level of eight ppm (from MOBILE6 for years after 2006), diesel fuel economy of 8.71 miles per gallon (from Update Heavy-Duty Engine Emission Conversion Factors for Mobile6 – Analysis of BSFCs and Calculation of Heavy-Duty Engine Emission Conversion Factors), and diesel fuel density of 7.099 pounds per gallon (from Update Heavy-Duty Engine Emission Conversion Factors for MOBILE6 – Analysis of Fuel Economy, Non-Engine Fuel Economy Improvements and Fuel Densities), the exhaust emission rate for sulfur dioxide could be 0.00592 grams per mile, assuming all sulfur in fuel would be transformed to sulfur dioxide.

Catch Basin Inserts

Long-term increases in traffic caused by ongoing maintenance of catch basin inserts (e.g., delivery of materials, street sweeping) are potential sources of increased air pollutant emissions.

As an example, the Trash TMDL analysis estimated that approximately 150,000 catch basins could be retrofitted with inserts in the urban portion of watershed. As discussed previously, the Los Angeles River Watershed has 474 square miles highly developed with commercial, industrial, or residential uses. Assuming that 150,000 catch basin inserts were placed evenly in the 474 square miles developed area, each catch basin insert covered 0.00316 square miles. The distance between two catch basin inserts was about 0.056 mile. The total distance for a truck to travel through all 150,000 catch basin inserts units was about 8,342 miles. Assuming catch basins need to be cleaned twice a year. This translated to approximately 822 vehicle trips per day in the watershed. Assuming the 822 trips were arranged at shortest distance, which is reasonable by arranging a round trip, the total travel distance for 822 trips was about 52 miles (9497 miles divided by 183 days, or 822 trips times 0.063 mile). The vehicle emissions for traveling 52 miles are listed in Table 9. Emission levels for all the pollutants were well below the South Coast Air Quality Management District Air Quality Significance thresholds. If all trips were arranged in one day, emission levels for HC, CO, PM, and sulfur dioxide were still well below the significance thresholds. The maximum potential impact of the proposed project for level for oxides of nitrogen was about twice the significance threshold level of 55 lbs/day.

Measures are available to alleviate any potential impacts to air quality due to increased traffic due to catch basin cleanings. Such measures could include: (1) use of construction, maintenance, and street sweeper vehicles with lower-emission engines; (2) use of soot reduction traps or diesel particulate filters; (3) use of emulsified diesel fuel; (4) use of vacuum-assisted street sweepers to eliminate potential re-suspension of sediments during sweeping activity; and (5) the design of trash removal devices to minimize the frequency of maintenance trips (e.g., design for smaller drainage areas).

Toxic Air Contaminants Because the emission levels of criteria pollutants during installation and maintenance of catch basin inserts can be below the South Coast Air Quality Management District Air Quality Significance thresholds, the emission of toxic air contaminants is expected to be below the other Air Quality Management District thresholds as well. With its high population and pollutant concentrations, South Coast Air Quality Management District's thresholds are likely to be the most stringent of other Districts in other parts of the state and serves as a maximum threshold related to Toxic Air Contaminants. Therefore, a significant increase in toxic air contaminants is not expected in other areas of the state due to implementation of the final Trash Amendments.

Odor Impacts To the extent improper disposal of, for instance, household hazardous wastes result in them being kept on the street or in inserts, and potentially allowing a release of chemical odors, local residents could be exposed to those effects. Those effects are already occurring in watersheds, however, and should be considered baseline impacts. Nevertheless, to the extent the locality that originated the risk would become newly potentially exposed instead of downstream receptors, those impacts could be potentially significant in those locales. Such impacts could be avoided or mitigated by

educating the local community of the effects of improper disposal of such wastes, enforcing litter ordinances, and timely cleaning out inserts.

Vortex Separation Systems

Criteria Pollutants Short term increases in traffic during the construction and installation of vortex separation systems and long-term increases in traffic caused by ongoing maintenance of these devices (e.g., delivery of materials and deployment of vacuum trucks) are potential sources of increased air pollutant emissions. For example, the Trash TMDL analysis estimated that approximately 3700 large capacity vortex separation systems could be installed to collect all the trash generated in the urban portion of the Los Angeles River watershed. Maintenance requirements for trash removal devices demonstrate that devices should be emptied when they reach 85 percent capacity. Vortex separation systems can be designed so that they need be cleaned only once per storm season.

As an example of truck travel within a particular watershed used as a representative maximum possible effect of the proposed project, the Los Angeles River Watershed covers a land area of over 834 square miles, of which 599 square miles are highly developed with commercial, industrial, or residential uses. The remaining area is covered by forest or open space. Assuming that 3700 vortex separation systems were placed evenly in the 599 square miles developed area, each vortex separation system would cover 0.162 square miles. The distance between two vortex separation system units was about 0.40 mile. The total distance for a truck to travel through all 3700 vortex separation system units was about 1489 miles. A vortex separation system would need to be cleaned at minimum once per storm season, i.e., once per year.[15] There are about 247 business days a year. This translated to approximately 15 vehicle trips per business day in the watershed. Assuming the 15 trips were arranged at shortest distance, the total travel distance for 15 trips was about six miles (1489 miles divided by 247 days, or 15 trips times 0.40 mile). The vehicle emissions for traveling six miles are listed in Table 9. Emission levels for all the pollutants are far below the South Coast Air Quality Management District Air Quality Significance thresholds. If all trips are conducted in one day, emission levels for all the pollutants are still well below the significance thresholds (Table 9).

[15] Annual frequency of the cleaning the vortex separation systems may vary across California in response to rain events. However, this variation would not substantially change the conclusions of this analysis.

Table 9. Vehicle Emissions within the Los Angeles River Watershed Example.

Device	Trips per day	HC (lbs/day)	CO (lbs/day)	NO_x (lbs/day)	PM (lbs/day)	SO_2 (lbs/day)
Vortex Separation System	15*	0.029	0.132	0.086	0.0026	0.000079
Vortex Separation Systems	3700**	6.9	32.5	21.3	0.64	0.019
Catch Basin Insert	21,429*	0.2	1.1	0.7	0.0	0.00068
Catch Basin Insert	150,000**	43.7	206.5	135.1	4.0	0.12
SCAQMD significance threshold		55	550	55	150	150
*trips conducted over 247 business days, **trips conducted in a single day						

Using the South Coast Air Quality Management District daily construction emissions thresholds as a representative of air quality standards for assessing impacts, the emissions generated by construction equipment for the proposed project are expected to be lower than the daily construction emissions thresholds. However, detailed analysis can only be done at project level. In case daily construction emissions exceed significance thresholds, which are unlikely, construction projects for different vortex separation system units can be conducted on different days to reduce emissions rates.

Measures to decrease air emissions from increased vehicle trips or increased use of construction equipment include: (1) use of construction, and maintenance vehicles with lower-emission engines; (2) use of soot reduction traps or diesel particulate filters; and (3) use of emulsified diesel fuel.

Toxic Air Contaminants The emission levels of criteria pollutants during installation and maintenance of vortex separation system units are far below the South Coast Air Quality Management District Air Quality Significance thresholds, the emissions of toxic air contaminants are expected to be far below the other Air Quality Management District thresholds as well. With its high population and pollutant concentrations, South Coast Air Quality Management District's thresholds are likely to be the most stringent of other Air Quality Management Districts in other parts of the state and serves as a maximum threshold related to Toxic Air Contaminants. Therefore, a significant increase in toxic air contaminants is not expected in other areas of the state due to implementation of the final Trash Amendments.

Odor Impacts During construction of the vortex separation system units, it is possible that foul air could be temporarily released to the atmosphere while enclosed sources are uncovered or piping is reconfigured. These releases could create objectionable odors at the nearest receptors. These impacts are temporary and unpleasant odors, if any, would be at minimum with completion of the installation.

Vortex separation system units may be a source of objectionable odors if design allows for water stagnation or collection of water with sulfur-containing compounds. Storm water runoff is not likely to contain sulfur-containing compounds, but stagnant water could create objectionable odors. Measures to eliminate odors caused by stagnation could include covers, aeration, filters, barriers, and/or odor suppressing chemical additives. Devices could be inspected to ensure that intake structures are not clogged or pooling water. During maintenance, odorous sources could be uncovered for as short of a time period as possible. To the extent possible, trash removal devices could be designed to minimize stagnation of water (e.g., allow for complete drainage within 48 hours) and installed to increase the distance to sensitive receptors in the event of any stagnation.

The potential re-suspension of sediments and associated pollutants during construction could also impact air quality. An operations plan for the specific construction and/or maintenance activities could be completed to address the variety of available measures to limit the air quality impacts. These could include vapor barriers and moisture control to reduce transfer of small sediments to air.

To the extent improper disposal of, for instance, household hazardous wastes result in them being trapped in structural compliance measures, potentially allowing a release of such chemicals, local residents could be exposed to those effects. On balance, however, it is not unfair that the residents of the localities where improper disposal of such materials occurs should suffer those risks rather than allowing the wastes to be conveyed through the water body, to expose downstream citizens to risk instead. Those effects are already occurring in the watershed and should be considered baseline impacts. Nevertheless, to the extent the locality that originated the risk would become newly potentially exposed instead of downstream receptors, those impacts could be potentially significant in those locales. Such impacts could be avoided or mitigated by educating the local community of the effects of improper disposal of such wastes, enforcing litter ordinances, and timely cleaning out vortex separation systems.

Trash Nets

Trash nets are end-of-pipe devices. The number of end-of-pipe trash nets installed would be limited by the number of suitable locations within a watershed. Short term increases in traffic during the construction and installation of trash nets and long-term increases in traffic caused by ongoing maintenance of these devices (e.g., replacement of nets) are potential sources of increased air pollutant emissions. After installation, trash nets can be replaced once per year. It is not clear how many trash nets are going to be installed at this point. If the responsible parties make decisions on the numbers of trash nets that are going to be installed, the impacts on air quality caused by installation and maintenance of trash nets should be analyzed at project level. Nevertheless, many fewer trash nets are currently being installed than catch basin inserts, and, anticipating this trend to continue, the impacts of installation and maintenance of trash nets on air quality are expected to be much less than those of catch basin inserts.

Measures to lessen the impacts of increased air emissions caused by increased vehicle trips or construction equipment due to the installation of trash nets include: (1) use of construction, and maintenance vehicles with lower-emission engines; (2) use of soot reduction traps or diesel particulate filters; and (3) use of emulsified diesel fuel.

Trash trapped in trash nets may be a source of objectionable odors. Measures to eliminate odors could include covers, aeration, filters, barriers, and/or odor suppressing chemical additives. During maintenance, odorous sources could be uncovered for as short of a time period as possible. Notably, the current conditions result in significant impacts from odor. The impacts from odor could be alleviated by employing alternative structural devices, such as in-line trash nets, or by employing non-structural controls, for instance, increased litter enforcement.

Gross Solids Removal Devices

Short term increases in traffic during the construction and installation of Gross Solids Removal Devices and long-term increases in traffic caused by ongoing maintenance of these devices (e.g., replacement of nets) are potential sources of increased air pollutant emissions. Each Gross Solids Removal Device was designed to capture annual load of gross solids, which would result in one cleaning per year. It is not clear how many Gross Solids Removal Devices are going to be installed at this point. If the responsible parties determine that Gross Solids Removal Devices should be installed, the impacts on air quality caused by installation and maintenance Gross Solids Removal Devices should be analyzed at project level. Nevertheless, many fewer Gross Solids Removal Devices are currently being installed than catch basin inserts, and, anticipating these trends to continue, the impacts of installation and maintenance of Gross Solids Removal Devices on air quality are expected to be much less than those of catch basin inserts.

Measures to lessen the increase of air emissions caused by increased vehicle trips or construction equipment due to the installation of Gross Solids Removal Devices include: (1) use of construction, and maintenance vehicles with lower-emission engines; (2) use of soot reduction traps or diesel particulate filters; and (3) use of emulsified diesel fuel.

Trash trapped in Gross Solids Removal Devices may be a source of objectionable odors. Measures to eliminate odors could include covers, aeration, filters, barriers, and/or odor suppressing chemical additives. During maintenance, odorous sources could be uncovered for as short of a time period as possible. By employing nonstructural controls, for instance, increased litter enforcement, the impacts from odor could be alleviated.

Enforcement of Litter Laws

It is possible that the final Trash Amendments may require more workers and vehicles to enforce litter laws. Air pollutant emissions might be increased due to increased driving to enforce litter laws. The increase in traffic due to enforcement of litter laws, however, is expected to be very limited and would not have a noticeable impact on air quality.

Increased Street Sweeping

Increased street sweeping would increase traffic and therefore increase air pollutant emissions. Increased street sweeping would not foreseeably be implemented alone for the final Trash Amendments. It is not clear how often street sweeping would be increased to comply with the final Trash Amendments at this point. If the responsible parties determine that a given frequency of street sweeping is necessary, the impacts on air quality caused by increased street sweeping should be analyzed at project level.

Increased street sweeping may increase objectionable odors on street. Nonetheless, measures are available to reduce any potential impacts to air quality due to increased

street sweeping. Such measures could include: (1) use of street sweeper vehicles with lower-emission engines; (2) use of soot reduction traps or diesel particulate filters, (3) use of emulsified diesel fuel; (4) use of vacuum-assisted street sweepers to eliminate potential re-suspension of sediments during sweeping activity.

Public Education

Similar to enforcement of litter laws, public education is not expected to have noticeable impact on air quality.

Ordinances

Similar to enforcement of litter laws and public education, ordinances are expected to have no impact or less-than-significant impact on air quality.

Exposure of sensitive receptors to substantial pollutant concentrations

Implementation of the final Trash Amendments is expected to cause a minor amount of construction activities, causing impacts to air quality over baseline conditions. This construction is expected to take place within a short timeframe of several days, spread out over many urban and suburban sites. Due to the short term and dispersed nature of the implementation of the final Trash Amendments, there is no expectation that sensitive receptors will be exposed to substantial pollutant concentrations. In addition, the reasonably foreseeable methods of compliance will be conditioned with standard procedures requiring that the general population not have access to construction areas. Further, maintenance activities would be intermittent and are not expected to create substantial pollutant concentrations. Therefore, potential impacts due to exposure of sensitive receptors to substantial pollutant concentrations are expected to be less than significant for the reasonably foreseeable methods of compliance with the final Trash Amendments.

6.2.4 Summary

Installation and maintenance of full capture systems and treatment controls could result in potentially significant environmental effects with regard to air quality. Measures, however, can be applied to reduce and/or eliminate these impacts, as described above. These measures are within the responsibility and jurisdiction of the responsible agencies subject to the final Trash Amendments and can or should be adopted by them. The State Water Board does not direct which compliance measures responsible agencies choose to adopt or the mitigation measures they employ. The State Water Board does, however, recommend that appropriate measures be applied to reduce or avoid potential environmental impacts. Although this analysis concludes that, based on substantial evidence on the record, on a statewide level analysis, all impacts would be less than significant with mitigation; it is foreseeable that these measures may not always be capable of reducing these impacts to levels that are less than significant in every conceivable instance. Although there is no information on the record that this would occur, in the event that a specific measure or alternative may not reduce impacts to levels that are less than significant, the project proponent may need to consider an alternative strategy or combination of strategies to comply with the final Trash Amendments. All foreseeable methods of compliance listed above would not be of the size or scale to result

in alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally.

6.3 Biological Resources

A general description of the environmental setting is presented in Section 3 of this document. Those portions of the state where the final Trash Amendments would be implemented are densely urbanized and the presence of fish and wildlife species and their supporting habitat severely limited. Any watercourses, riparian habitat or wetlands downstream from the implementation areas would not be adversely impacted by implementation measures. Rather, these areas would be improved by the reduction in trash entering these habitats from upstream sources.

6.3.1 Regulatory Setting

Federal Regulatory Setting

Federal Endangered Species Act

Pursuant to the federal Endangered Species Act, the U. S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration Fisheries Service, formerly National Marine Fisheries Service, have regulatory authority over federally listed species. Under the Endangered Species Act, a permit is required for any federal action that may result in "take" of a listed species. Section 9 of the Endangered Species Act defines take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Under federal regulations, take is further defined to include the modification or degradation of habitat where such activity results in death or injury to wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Clean Water Act

Section 404 of the CWA requires project proponents to obtain a permit from the U.S. Army Corps of Engineers before performing any activity that involves discharge of dredged or fill material into "waters of the United States," including wetlands. Dredge and fill activities involve any activity, such as construction, that results in direct modification (e.g., alteration of the banks, deposition of soils) of an eligible waterway. Waters of the United States include navigable waters, interstate waters, and other waters where the use or degradation or destruction of the waters could affect interstate or foreign commerce, tributaries to any of these waters, and wetlands that meet any of these criteria or that are adjacent to any of these waters or their tributaries. Many surface waters and wetlands in California meet the criteria for waters of the United States.

In accordance with section 401 of the CWA, projects that apply for a U.S. Army Corps of Engineers permit for discharge of dredged or fill material must obtain water quality certification from the Water Boards indicating that the project would uphold state water quality standards.

State Regulatory Setting

California Endangered Species Act

Pursuant to the California Endangered Species Act, a permit from the California Department of Fish and Wildlife is required for projects that could result in take of a plant or animal species that is state listed as threatened or endangered. Under California Endangered Species Act, "take" is defined as an activity that would directly or indirectly kill an individual of a species. Authorization for take of state-listed species can be obtained through a California Fish and Wildlife Code section 2080.1 consistency determination or a section 2081 incidental take permit.

Section 1600 of the California Fish and Wildlife Code

All diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream or lake in California that supports wildlife resources is subject to regulation by the California Department of Fish and Wildlife, under sections 1600–1603 of the California Fish and Wildlife Code. Section 1601 states that it is unlawful for any agency to substantially divert or obstruct the natural flow or substantially change the bed, channel or bank of any river, stream or lake designated by California Department of Fish and Wildlife, or use any material from the streambeds, without first notifying California Department of Fish and Wildlife of such activity. The regulatory definition of a stream is a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation. California Department of Fish and Wildlife's jurisdiction within altered or artificial waterways is based on the value of those waterways to fish and wildlife. Accordingly, a California Department of Fish and Wildlife Streambed Alteration Agreement must be obtained for any project that would result in diversions of surface flow or other alterations to the bed or bank of a river, stream, or lake.

Porter-Cologne Water Quality Control Act

Under the Porter-Cologne, "waters of the state" fall under the jurisdiction of the appropriate regional water board. The regional water board must prepare and periodically update Basin Plans. Each Basin Plan establishes numerical or narrative water quality objectives to protect established beneficial uses, which include wildlife, fisheries and their habitats. Projects that affect wetlands or waters of the state must meet discharge requirements of the regional water board, which may be issued in addition to a water quality certification or waiver under section 401 of the CWA.

Local Regulations

Numerous California cities and counties have adopted ordinances regulations and policies for the protection and enhancement of natural resources, including heritage trees, important natural features, habitat alteration, and common and special status species.

6.3.2 Thresholds of Significance

A project would normally have a significant effect on biological resources if it would:

- Have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status species in local or regional plans, policies or regulations, or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service;

- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Fish and Wildlife or U.S. Fish and Wildlife Service;

- Have a substantial adverse effect on federally protected wetlands as defined by section 404 of the CWA (including, but not limited to marsh, riparian scrub, etc.) through direct removal, filling, hydrological interruption, or other means;

- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;

- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or

- Conflict with the provision of an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or state habitat conservation plan.

6.3.3 Impacts and Mitigation

This is a statewide analysis of the potential impacts from each implementation measure. The specific location of each implementation measure would be determined during the implementation of the final Trash Amendments. In general, the activities that would take place with the implementation of the full capture and/or partial capture trash capture systems would be similar in nature to current urban activities that are already occurring in the watersheds. The implementation of additional trash control measures would not foreseeably:

- Cause a substantial reduction of the overall habitat of a wildlife species.
- Produce a drop in a wildlife population below self-sustaining levels.
- Eliminate a plant or animal community.
- Have a substantial adverse effect on federally protected wetlands.
- Conflict with any local policies or ordinances protecting biological resources.

It is not reasonably foreseeable that either the construction/implementation or maintenance phase of potential projects would result in a significant long-term impact to general wildlife species adapted to developed environments.

An objective of the final Trash Amendments is to improve conditions for aquatic life. Removing trash from the State's rivers, streams, and lakes would have an overall positive impact on biological resources.

Catch Basins

Catch basin inserts fit directly into curbside catch basins, requiring no expansion of footprint or additional excavation, in urbanized areas where native habitat or special-status species usually are absent. As such, impacts to biological resources would likely not occur, including impacts to species diversity, impacts to special-status species, impacts to habitat, or impacts to wildlife migration. Furthermore, because installation of catch basin inserts requires no construction or ground disturbance and is accomplished within the existing footprint of the facility, the installation of catch basin inserts would not impact biological resources. Implementation of the Trash Amendments and the use of catch basin inserts would considerably improve habitat for biological resources by removing trash from water bodies, as well as surrounding beaches. No mitigation is required since no potentially significant impacts are anticipated.

Vortex Separation Systems

Vortex separation systems would be implemented in currently urbanized areas. Since these areas are already fully urbanized, it is unlikely that the installation of vortex separation systems would cause the removal, disturbance or change in diversity of any plant species or cause a change or reduction in the number of any unique, rare or endangered species of plants. Depending on the final location of facilities, however, potential impacts to biological resources including special-status species and habitat, wetlands, and trees protected under local ordinances or policies could occur.

It is not reasonably foreseeable that implementation of vortex separation systems would result in the introduction of exotic or invasive plant species into an area. Nor would it result in a barrier to the normal replenishment of existing species. In the case that landscaping is incorporated into the specific project design, however, there is a possibility of disruption of resident native species.

It is possible that direct or indirect impacts to special-status animal species may occur at the project level. Because these animal species are protected by state and/or federal Endangered Species Acts, impacts to them would be considered potentially significant. Even though it is expected that potential projects would occur in previously developed areas it is possible for special-status species to occur in what would generally be described as urban areas. If these species are present during activities such as ground disturbance, construction, and operation and maintenance activities associated with the potential projects, it could conceivably result in direct impacts to special status species including the following:

- Direct loss of a sensitive species.
- Increased human disturbance in previously undisturbed habitats.
- Mortality by construction or other human-related activity.
- Impairing essential behavioral activities, such as breeding, feeding or shelter/refugia.
- Destruction or abandonment of active nest(s)/den sites.
- Direct loss of occupied habitat.

In addition, potential indirect impacts may include but are not limited to, the following:

- Displacement of wildlife by construction activities.
- Disturbance in essential behavioral activities due to an increase in ambient noise levels and/or artificial light from outdoor lighting around facilities.

It is not reasonably foreseeable that implementation of vortex separation systems would result in the introduction of new species. In addition, because potential projects would be established in previously heavily developed areas it is not expected that potential project sites would act as a travel route or regional wildlife corridor. Construction of these facilities would not considerably restrict wildlife movement. A travel route is generally described as a landscape feature (such as a ridgeline, canyon, or riparian strip) within a larger natural habitat area that is used frequently by animals to facilitate movement and provide access to necessary resources (e.g. water, food, and den sites). Wildlife corridors are generally an area of habitat, usually linear in nature, which connect two or more habitat patches that would otherwise be fragmented or isolated from one another. It is considered unlikely that vortex separation systems would be constructed in areas such as these.

Constructed vortex separation systems, however, may potentially impact wildlife crossings. A wildlife crossing is a small narrow area relatively short and constricted, which allows wildlife to pass under or through obstacles that would otherwise hinder movement. Crossings are typically manmade and include culverts, underpasses, and drainage pipes to provide access across or under roads, highways, or other physical obstacles.

Construction activities associated with the implementation of vortex separation systems may impact migratory avian species. These avian species may use portions of potential project sites, including ornamental vegetation, during breeding season and may be protected under the Migratory Bird Treaty Act while nesting. The Migratory Bird Treaty Act includes provisions for protection of migratory birds under the authority of the U.S. Fish and Wildlife Service and California Fish and Wildlife. The Migratory Bird Treaty Act protects over 800 species including, geese, ducks, shorebirds, raptors, songbirds, and many other relatively common species.

It is not reasonably foreseeable that the implementation of vortex separation systems would result in the deterioration of existing fish and or wildlife habitat. Potential vortex separation systems would be located in previously developed areas and would not result in the removal of sensitive biological habitats.

Vortex separation systems would not be located within the river channel, but rather in the storm drain itself. As such, a foreseeable deterioration of existing fish habitat is not anticipated. It is foreseeable, however, that the implementation of the final Trash Amendments would considerably improve fish habitat by removing trash from water bodies, as well as surrounding beaches.

The following measures should be implemented to reduce or avoid potential project-level impacts to biological resources:

Assuming any unique species are present, plant number and species diversity could be maintained by either preserving them prior, during, and after the construction of vortex separation systems or by re-establishing and maintaining the plant communities post construction.

When the specific projects are developed and sites identified, a search of the California Natural Diversity Database could be employed to confirm that any potentially sensitive plant species or biological habitats in the site area are properly identified and protected as necessary. Focused protocol plant surveys for special-status-plant species could be conducted at each site location, if appropriate. If sensitive plant species occur on the project site mitigation would be required consistent with appropriate expert analysis. Mitigation measures shall be developed in coordination with U.S. Fish and Wildlife Service and California Department of Fish and Wildlife. Responsible agencies should endeavor to avoid compliance measures that could result in reduction of the numbers of any unique, rare or endangered species of plants, and instead opt for such measures as enforcing litter ordinances in sensitive habitat areas, or siting physical compliance measures sufficiently upstream or downstream of sensitive areas to avoid any impacts.

In the case that landscaping is incorporated into the specific project design, the possibility of disruption of resident native species could be avoided or minimized by using only plants native to the area. Use of exotic invasive species or other plants listed in the Exotic Pest Plant of Greatest Ecological Concern in California should be prohibited (California Exotic Pest Plant Council 1999).

Responsible agencies should endeavor to avoid compliance measures that could result in significant impacts to unique, rare or endangered (special-status) species, should any such species be present at locations where such compliance measures might otherwise be performed, and instead opt for such measures as enforcing litter ordinances in sensitive habitat areas. Mitigation measures, however, could be implemented to ensure that potentially significant impacts to special status animal species are less than significant. When the specific projects are developed and sites identified a search of the California Natural Diversity Database could be employed to confirm that any potentially special-status animal species in the site area are properly identified and protected as necessary. Focused protocol animal surveys for special-status animal species should be conducted at each site location.

If special-status animal species are potentially near the project site area two weeks prior to grading or the construction of facilities and per applicable U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife protocols, pre-construction surveys to determine the presence or absence of special-status species would be conducted. The surveys should extend off site to determine the presence or absence of any special-status species adjacent to the project site. If special-status species are found to be present on the project site or within the buffer area, mitigation should be required consistent with appropriate expert analysis. To this extent, mitigation measures would be developed in coordination with the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife to reduce potential impacts.

If vortex separation systems are implemented at locations where they would foreseeably adversely impact species migration or movement patters, mitigation measures previously described could be implemented to ensure that impacts which may result in a barrier to the migration or movement of animal is less than significant. Any site-specific wildlife crossings should be evaluated in consultation with California Department of Fish and Wildlife. If a wildlife crossing would be significantly impacted in an adverse manner, then the design of the project should include a new wildlife crossing in the same general location.

If construction occurs during the avian breeding season for special status species and/or Migratory Bird Treaty Act -covered species, generally February through August, then prior (within two weeks) to the onset of construction activities, surveys for nesting migratory avian species would be conducted on the project site following U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife guidelines. If no active avian nests are identified on or within 200 feet of construction areas, no further mitigation would be necessary.

Alternatively, to avoid impacts, the agencies implementing the final Trash Amendments may begin construction after the previous breeding season for covered avian species and before the next breeding season begins. If a protected avian species was to establish an active nest after construction was initiated and outside of the typical breeding season (February – August), the project sponsor, would be required to establish a buffer of 200 feet or other measure that would result in equivalent mitigation between the construction activities and the nest site.

If active nest for protected avian species are found within the construction footprint or within the 200-foot buffer zone, construction would be required to be delayed within the construction footprint and buffer zone until the young have fledged or appropriate mitigation measures responding to the specific situation are developed in coordination with U.S. Fish and Wildlife Service or California Department of Fish and Wildlife. These impacts are highly site specific, and assuming they are foreseeable, they would require a project-level analysis and mitigation plan.

Finally, to the extent feasible, responsible agencies should endeavor to avoid compliance measures that could result in significant barriers to the beneficial migration or movement of animals, and instead opt for such measures as enforcing litter ordinances in sensitive areas. No significant impact is anticipated after mitigation.

Trash Nets

Trash nets are installed within the storm drain systems either inline or at the end of pipe in urbanized areas where native habitat or special-status species usually are absent. As such, impacts to biological resources would likely not occur, including impacts to species diversity, impacts to special-status species, impacts to habitat, or impacts to wildlife migration. Trash nets used for the purposes of compliance with the final Trash Amendments would not be located within a stream channel, but rather in the storm drain itself and would not result in a foreseeable deterioration of existing fish habitat. Furthermore, because installation of trash nets requires minimal construction and ground disturbance and is accomplished within the existing pipeline, the installation of trash nets does not have the potential to cause a significant impact on biological resources. No mitigation is required since no impact is anticipated.

Gross Solids Removal Devices

Like vortex separation systems, Gross Solids Removal Devices are inline structural trash removal devices that are implemented in urbanized areas. As such, the project-level impacts on biological resources due to implementation of Gross Solids Removal Devices would be similar to the project-level impacts associated with vortex separation systems.

The proposed measures to lessen impacts from Gross Solids Removal Devices would be similar to the proposed measures for vortex separation systems. No potentially significant impact is anticipated after measures are applied.

Enforcement of Litter Laws

Enforcement of litter laws would involve no relative change to the baseline physical environment related to biological resources, either directly or indirectly and would have no impact on biological resources. Complying with existing statewide and local litter laws and ordinances would eliminate the substantial adverse environmental impacts from the litter, and the need for additional controls that could potentially generate their own nominal biological impacts. No mitigation is required since no impact is anticipated.

Increased Street Sweeping

Increased street sweeping and storm drain cleaning would involve no direct change to the physical environment related to biological objectives. Indirect impacts could include an increase in ambient noise levels, but this would not result in a significant impact to general wildlife species adapted to developed environments. No mitigation is required since no significant impact is anticipated.

Public Education

Public education would involve no change to the physical environment related to biological resources, either directly or indirectly and would have no impact on biological resources. Successful public education strategies would eliminate the substantial adverse environmental impacts from the litter, and the need for additional structural controls that generate their own nominal biological impacts. No mitigation is required since no impact is anticipated.

Ordinances

Similar to enforcement of litter laws and public education, ordinances are expected to have no impact or less-than-significant impact on biological conditions. Successful ordinances would eliminate the substantial adverse environmental impacts from the litter. No mitigation is required since no impact is anticipated.

6.3.4 Summary

Adverse impacts to biological resources are not expected to occur due to the nature of the areas where potential implementation measures used to comply with the final Trash Amendments would be located. Most areas are already extensively developed and the presence of significant biological resources is unlikely. In the event that specific compliance projects do encounter biological resources, measures have been identified to avoid or reduce potential impacts to less than significant levels, and these projects would need to have an independent environmental review done by the agency conducting the work.

6.4 Cultural Resources

6.4.1 Historic Resources

An historical resource includes resources listed in or eligible for listing in the California Register of Historical Resources. The California Register includes resources on the National Register of Historic Places, as well as California State Landmarks and Points of Historical Interest. Properties that meet the criteria for listing also include districts which reflect California's history and culture, or properties which represent an important period or work of an individual, or yield important historical information. Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified as local historical resources are also considered a historical resource (California Office of Historical Preservation 2006). Based on substantial evidence within the administrative record, any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may also be considered to be an historical resource (CEQA Guidelines 15064.5(a)).

6.4.2 Archeological Resources

An archeological site may be considered an historical resource if it is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California (PRC § 5020.1(j)) or if it meets the criteria for listing on the California Register (14 CCR § 4850).

If an archeological site is not an historical resource, but meets the definition of a "unique archeological resource" as defined in PRC Section 21083.2, then it should be treated in accordance with the provisions of that section.

6.4.3 Thresholds of Significance

A project would normally have a significant effect on cultural resources if it would:

- Cause a substantial adverse change in the significance of a historical resource as defined in section 15064.5 of the CEQA Guidelines.
- Cause a substantial adverse change in the significance of an archaeological resource pursuant to section 15064.5 of the CEQA Guidelines.
- Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.
- Disturb any human remains, including those interred outside of formal cemeteries.

6.4.4 Impacts and Mitigation

This is a statewide level analysis of the potential impacts from the final Trash Amendments. The specific location of potential impacts would be determined during the implementation of the final Trash Amendments.

Catch Basin Inserts

Catch basin inserts fit directly into curbside catch basins in urbanized areas and require no construction or ground disturbance. There is therefore no potential to impact cultural resources from this alternative means of compliance. No mitigation is required since no impact is anticipated.

Vortex Separation Systems

Vortex separation systems would be installed in currently urbanized areas where ground disturbance has previously occurred. Because these areas are already fully urbanized it is unlikely that their implementation would cause a substantial adverse change to historical or archeological resources, destroy paleontological resources, or disturb human remains. Depending, however, on the final location of facilities, potential impacts to cultural resources could occur. Paleontological resources can be found in areas containing fossil-bearing formations. Archaeological resources have been found within urbanized areas. Historic and architectural resources have also been found within urbanized areas. The site-specific presence or absence of these resources is unknown because the specific locations for vortex separation systems would be determined by responsible agencies at the project level. Installation of these systems could result in minor ground disturbances, which could impact cultural resources if they are sited in locations containing these resources and where disturbances have not previously occurred.

Upon determination of specific locations for vortex separation systems, responsible agencies should complete further investigation, including consultation with Native American tribes, to make an accurate assessment of the potential to affect historic, archaeological, or historic resources or to impact any human remains. If potential impacts are identified, measures to reduce impact could include project redesign, such as the relocation of facilities outside the boundaries of archeological or historical sites. According to the California Office of Historic Preservation, avoidance and preservation in place are the preferable forms of mitigation for archeological sites. When avoidance is infeasible, a data recovery plan should be prepared which adequately provides for recovering scientifically consequential information from the site. Studies and reports resulting from excavations must be deposited with the California Historical Resources Regional Information Center. No potentially significant impact is anticipated after these measures are taken.

Trash Nets

Trash nets are installed within the storm drain system either inline or at the end of pipe. Installation requires no ground disturbance which might impact cultural resources. No mitigation is required since no impact is anticipated.

Gross Solids Removal Devices

Like vortex separation systems, Gross Solids Removal Devices are inline structural trash removal devices that are implemented in urbanized areas. As such, the project-level impacts on cultural resources due to implementation of Gross Solids Removal Devices would be similar to the project-level impacts associated with vortex separation systems.

The proposed measures to lessen the impacts from Gross Solids Removal Devices would be similar to the proposed measures for vortex separation systems. No potentially significant impact is anticipated after these measures are applied.

Enforcement of Litter Laws

Enforcement of litter laws would involve no change to the physical environment related to cultural resources, either directly or indirectly and would have no impact on cultural resources. No mitigation is required since no impact is anticipated.

Increased Street Sweeping

Increased street sweeping and storm drain cleaning would occur in urbanized areas along public rights of way and would have no potential to impact cultural resources. No mitigation is required since no impact is anticipated.

Public Education

Public education would involve no change to the physical environment related to cultural resources, either directly or indirectly and would have no impact on cultural resources. No mitigation is required since no impact is anticipated.

Ordinances

Ordinances would involve no change to the physical environment related to cultural resources, either directly or indirectly, and would have no impact on cultural resources. No mitigation is required since no impact or less-than significant is anticipated.

6.4.5 Summary

While the potential for adverse impacts to cultural resources is low, there still exists a chance that cultural resources may occur at specific locations where implementation measures could be installed. Measures have been identified that could reduce potential impacts to less than significant levels and should be incorporated into site-specific projects carried out by the local agency.

6.5 Geology/Soils

6.5.1 Thresholds of Significance

A project would normally have a significant effect on the environment if it would:

- Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
    - Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault (refer to Division of Mines and Geology Special Publication 42);
    - Strong seismic ground shaking;
    - Seismic-related ground failure, including liquefaction; and/or
    - Landslides.

- Result in substantial soil erosion or the loss of topsoil;
- Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse;
- Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property; or
- Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of waste water.

6.5.2 Impacts and Mitigation

This is a statewide level analysis of the potential impacts from each compliance measure. The specific location of each compliance measure would be determined during the implementation of the final Trash Amendments.

Catch Basin Inserts

Catch basin inserts fit directly into curbside catch basins in urbanized areas and require no construction or ground disturbance. There is, therefore, no potential to impact geology or soils resources from this alternative means of compliance. No mitigation is required since no impact is anticipated.

Vortex Separation Systems

No impact due to exposure of people to, or property to, geologic hazards such as rupture of a known earthquake fault, strong seismic ground shaking, liquefaction, or landslides is expected from the implementation of vortex separation systems. Although areas of the state are subject to geologic hazards, compliance with standard design and construction specifications and the recommendations of geotechnical studies prepared at the project level would reduce the risk of damage from seismic-related hazards. Furthermore, it is not reasonably foreseeable that responsible agencies would choose to comply with the final Trash Amendments through structural means in areas where doing so would result in exposure of people or property to geologic hazards. Rather, it is foreseeable that localities would avoid such compliance measures in lieu of other compliance measures, such as enforcing litter ordinances in sensitive areas.

Wind or water erosion of soils may occur as a short-term impact during installation of vortex separation systems. Siltation or deposition within the vortex separation systems may occur, resulting in reduction in siltation or deposition in downstream areas. Reduction in siltation and deposition in downstream areas may be considered a positive impact as fine sediments may contain toxic pollutants. Little or no impact on erosion of affected watercourses is expected since the flow rate in the watercourses is not impacted by foreseeable methods of compliance.

Installation and operation of vortex separation systems would not cause or accelerate instability due to on- or off-site landslides, lateral spreading, subsidence, expansive soils, liquefaction, or collapse. Vortex separation systems would not be of the size or

scale to result in unstable earth conditions, changes in geologic substructures, topography or ground surface relief features, or destruction, covering or modification of any unique geologic or physical features. Typical units occupy about 4-1/2 square feet of plan view area for each cubic foot per second that they treat. Implementation of the final Trash Amendments may result in minor surface soil excavation during installation of vortex separation systems and result in temporarily unstable soil but would not, due to small size, however, lead to landslides, lateral spreading, subsidence, expansive soils, liquefaction, or collapse. Most of the relevant areas are already urbanized, and have already suffered soil compaction and hardscaping. Installation of vortex separation systems would occur within the existing storm drain systems.

Compliance with the final Trash Amendments would not require the use of septic tanks or alternative wastewater disposal systems. The presence or absence of soils incapable of adequately supporting their use is not relevant.

To the extent that vortex separation systems are installed in areas subject to geologic hazards, such as, ground shaking, liquefaction, liquefaction-induced hazards, or landslides, geotechnical studies prepared as part of the pre-design process would identify site-specific soil and subsurface conditions and specify design features would keep potential seismic related impacts within acceptable levels. Compliance with existing regulations, building codes, and standards specifications would also keep potential impacts within acceptable levels. The most appropriate measure for potential fault rupture hazards is avoidance (e.g., building setbacks), as most surface faulting is confined to a relatively narrow zone a few feet to tens of feet wide (California Geological Survey 2002).

To the extent that the installation of vortex separation systems causes an increase in erosion, typical established best management practices would be used during implementation to minimize offsite sediment runoff or deposition. Construction sites are required to retain sediments on site, either under a CGP permit or through the construction program of the applicable MS4 Phase I and II permit, which are already designed to minimize or eliminate erosion impacts on receiving water. No potentially significant impact is anticipated after these measures are taken.

To the extent that installation and operation of vortex separation systems could result in ground instability, potential impacts could be avoided or mitigated through mapping to site facilities away areas with unsuitable soils or steep slopes; design and installation in compliance with existing regulations; standard specifications and building codes; ground improvements such as soil compaction; and groundwater level monitoring to ensure stable conditions. No potentially significant impact is anticipated after these measures are taken.

To the extent that any soil is disturbed during installation of vortex separation systems, standard construction techniques, including but not limited to, shoring, piling, and soil stabilization can alleviate any potential impacts. Prior to earthwork, a geotechnical study would be conducted to evaluate geology and soil conditions. No potentially significant impact is anticipated after these measures are taken.

Trash Nets

Trash nets are installed within the storm drain system either inline or at the end of pipe. Installation requires no ground disturbance which might impact geology or soils resources. No mitigation is required since no impact is anticipated.

Gross Solids Removal Devices

Like vortex separation systems, Gross Solids Removal Devices are inline structural trash removal devices that are implemented in urbanized areas. As such, the project-level impacts on geology and soils resources due to implementation of Gross Solids Removal Devices would be similar to the project-level impacts associated with vortex separation systems.

The proposed measures to lessen the impacts from Gross Solids Removal Devices would be similar to the proposed measures for vortex separation systems. No potentially significant impact is anticipated after these measures are taken.

Enforcement of Litter Laws

Enforcement of litter laws would involve no change to the physical environment related to geologic and soil resources either directly or indirectly and would have no impact on geology and soils resources. No mitigation is required since no impact is anticipated.

Increased Street Sweeping

Increased street sweeping and storm drain cleaning would occur in urbanized areas along public rights of way and would have no potential to impact geology and soils resources. No mitigation is required since no impact is anticipated.

Ordinances

Ordinances would involve no change to the physical environment related to geologic and soil resources, either directly or indirectly, and would have no impact on geologic and soil resources. No mitigation is required since no impact to less-than-significant impact is anticipated.

6.5.3 Summary

Installation and maintenance of some full capture devices and treatment controls are not expected to result in potentially significant environmental effects with regard to geology and soils, because municipalities would not reasonably site BMPs where they would risk such impacts. Further, in the unlikely occurrence of such an impact, mitigation measures, which can be applied to reduce and/or eliminate these impacts, are available as described above. These mitigation measures are within the responsibility and jurisdiction of the responsible agencies subject to the final Trash Amendments and can or should be adopted by them (CCR, title 14, § 15091(a)(2)). The State Water Board does not direct which compliance measures responsible agencies choose to adopt or the mitigation measures they employ. The State Water Board does, however, recommend that appropriate measures be applied to reduce or avoid potential environmental impacts. Although this analysis concludes that, based on substantial evidence on the record, on a statewide level analysis, all impacts would be less than significant with mitigation; it is foreseeable that these measures may not

always be capable of reducing these impacts to levels that are less than significant in every conceivable instance. Although there is no information on the record that this would occur, in the event that a specific measure or alternative may not reduce impacts to levels that are less than significant, the project proponent may need to consider an alternative strategy or combination of strategies to comply with the final Trash Amendments.

6.6 Greenhouse Gas Emissions

General scientific consensus and increasing public awareness regarding global warming and climate change have placed new focus on the CEQA review process as a means to address the effects of greenhouse gas emissions from proposed projects on climate change.

Global warming refers to the recent and ongoing rise in global average temperature near Earth's surface. It is caused mostly by increasing concentrations of greenhouse gases in the atmosphere. Global warming is causing climate patterns to change. Global warming itself, however, represents only one aspect of climate change.

Climate change refers to any significant change in the measures of climate lasting for an extended period of time. In other words, climate change includes major changes in temperature, precipitation, or wind patterns, among other effects, that occur over several decades or longer.

Increases in the concentrations of greenhouse gases in the Earth's atmosphere are thought to be the main cause of human-induced climate change. Greenhouse gases naturally trap heat by impeding the exit of infrared radiation that results when incoming ultraviolet solar radiation is absorbed by the Earth and re-radiated as infrared radiation. The principal greenhouse gases associated with anthropogenic emissions are carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, perfluorocarbon, nitrogen trifluoride, and hydrofluorocarbon (Health and Safety Code, § 38505, subdivision (g); CEQA Guidelines, § 15364.5). Water vapor is also an important greenhouse gas, in that it is responsible for trapping more heat than any of the other greenhouse gases. Water vapor, however, is not a greenhouse gas of concern with respect to anthropogenic activities and emissions. Each of the principal greenhouse gases associated with anthropogenic climate warming has a long atmospheric lifetime (one year to several thousand years). In addition, the potential heat trapping ability of each of these gases vary significantly from one another. Methane for instance is 23 times more potent than carbon dioxide, while sulfur hexaflouride is 22,200 times more potent than carbon dioxide (Intergovernmental Panel on Climate Change 2001). Conventionally, greenhouse gases have been reported as "carbon dioxide equivalents." Carbon dioxide equivalents take into account the relative potency of non-carbon dioxide greenhouse gases and convert their quantities to an equivalent amount of carbon dioxide so that all emissions can be reported as a single quantity.

The primary man-made processes that release these greenhouse gases include: (1) burning of fossil fuels for transportation, heating and electricity generation, which release primarily carbon dioxide; (2) agricultural practices, such as livestock grazing and crop residue decomposition and application of nitrogen fertilizers, that release methane

and nitrous oxide; and (3) industrial processes that release smaller amounts of high global warming potential gases.

In 2005, Executive Order S-3-05 proclaimed that California is vulnerable to the effects of climate change. To combat those concerns, the Executive Order established a long-range greenhouse gas reduction target of 80percent below 1990 levels by 2050.

Subsequently, Assembly Bill (AB) 32, the California Global Warming Solutions Act of 2006 (Chapter 488, Statutes of 2006, enacting § 38500-38599 of the Health and Safety Code) was signed. AB 32 requires California to reduce statewide greenhouse gas emissions to 1990 levels by 2020. AB 32 directed the California Air Resources Board to develop and implement regulations that reduce statewide greenhouse gas emissions.

The Climate Change Scoping Plan approved by the California Air Resources Board in December 2008, outlines the State's plan to achieve the greenhouse gas reductions required in AB 32.

Senate Bill (SB) 97, signed in August 2007 (Chapter 185, Statutes of 2007, enacting § 21083.05 and 21097 of the Public Resources Code), acknowledges that climate change is a prominent environmental issue that requires analysis under CEQA. This bill directed the Office of Planning and Research to prepare, develop, and transmit guidelines for the feasible mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions to the California Resources Agency. Office of Planning and Research developed a technical advisory suggesting relevant ways to address climate change in CEQA analyses. The technical advisory also lists potential mitigation measures, describes useful computer models, and points to other important resources. In addition, amendments to CEQA guidelines implementing SB 97 became effective on March 18, 2010.

6.6.1 Thresholds of Significance

A project would normally have a significant effect on the environment if it would:

- Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.
- Conflict with an applicable plan, amendment or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

6.6.2 Impacts and Mitigation

The operation of construction equipment for the installation of trash collection devices and the operation of new or increase in maintenance equipment and street sweepers would generate greenhouse gas emissions over baseline conditions. Consistent with the air quality analysis in Section 6.2, greenhouse gas emissions due to construction equipment would be short-term and limited to minor amounts of construction equipment and therefore would not significantly increase greenhouse gas levels in the environment. Greenhouse gas levels are not expected to rise significantly since mitigation measures are available to reduce greenhouse gas emissions due to construction, maintenance and street sweeping activities.

The California Department of Water Resources has developed a set of BMPs to reduce greenhouse gas emissions from California Department of Water Resources construction and maintenance activities (California Department of Water Resources 2012). These BMPs can be used and/or modified to fit specific situations by the implementing agencies to reduce greenhouse gas emissions from their activities:

BMP 1. Evaluate project characteristics, including location, project work flow, site conditions, and equipment performance requirements, to determine whether specifications of the use of equipment with repowered engines, electric drive trains, or other high efficiency technologies are appropriate and feasible for the project or specific elements of the project.

BMP 2. Evaluate the feasibility and efficacy of performing on-site material hauling with trucks equipped with on-road engines.

BMP 3. Ensure that all feasible avenues have been explored for providing an electrical service drop to the construction site for temporary construction power. When generators must be used, use alternative fuels, such as propane or solar, to power generators to the maximum extent feasible.

BMP 4. Evaluate the feasibility and efficacy of producing concrete on-site and specify that batch plants be set up on-site or as close to the site as possible.

BMP 5. Evaluate the performance requirements for concrete used on the project and specify concrete mix designs that minimize greenhouse gas emissions from cement production and curing while preserving all required performance characteristics.

BMP 6. Minimize idling time by requiring that equipment be shut down after five minutes when not in use (as required by the State airborne toxics control measure [Title 13, § 2485 of the CCR]). Provide clear signage that posts this requirement for workers at the entrances to the site and provide a plan for the enforcement of this requirement.

BMP 7. Maintain all construction equipment in proper working condition and perform all preventative maintenance. Required maintenance includes compliance with all manufacturer's recommendations, proper upkeep and replacement of filters and mufflers, and maintenance of all engine and emissions systems in proper operating condition. Maintenance schedules shall be detailed in an Air Quality Control Plan prior to commencement of construction.

BMP 8. Implement tire inflation program on jobsite to ensure that equipment tires are correctly inflated. Check tire inflation when equipment arrives on-site and every two weeks for equipment that remains on-site. Check vehicles used for hauling materials off-site weekly for correct tire inflation. Procedures for the tire inflation program shall be documented in an Air Quality Management Plan prior to commencement of construction.

BMP 9. Develop a project specific ride share program to encourage carpools, shuttle vans, transit passes and/or secure bicycle parking for construction worker commutes.

BMP 10. Reduce electricity use in temporary construction offices by using high efficiency lighting and requiring that heating and cooling units be Energy Star compliant. Require that all contractors develop and implement procedures for turning off computers, lights, air conditioners, heaters, and other equipment each day at close of business.

BMP 11. For deliveries to project sites where the haul distance exceeds 100 miles and a heavy-duty class 7 or class 8 semi-truck or 53-foot or longer box type trailer is used for hauling, a SmartWay[16] certified truck would be used to the maximum extent feasible.

The final Trash Amendments would not conflict with any plan, amendment, or regulation adopted for the purpose of reducing greenhouse gas emissions. Most greenhouse gas reduction plans include replacing government owned vehicles with low or zero-emission vehicles (Marin County 2006, City of Pasadena 2009, City of Citrus Heights 2011, California Department of Water Resources 2012). Implementation of greenhouse gas reduction plans would reduce greenhouse gas emissions from activities undertaken to comply with the final Trash Amendments.

In 2007, the California Air Resources Board adopted the Off-Road Diesel Vehicle Regulation (CCR, title 13, article 4.8, chapter 9) which, when fully implemented, would significantly reduce emissions from off-road, non-agricultural, diesel vehicles with engines greater than 25 horsepower—the types of vehicles typically used in construction activities. The regulation required owners to replace the engines in their vehicles, apply exhaust retrofits, or replace the vehicles with new vehicles equipped with cleaner engines. The regulation also limited vehicle idling, required sales disclosure requirements, and reporting and labeling requirements. The first compliance date for large fleets was March 1, 2010; however, amendments have been made several times to extend the deadlines. When the regulation is fully implemented, owners of fleets of construction, mining, and industrial vehicles would have to upgrade the performance of their vehicle fleets to comply with the regulation.

The California Air Resources Board Scoping Plan (California Air Resources Board 2008) proposes a comprehensive set of actions designed to achieve the 2020 greenhouse gas emissions reductions required under AB 32. While some of the regulations would not be implemented until later, when they do take effect, they would likely result in reduced emissions from construction and maintenance activities. Specific actions in the Scoping Plan that would impact construction and maintenance activities include: low carbon fuel standard (Measure Transportation-2), tire inflation regulation

[16] The U.S EPA has developed the SmartWay truck and trailer certification program to set voluntary standards for trucks and trailers that exhibit the highest fuel efficiency and emissions reductions. These tractors and trailers are outfitted at point of sale or retrofitted with equipment that significantly reduces fuel use and emissions including idle reduction technologies, improved aerodynamics, automatic tire inflation systems, advanced lubricants, advanced powertrain technologies, and low rolling resistance tires.

(Measure Transportation-4), the heavy-duty tractor truck regulation (Measure Transporation-7), and commercial recycling (Measure Recycling and Waste-3).

In addition, other efforts by the California Air Resources Board would reduce air pollutant emissions through 2020, including the Diesel Risk Reduction Plan (California Air Resources Board 2000) and the 2007 State Implementation Plan. Measures in these plans would result in the accelerated phase-in of cleaner technology for virtually all of California's diesel engine fleets including trucks, buses, construction equipment, and cargo handling equipment at ports.

6.6.3 Summary

With the incorporation of BMPs and compliance with any plans, amendments, or regulations adopted for the purpose of reducing greenhouse gas emissions, projects undertaken to comply with the final Trash Amendments would not have a significant impact on the environment due to greenhouse gas emissions.

6.7 Hazards and Hazardous Materials

Hazards and hazardous materials are located throughout the urbanized portion of the state either as naturally occurring or man-made hazards. Contaminated soil and groundwater from commercial and industrial sites such as gas stations, dry cleaners, and manufacturing facilities are located throughout the state. Aboveground and underground storage tanks contain vast quantities of hazardous substances. Thousands of these tanks have leaked or are leaking, discharging petroleum fuels, solvents, and other hazardous substances into the subsurface. These leaks as well as other discharges to the subsurface that result from inadequate handling, storage, and disposal practices can seep into the subsurface and pollute soils and groundwater.

Both naturally occurring hazards and anthropogenic contaminated soils and groundwater could be encountered during the installation of structural treatment alternatives for implementation of the reasonably foreseeable compliance methods for the final Trash Amendments.

Individual projects also may generate hazardous emissions, as the full capture system would, by design, trap substances which could become hazardous to the public or to maintenance workers if not handled in a timely manner and disposed of appropriately. To the extent improper disposal of, for instance, household hazardous wastes result in them being trapped in structural compliance measures, and potentially allowing a release of such chemicals, local residents could be exposed to those effects. To a large extent, those effects are already occurring in the watershed (but further downstream) and should be considered baseline impacts. Nevertheless, the locality that originated the risk would become newly potentially exposed instead of downstream receptors, those impacts could be potentially significant in those locales. Such impacts could be avoided or diminished by educating the local community of the effects of improper disposal of such wastes, enforcing litter ordinances, and timely cleaning out inserts and structural controls.

There is also the potential for public health hazards associated with the installation, operation, and maintenance of structural trash removal devices. Use of heavy equipment during installation and maintenance of structural trash removal devices may add to the potential for construction accidents. Unprotected sites may also result in accidental health

hazards for people. In addition, certain structural devices may become a source of standing water. Any source of standing water can potentially become a source of vector production.

6.7.1 Thresholds of Significance

A project would normally have a significant effect on the environment if it would:

- Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.
- Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment.
- Reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.
- The project is located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code section 65962.5 and, as a result, would it create a significant hazard to the public or the environment.
- For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area.
- For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area.
- Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.
- Expose people or structures to the risk of loss, injury or death involving wild land fires, including where wild lands are adjacent to urbanized areas or where residences are intermixed with wild lands.

6.7.2 Impacts and Mitigation

Catch Basin Inserts

Catch basin inserts fit directly into curbside catch basins in urbanized areas and require no construction or ground disturbance. There is, therefore, no potential to encounter contaminated soils or groundwater or other hazards from this alternative means of compliance. Since no construction is required, the use of hazardous materials or potential for construction accidents is unlikely during installation. Catch basin cleaning and maintenance, however, could pose risks to maintenance workers.

To the extent that catch basin cleaning and maintenance could pose risks to maintenance workers, measures to avoid these risks include requiring workers to obtain hazardous materials maintenance, record keeping, and disposal activities training, California

Occupational Health and Safety Administration -required Health and Safety Training, and California Occupational Health and Safety Administration Confined Space Entry training.

Vortex Separation Systems

It is reasonably foreseeable that hazards or hazardous materials could be encountered during the installation of vortex separation systems. Contamination could exist depending on the current and historical land uses of the area. Depending on their location, vortex separation systems could be proposed in areas of existing oil fields and/or methane zones or in areas with contaminated soils or groundwater. The use of hazardous materials (e.g., paint, oil, gasoline) and potential for accidents is also likely during installation.

Trash that is trapped by vortex separation systems could become hazardous to the public or to maintenance workers who collect and transport the trash if it is not handled in a timely manner and disposed of appropriately.

Installation of vortex separation systems could result in the temporary interference of emergency response or evacuation plans if construction equipment, road closures, or traffic interfered with emergency vehicles traveling through the installation area.

As vortex separation systems would be located in urbanized areas, it is not reasonably foreseeable that their installation would expose people to wildland fires. Furthermore, these are structural trash removal devices that would not serve as residences or places of employment. They would not result in a safety hazard for people residing or working within two miles of public airport or public use airport.

To the extent that installation of vortex separation systems could involve work with or near hazards or hazardous materials, potential risks of exposure can be alleviated with proper handling and storage procedures. The health and safety plan prepared for any project should address potential effects from cross contamination and worker exposure to contaminated soils and water and should include a plan for temporary storage, transportation and disposal of contaminated soils and water. Compliance with the requirements of California Occupational Health and Safety Administration and local safety regulations during installation, operation, and maintenance of these systems would prevent any worksite accidents or accidents involving the release of hazardous materials into the environment, which could harm the public, nearby residents and sensitive receptors such as schools. Systems can be redesigned and sites can be properly protected with fencing and signs to prevent accidental health hazards.

To the extent that trash trapped by vortex separation systems could become hazardous, impacts to maintenance workers and the public could be avoided or alleviated by educating the local community of the effects of improper disposal of such wastes, enforcing litter ordinances, and timely cleaning out inserts and structural controls.

To the extent that installation of vortex separation systems could interfere with emergency response or evacuation plans, traffic control plans should be used to manage traffic through installation zones.

To the extent that vortex separation systems become a source of standing water and vector production, design at the project-level can help reduce vector production from standing water. Netting can be installed over devices to further mitigate vector production. Vector control agencies may also be employed as another source of mitigation. Systems that are

prone to standing water can be selectively installed away from high-density areas and away from residential housing and/or by requiring oversight and treatment of those systems by vector control agencies.

Trash Nets

Trash nets are installed within the storm drain system either inline or at the end of pipe. There is therefore no potential to encounter contaminated soils or groundwater or other hazards from this alternative means of compliance. Since no construction is required, the use of hazardous materials or potential for construction accidents is unlikely during installation. No mitigation is required since no impact is anticipated.

To the extent that trash net cleaning and maintenance could pose risks to maintenance workers, measures to avoid these risks include requiring workers to obtain hazardous materials maintenance, record keeping, and disposal activities training, California Occupational Health and Safety Administration -required Health and Safety Training, and California Occupational Health and Safety Administration Confined Space Entry training.

Gross Solids Removal Devices

Like vortex separation systems, Gross Solids Removal Devices are inline structural trash removal devices that are implemented in urbanized areas. As such, the project-level impacts related to hazards and hazardous materials due to implementation of Gross Solids Removal Devices would be similar to the project-level impacts associated with vortex separation systems.

The proposed measures to decrease impacts from Gross Solids Removal Devices would be similar to the proposed measures for vortex separation systems.

Enforcement of Litter Laws

Enforcement of litter laws would involve no change to the physical environment related to hazards and hazardous materials, either directly or indirectly and would have no impact related to hazards, hazardous materials, or public health. No mitigation is required since no impact is anticipated.

Increased Street Sweeping

Increased street sweeping and storm drain cleaning would occur in urbanized areas along public rights of way and would have no potential impact related to hazards, hazardous materials, or public health. No mitigation is required since no impact is anticipated.

Public Education

Public education would involve no change to the physical environment related to hazards and hazardous materials, either directly or indirectly and would have no impact related to hazards, hazardous materials, or public health. No mitigation is required since no impact is anticipated.

Ordinances

Ordinances would involve no change to the physical environment related to hazards and hazardous materials, either directly or indirectly, and would have no impact on hazards

and hazardous materials, or public health. No mitigation is required since no impact to less-than-significant impact is anticipated.

6.7.3 Summary

Installation and maintenance of some treatment trash-reduction BMPs could result in potentially significant environmental effects with regard to hazards, hazardous materials, and public health. Measures can be applied, however, to reduce and/or eliminate these impacts, as described above. These measures are within the responsibility and jurisdiction of the responsible agencies subject to the final Trash Amendments and can or should be adopted by them (CCR, title 14, § 15091(a)(2)). The State Water Board does not direct which compliance measures responsible agencies choose to adopt or the mitigation measures they employ. The State Water Board does, however, recommend that appropriate measures be applied to reduce or avoid potential environmental impacts. Although this analysis concludes that, based on substantial evidence on the record, on a statewide level analysis, all impacts would be less than significant with mitigation; it is foreseeable that these measures may not always be capable of reducing these impacts to levels that are less than significant in every conceivable instance. Although there is no information on the record that this would occur, in the event that a specific measure or alternative may not reduce impacts to levels that are less than significant, the project proponent may need to consider an alternative strategy or combination of strategies to comply with the final Trash Amendments.

6.8 Hydrology/Water Quality

6.8.1 Thresholds of Significance

The proposed project would result in a significant impact on hydrology or water quality if it would:

- Violate any water quality standards or waste discharge requirements.
- Substantially deplete groundwater supplies or interfere substantially with groundwater recharge, resulting in a net deficit in aquifer volume or a lowering of the local groundwater table level.
- Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site.
- Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate of surface runoff in a manner that causes flooding on- or off-site, creating or contributing to an existing local or regional flooding problem;
- Create or contribute runoff water that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff;
- Otherwise substantially degrade water quality;

- Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance rate Map or other flood hazard delineation map;
- Place within a 100-year flood hazard area structures that would impede or redirect floodflows; or
- Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam;
- Contribute to inundation by seiche, tsunami, or mudflow.

6.8.2 Impacts and Mitigation

The final Trash Amendments would not violate any water quality standards or waste discharge requirements; in fact, they are designed to improve water quality. Several reasonably foreseeable methods of compliance may have the potential to cause localized flooding and are described below. It is not reasonably foreseeable that increased street sweeping, enforcement of litter laws, or public education would negatively impact hydrology or water quality.

The installation, operation, and maintenance of full capture systems do not entail the use of groundwater resources, nor would it interfere with groundwater recharge. Multi-purpose projects may include a groundwater recharge component which would be beneficial for groundwater resources. No impacts to groundwater resources are anticipated.

The installation, operation, and maintenance of full capture systems would not alter the drainage pattern of the target areas nor increase the amount of runoff within those areas. Full capture systems are placed at the inlet (catch basin inserts) or outlet (trash nets) of the storm drain system, or inline (vortex separation systems) and do not require any type of re-contouring of the surrounding area nor alteration of any stream courses. The main concern is localized flooding caused by clogging of the trash capture devices, which is discussed below. No other impacts are anticipated.

Compliance with the final Trash Amendments would not place housing or other structures within a 100-year flood hazard area, nor would it expose people and structures to a significant risk of loss, injury, or death by flooding, seiche, tsunami, or mudflow. No impacts are anticipated.

Catch Basin Inserts

Catch basin inserts are manufactured frames that typically incorporate filters or fabric and placed in a curb opening or drop inlet to remove trash, sediment, or debris. They can also be perforated metal screens placed horizontally or vertically within a catch basin. These devices have less hydraulic effect than the vortex separation systems or the Gross Solids Removal Devices, however, flooding is still a potential hazard if the filters or screens became blocked by trash and debris and prevents the discharge of storm water into the drain causing localized flooding. This would be of particular concern in areas susceptible to high leaf-litter rates. This potential impact can be diminished through the use of inserts that are designed with automatic release

mechanisms or retractable screens that allow flow-through during wet-weather and by performing regular maintenance to prevent the buildup of trash and debris. Therefore, the exposure of people and property to flooding hazards after mitigation is considered less than significant.

Vortex Separation Systems

Vortex separation systems are devices designed to allow the incoming flow of urban runoff or storm water to pass through the device while capturing trash and other debris within the unit. These types of devices may result in a potentially significant impact due to flooding if the screens became blocked by trash and debris and prevent the discharge of storm water or if the vortex separation systems are not properly designed and constructed to allow for bypass of storm water during storm events that exceed the design capacity. This potential impact can be alleviated through the design of the vortex separation systems with overflow/bypass structures and by performing regular maintenance to prevent the build-up of trash and debris. Therefore, the exposure of people and property to flooding hazards after mitigation is considered less than significant.

The vortex separation systems would not alter the direction or slope of the stream channels in the lower watershed, therefore, no change in the direction of surface water flow would occur.

Trash Nets

Trash nets are devices that use the natural energy of the flow to trap trash, floatables and solids in disposable mesh nets. Trash nets can be installed at or below grade within existing storm water conveyance structures or retrofitted to an existing outfall structure with only minor modifications. These devices have less hydraulic effect than the vortex separation systems or the Gross Solids Removal Devices; however, flooding is still a potential hazard if the nets became blocked by trash and debris. This potential impact can be alleviated through sizing and designing trash nets to allow for bypass when storm events exceed the design capacity and by performing regular maintenance to prevent the buildup of trash and debris. Therefore, the exposure of people and property to flooding hazards after mitigation is considered less than significant.

Gross Solids Removal Devices

Gross Solids Removal Devices are devices designed to allow the incoming flow of urban runoff or storm water to pass through the device while capturing trash and other debris within the unit. These types of devices may result in a potentially significant impact due to flooding hazards if the screens became blocked by trash and debris and prevent the discharge of storm water or if the Gross Solids Removal Devices are not properly designed and constructed to allow for bypass of storm water during storm events that exceed the design capacity. This potential impact can be diminished through the design of the Gross Solids Removal Devices with overflow/bypass structures and by performing regular maintenance to prevent the buildup of trash and debris. Therefore, the exposure of people and property to flooding hazards after mitigation is considered less than significant.

The Gross Solids Removal Devices units would not alter the direction or slope of the stream channels in the lower watershed, therefore, no change in the direction of surface water flows would occur.

6.8.3 Summary

Installation and maintenance of some treatment trash-reduction BMPs could result in potentially significant environmental effects with regard to hydrology. Measures, however, can be applied to reduce and/or eliminate these impacts, as described above. These measures are within the responsibility and jurisdiction of the responsible agencies subject to the final Trash Amendments and can or should be adopted by them (CCR, title 14, § 15091(a)(2)). The State Water Board does not direct which compliance measures responsible agencies choose to adopt or the mitigation measures they employ. The State Water Board does, however, recommend that appropriate measures be applied to reduced or avoid potential environmental impacts. It is foreseeable that these measures may not always be capable of reducing these impacts to levels that are less than significant in every conceivable instance. In the event that a specific measure or alternative may not reduce impacts to levels that are less than significant, the project proponent may need to consider an alternative strategy or combination of strategies to comply with the final Trash Amendments.

6.9 Land Use/Planning

6.9.1 Thresholds of Significance

The proposed project would have a significant environmental impact on land use if it would:

- Physically divide an established community.
- Conflict with any applicable land use plan, policy, or regulation to an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.
- Conflict with any applicable habitat conservation plan or natural community conservation plan.

6.9.2 Impacts and Mitigation

Due to where they are currently located or would be planned for implementation, it is not expected that the final Trash Amendments and the reasonably foreseeable methods of compliance would either physically divide an established community or conflict with any applicable habitat conservation plan or natural community conservation plan.

Catch Basin Inserts

Since, catch basin inserts can be installed at or below grade within existing storm water catch basins with minor modifications to the storm water conveyance structure no adverse impacts are expected on present or planned land use.

Vortex Separation Systems

Vortex separation systems (i.e., Continuous Deflective Separation units) are installed below grade and are appropriate for highly urbanized areas where space is limited. In general, a vortex separation system occupies about 4-1/2 square feet of plan view area for each treated cubic feet per second of runoff, with the bulk of the plan view area being well below grade. Maintenance of the Continuous Deflective Separation unit involves the removal of the solids either by using a vactor truck, a removable basket or a clamshell excavator depending on the design and size of the unit.

The installation of vortex separation systems may require modification of storm water conveyance structures; however, these units would generally be sited below grade and within existing storm drain infrastructure. The installation of vortex separation systems is not expected to result in substantial alterations or adverse impacts to a present or planned land use. To the extent that there could be land use impacts at a specific location, these potential land use conflicts are best addressed at the project level. Since the State Water Board cannot specify the manner of compliance with the final Trash Amendments, the State Water Board cannot specify the exact location of trash removal devices. The various municipalities that might install these devices would need to identify local land use plans as part of a project-level analysis to ensure that projects comply with the final Trash Amendments as well as permitted land-use regulations and are consistent with land use plans, general plans, specific plans, conditional uses, or subdivisions.

Trash Nets

Since, trash nets can be installed at or below grade within existing storm water conveyance structures or retrofitted to an existing outfall structure with only minor modifications no adverse impacts are expected on present or planned land use.

Gross Solid Removal Devices

Gross Solids Removal Devices were developed by Caltrans to be retrofitted below grade into existing highway drainage systems or installed in future highway drainage systems. These devices are appropriate for highly urbanized areas where space is limited. The Gross Solids Removal Devices s can be designed to accommodate vehicular loading. Maintenance of the devices involves the removal of the solids either by using a vactor truck or other equipment.

The installation of Gross Solids Removal Devices may require modification of storm water conveyance structures; however, these units would generally be sited below grade and within existing storm drain infrastructure. The installation of Gross Solids Removal Devices is not expected to result in substantial alterations or adverse impacts to present or planned land use. To the extent that there could be land use impacts at a specific location, these potential land use conflicts are best addressed at the project level. Since the State Water Board cannot specify the manner of compliance with the final Trash Amendments, the State Water Board cannot specify the exact location of trash removal devices. The various municipalities that might install these devices would need to identify local land use plans as part of a project-level analysis to ensure that projects comply with permitted land-use regulations and are consistent with land use

plans, general plans, specific plans, conditional uses, or subdivisions.

Institutional Controls

It is not reasonably foreseeable that increased street sweeping, enforcement of litter laws, ordinances, or public education would alter present or planned land use.

6.9.3 Summary

Construction of vortex separation systems and Gross Solids Removal Devices would not result in permanent features such as aboveground infrastructure that would disrupt, divide, or isolate existing communities or land uses.

6.10 Noise and Vibration

6.10.1 Background

Noise

California Health and Safety Code section 46022 defines noise as “excessive undesirable sound, including that produced by persons, pets and livestock, industrial equipment, construction, motor vehicles, boats, aircraft, home appliances, electric motors, combustion engines, and any other noise-producing objects”. The degree to which noise can affect the human environment range from levels that interfere with speech and sleep (annoyance and nuisance) to levels that cause adverse health effects (hearing loss and psychological effects). Human response to noise is subjective and can vary greatly from person to person. Factors that influence individual response include the intensity, frequency, and pattern of noise; the amount of background noise present before the intruding noise; and the nature of work or human activity that is exposed to the noise source.

Sound results from small and rapid changes in atmospheric pressure. These cyclical changes in pressure propagate through the atmosphere and are often referred to as sound waves. The greater the amount of variation in atmospheric pressure (amplitude) leads to a greater loudness (sound level). Sound levels are most often measured on a logarithmic scale of decibels (dB). The decibel scale compresses the audible acoustic pressure levels which can vary from 20 micropascals (μPa), the threshold of hearing and reference pressure (0 dB), to 20 million μPa, the threshold of pain (120 dB) (Air & Noise Compliance 2006).

Table 10 provides examples of noise levels from common sounds.

Table 10. Common Sound Levels.

Outdoor Sound Levels	Sound Pressure (µPa)	Sound Level (dBA)	Indoor Sound Level
	6,324,555	110	Rock Band at 5m
Jet Over-flight at 300m		105	
	2,000,000	100	Inside NY Subway Train
Gas Lawn Mower at 1m		95	
	632,456	90	Food Blender at 1m
Diesel Truck at 15 m		85	
Noisy Urban Area (daytime)	200,000	80	Garbage Disposal at 1m
		75	Shouting at 1m
Gas Lawn Mower at 30m	63,246	70	Vacuum Cleaner at 3m
Suburban Commercial Area		65	Normal Speech at 1m
	20,000	60	
Quiet Urban Area (daytime)		55	Quiet Conversation at 1m
	6,325	50	Dishwasher in Adjacent Room
Quiet Urban Area (nighttime)		45	
	2,000	40	Empty Theater of Library
Quiet Suburb (nighttime)		35	
	632	30	Quiet Bedroom at Night
Quiet Rural Area (nighttime)		25	Empty Concert Hall
Rustling Leaves	200	20	
		15	Broadcast and Recording Studios
	63	10	
		5	
Reference Pressure Level	20	0	Threshold of Hearing

Source: Air & Noise Compliance 2006.

To determine ambient (existing) noise levels, noise measurements are usually taken using various noise descriptors. The following are brief definitions of typical noise measurements:

Community Noise Equivalent Level

The community noise equivalent level is an average sound level during a 24-hour day. The community noise equivalent level noise measurement scale accounts for noise source, distance, single-event duration, single-event occurrence, frequency, and time of day. Humans react to sound between 7:00 p.m. and 10:00 p.m. as if the sound were actually 5 decibels higher than if it occurred from 7:00 a.m. to 7:00 p.m. From 10:00 p.m. to 7:00 a.m., humans perceive sound as if it were 10 dBA higher than if it occurred from 7:00 a.m. to 7:00 p.m. due to the lower background noise level. Hence, the community noise equivalent level noise measurement scale is obtained by adding an additional 5 decibels to sound levels in the evening from 7:00 p.m. to 10:00 p.m., and 10 dBA to sound levels in the night after 10:00 p.m. and before 7:00 a.m. Because community noise equivalent level accounts for human sensitivity to sound, the community noise equivalent level 24-hour figure is always a higher number than the actual 24-hour average.

Equivalent Noise Level

Equivalent noise level is the average noise level on an energy basis for any specific time period. The equivalent noise level for 1 hour is the energy average noise level during the hour. The average noise level is based on the energy content (acoustic energy) of the sound. Equivalent noise level can be thought of as the level of a continuous noise that has the same energy content as the fluctuating noise level. The equivalent noise level is expressed in units of dBA.

Sound Exposure Level

Sound exposure level is a measure of the cumulative sound energy of a single event. This means that louder events have greater sound exposure level than quieter events. Additionally, events that last longer have greater sound exposure level than shorter events.

Audible Noise Changes

Studies have shown that the smallest perceptible change in sound level for a person with normal hearing sensitivity is approximately 3 decibels. A change of at least 5 decibels would be noticeable and likely would evoke a community reaction. A 10-decibel increase is subjectively heard as a doubling in loudness and would most certainly cause a community response. Noise levels decrease as the distance from the noise source to the receiver increases. Noise generated by a stationary noise source, or “point source,” would decrease by approximately 6 decibels over hard surfaces and 9 decibels over soft surfaces for each doubling of the distance. For example, if a noise source produces a noise level of 89 dBA at a reference distance of 50 feet, then the noise level would be 83 dBA at a distance of 100 feet from the noise source, 77 dBA at a distance of 200 feet, and so on over hard surfaces. Generally, noise is most audible when traveling along direct line-of-sight. Barriers, such as walls, berms, or buildings that break the line-of-sight between the source and the receiver greatly reduce noise

levels from the source because sound can reach the receiver only by bending over the top of the barrier (diffraction). Sound barriers can reduce sound levels by up to 20 dBA. If a barrier, however, is not high or long enough to break the line-of-sight from the source to the receiver, its effectiveness is greatly reduced.

Sensitive Receptors

Land uses that are considered sensitive to noise impacts are referred to as "sensitive receptors." Noise-sensitive receptors consist of, but are not limited to, schools, religious institutions, residences, libraries, parks, hospitals, and other care facilities.

Vibration

In contrast to airborne noise, ground-borne vibration is not a common environmental problem. It is unusual for vibration from sources such as buses and trucks to be perceptible, even in locations close to major roads. Some common sources of groundborne vibration are trains, buses on rough roads, and construction activities such as blasting, pile-driving and operating heavy earth-moving equipment. The effects of ground-borne vibration include feelable movement of the building floors, rattling of windows, shaking of items on shelves or hanging on walls, and rumbling sounds. In extreme cases, the vibration can cause damage to buildings. A vibration level that causes annoyance would be well below the damage threshold for normal buildings.

The background vibration velocity level in residential areas is usually 50 VdB or lower, well below the threshold of perception for humans which is around 65 VdB. Most perceptible indoor vibration is caused by sources within buildings such as operation of mechanical equipment, movement of people or slamming of doors. Typical outdoor sources of perceptible ground-borne vibration are construction equipment, steel-wheeled trains, and traffic on rough roads. If the roadway is smooth, the vibration from traffic is rarely perceptible. The range of interest is from approximately 50 VdB to 100 VdB. Background vibration is usually well below the threshold of human perception and is of concern only when the vibration affects very sensitive manufacturing or research equipment. Electron microscopes and high-resolution lithography equipment are typical of equipment that is highly sensitive to vibration.

6.10.2 General Setting

Noise

Existing noise environments will vary considerably based on the diversity of land uses and densities. In most urban environments automobile, truck, and bus traffic is the major source of noise. Traffic generally produces background sound levels that remain fairly constant with time. Individual high-noise-level events that can occur from time to time include honking horns, sirens, operation of construction equipment, and travel of noisy vehicles like trucks or buses. Air and rail traffic and commercial and industrial activities are also major sources of noise in some areas. In addition, air conditioning and ventilating systems contribute to the noise levels in residential areas, particularly during the summer months.

Regulatory Framework

The no longer extant California Office of Noise Control, California Department of Health Services developed guidelines showing a range of noise standards for various land use categories in the *1976 Noise Element Guidelines*. These guidelines are now found in Appendix C of the State of California General Plan Guidelines (Governor's Office of Planning and Research 2003). Cities within the state have generally incorporated this compatibility matrix into their General Plan noise elements. These guidelines are meant to maintain acceptable noise levels in a community setting based on the type of land use. Noise compatibility by different types of land uses is a range from "Normally Acceptable" to "Clearly Unacceptable" levels. The guidelines are used by cities within the state to help determine the appropriate land uses that could be located within an existing or anticipated ambient noise level.

Some of the reasonably foreseeable methods of compliance have the potential to affect noise levels. Noise within counties and cities are regulated by noise ordinances, which are found in the municipal code of the jurisdiction These noise ordinances limit intrusive noise and establish sound measurements and criteria, minimum ambient noise levels for different land use zoning classifications, sound emission levels for specific uses, hours of operation for certain activities (such as construction and trash collection), standards for determining noise deemed a disturbance of the peace, and legal remedies for violations.

Vibration

Major sources of groundborne vibration would typically include trucks and buses operating on surface streets, and freight and passenger train operations. The most significant sources of construction-induced groundborne vibrations are pile driving and blasting – neither of which would be involved in the installation or maintenance of structural implementation alternatives. Currently, the state of California has no vibration regulations or guidelines.

6.10.3 Thresholds of Significance

A project would normally have a significant effect on the environment if it would result in:

- Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.
- Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels.
- A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.
- A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.

- Exposure of persons residing or working in the project area, for a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, to excessive noise levels.

- Exposure of persons residing or working in the project area to excessive noise levels, for a project within the vicinity of a private airstrip.

6.10.4 Impacts and Mitigation

Implementation of the final Trash Amendments would not cause a permanent increase in ambient noise levels. All construction and maintenance activities would be intermittent. The remaining thresholds may be exceeded for limited durations depending on the location and ambient noise levels at sites selected for installation of trash removal devices.

Increases in noise levels during installation and/or maintenance of some of the implementation alternatives would vary depending on the existing ambient levels at each site. Once a site has been selected, project-level analysis to determine noise impacts would involve: (i) identifying sensitive receptors within a quarter-mile vicinity of the site, (ii) characterizing existing ambient noise levels at these sensitive receptors, (iii) determining noise levels of any and all installation and maintenance equipment, and (iv) adjusting values for distance between noise source and sensitive receptor. In addition, the potential for increased noise levels due to installation of trash reduction structural controls is limited and short-term. Given the size of the individual projects and the fact that installation would occur in small discrete locations, noise impacts during installation would not foreseeably be greater, and would likely be less onerous than, other types of typical construction activities in urbanized areas, such as ordinary road and infrastructure maintenance activities, building activities, etc. These short-term noise impacts can be mitigated by implementing commonly-used noise abatement procedures, standard construction techniques such as sound barriers, mufflers and employing restricted hours of operation. Applicable and appropriate mitigation measures could be evaluated when specific projects are determined, depending upon proximity of construction activities to receptors.

Overall, noise levels for installation of several of the reasonably foreseeable methods of compliance are governed primarily by the noisiest pieces of equipment. For most construction equipment the engine is the dominant noise source. Typical maximum noise emission levels (Lmax) are summarized, based on construction equipment operating at full power at a reference distance of 50 feet, and an estimated equipment usage factor based on experience with other similar installation projects. The usage factor is a fraction that accounts for the total time during an eight-hour day in which a piece of installation equipment is producing noise under full power. Although the noise levels in Table 11 represent typical values, there can be wide fluctuations in the noise emissions of similar equipment based on two important factors: (1) the operating condition of the equipment (e.g., age, presence of mufflers and engine cowlings); and (2) the technique used by the equipment operator (aggressive vs. conservative).

Table 11. Typical Installation Equipment Noise Emission Levels.

Equipment	Maximum Noise Level, (dBA) 50 feet from source	Equipment Usage Factor	Total 8-hr Leq exposure (dBA) at various distances	
			50ft	100ft
Foundation Installation			83	77
Concrete Truck	82	0.25	76	70
Front Loader	80	0.3	75	69
Dump Truck	71	0.25	65	59
Generator to vibrate concrete	82	0.15	74	68
Vibratory Hammer	86	0.25	80	74
Equipment Installation			83	77
Flatbed Truck	78	0.15	70	64
Forklift	80	0.27	74	69
Large Crane	85	0.5	82	76

Source: Los Angeles Water Board 2007f.

Vortex Separation Systems

Installation of vortex separation systems would potentially involve removal of asphalt and concrete from streets and sidewalks, excavation and shoring, installation of reinforced concrete pipe, installation of the unit, and repaving of the streets and sidewalks. It is anticipated that installation activities would occur in limited, discrete, and discontinuous areas over a short duration. No major long term or geographically extensive construction activities are anticipated. It is anticipated that excavation, for the purpose of installation, and repaving would result in the greatest increase in noise levels during the period of installation. Table 11 provides noise levels generated by different machinery that may be used in installing the vortex separation systems. The manufacturer of the Continuous Deflective Separation unit (described in detail in Section 5) recommends that the unit receive maintenance 2 to 4 times a year depending on amount and frequency of precipitation. Maintenance involves cleaning using vacuum trucks, which would increase ambient noise levels. The increase in noise levels would be dependent on the proximity of sensitive receptors to the site. Maintenance is also expected to generate 2-4 vehicle trips per year, which is not expected to increase ambient noise levels noticeably.

Contractors and equipment manufacturers have been addressing noise problems for many years, and through design improvements, technological advances, and a better understanding of how to minimize exposures to noise, noise effects can be minimized. An operations plan for the specific construction and/or maintenance activities could be

developed to address the variety of available measures to limit the impacts from noise to adjacent homes and businesses. To minimize noise and vibration impacts at nearby sensitive sites, installation activities should be conducted during daytime hours to the extent feasible. There are a number of measures that can be taken to reduce intrusion without placing unreasonable constraints on the installation process or substantially increasing costs. These include noise and vibration monitoring to ensure that contractors take all reasonable steps to minimize impacts when near sensitive areas; noise testing and inspections of equipment to ensure that all equipment on the site is in good condition and effectively muffled; and an active community liaison program. A community liaison program should keep residents informed about installation plans so they can plan around noise or vibration impacts; it should also provide a conduit for residents to express any concerns or complaints.

The following measures would minimize noise and vibration disturbances at sensitive areas during installation:

- Use newer equipment with improved noise muffling and ensure that all equipment items have the manufacturers' recommended noise abatement measures, such as mufflers, engine covers, and engine vibration isolators intact and operational. Newer equipment will generally be quieter in operation than older equipment. All installation equipment should be inspected at periodic intervals to ensure proper maintenance and presence of noise control devices (e.g., mufflers and shrouding).
- Perform all installation in a manner to minimize noise and vibration. Use installation methods or equipment that will provide the lowest level of noise and ground vibration impact near residences and consider alternative methods that are also suitable for the soil condition. The contractor should select installation processes and techniques that create the lowest noise levels.
- Perform noise and vibration monitoring to demonstrate compliance with the noise limits. Independent monitoring should be performed to check compliance in particularly sensitive areas. Require contractors to modify and/or reschedule their installation activities if monitoring determines that maximum limits are exceeded at residential land uses.
- Conduct truck loading, unloading and hauling operations so that noise and vibration are kept to a minimum by carefully selecting routes to avoid going through residential neighborhoods to the greatest possible extent. Ingress and egress to and from the staging area should be on collector streets or higher street designations (preferred).
- Turn off idling equipment.
- Temporary noise barriers shall be used and relocated, as practicable, to protect sensitive receptors against excessive noise from installation activities. Consider mitigation measures such as partial enclosures around continuously operating equipment or temporary barriers along installation boundaries.

- The installation contractor should be required by contract specification to comply with all local noise and vibration ordinances and obtain all necessary permits and variances.

These and other measures can be classified into three distinct approaches as outlined in Table 12.

Table 12. Noise Abatement Measures**.**

Type of Control	Description
Source Control	*Time Constraints* – Prohibiting work during sensitive nighttime hours *Scheduling* – performing noisy work during less sensitive time periods *Equipment Restrictions* – restricting the type of equipment used *Substitute Methods* –using quieter equipment when possible *Exhaust Mufflers* – ensuring equipment have quality mufflers installed *Lubrication and Maintenance* – well maintained equipment is quieter *Reduced Power Operation* – use only necessary power and size *Limit equipment on-site* – only have necessary equipment onsite *Noise Compliance Monitoring* – technician on-site to ensure compliance
Path Control	*Noise barriers* – semi-portable or portable concrete or wooden barriers *Noise curtains* – flexible intervening curtain systems hung from supports Increased distance – perform noisy activities further away from receptors
Receptor Control	*Community participation* –open dialog to involve affected parties *Noise complaint process* – ability to log and respond to noise complaints

Source: Adapted from Thalheimer 2000.

Increases in ambient noise levels are expected to be less than significant once measures have been properly applied to reduce potential impacts.

Catch Basin Inserts

Installation of catch basin inserts should not involve any construction activity or the use of major equipment therefore no significant increase in ambient noise levels is anticipated.

Catch basins need to be cleaned regularly. Frequency of cleaning depends on the amount of trash flowing into the insert. Increased street sweeping can decrease the amount of trash, caught by catch basin inserts. Catch basins are cleaned out on varying schedules at a minimum frequency of once a year as a requirement of the MS4 Phase I or Phase II permit. This implementation measure does not require an increase in cleaning frequency above what is already required for existing permits, therefore no significant increase in noise levels over baseline are anticipated. It is not anticipated that ambient noise levels will be increased by the use of catch basin inserts. To the contrary it is expected that since the design of many of these inserts act to prevent trash from entering the catch basins, the frequency of cleanouts of these basins may be reduced as a result of reduced trash loading. In the unlikely event, however, that there should be an increase in noise levels generated by current clean-out practices, the

source, path and receptor control measures presented in Table 12 should be applied. Therefore, increases in ambient noise levels are expected to be less than significant once measures have been properly applied to reduce potential impacts.

Trash Nets

Installation of trash nets should not involve any construction activity or the use of major equipment therefore no significant increase in ambient noise levels is anticipated. Maintenance of the trash nets involves replacing the nets when full or after each major storm event as necessary. Frequency of maintenance would depend on the trash volumes generated in the catchment area of the net. Equipment used to detach and haul away the trash nets may result in temporary increases in ambient noise levels. In the unlikely event that there should be an increase in noise levels generated by the equipment used to detach and haul away nets, the source, path and receptor control measures presented in Table 12 should be applied. Therefore, increases in ambient noise levels are expected to be less than significant once measures have been properly applied to reduce potential impacts.

Gross Solid Removal Devices

Gross Solids Removal Devices are the full capture systems being used by Caltrans for highway drainage systems and as such would be located adjacent to freeways and major highways under Caltrans' jurisdiction. Installation of Gross Solids Removal Devices would involve activities similar to those for vortex separation system installation. Clean-outs of Gross Solids Removal Devices are expected to occur only once per year. Equipment and/or machinery employed in this exercise may not significantly increase ambient noise levels as the potential sites for these units would already be subject to high traffic noise levels. In addition, increase in noise levels due to clean-outs would be of low frequency and short duration. Therefore, the installation of Gross Solids Removal Device is not expected to cause any potentially significant impacts.

Increased Street Sweeping

Increased street sweeping would involve an increase in current street sweeping frequencies in order to reduce the amount of trash accumulating on streets between cleanings. Any increases in street sweeping frequencies would be geared towards high trash generation areas such as those with commercial and industrial land-uses. The increase in ambient noise levels is expected to be limited in duration. Therefore, any increase in ambient noise levels over baseline conditions are expected to be less than significant.

Other Institutional Controls

Litter enforcement, ordinances, and public education are not expected to create any increases in ambient noise levels, and no mitigation would be required.

6.10.6 Summary

Installation and maintenance of some structural trash-reduction BMPs could result in potentially significant environmental effects with regard to noise. Measures, however, can be applied to reduce and/or eliminate these impacts are available as described

above. These mitigation measures are within the responsibility and jurisdiction of the responsible agencies subject to the final Trash Amendments and can or should be adopted by them. The State Water Board does not direct which compliance measures responsible agencies choose to adopt or the mitigation measures they employ. The State Water Board does, however, recommend that appropriate measures be applied to reduced or avoid potential environmental impacts. It is foreseeable that these measures may not always be capable of reducing these impacts to levels that are less than significant in every conceivable instance. Although there is no information on the record that this would occur, in the event that a specific mitigation measure or alternative may not reduce impacts to levels that are less than significant, the project proponent may need to consider an alternative strategy or combination of strategies to comply with the final Trash Amendments.

6.11 Public Services

6.11.1 Thresholds of Significance

A project would normally have a significant effect on the environment if it would result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: (a) Fire protection, (b) Police protection, (c) School, (d) Parks, and (e) Other public facilities. (See Environmental Checklist in Appendix B for discussion).

6.11.2 Impacts and Mitigation

While, implementation of the final Trash Amendments may require some activities at or in the vicinity of public service facilities, the final Trash Amendments would not require the establishment of new or altered government facilities to provide the services outlined above. However, response times for fire and police protection may be temporarily affect during installation of trash collection devices and are discussed below.

Catch Basin Inserts

Although the delays due to installations would be more localized and of shorter duration than installation of vortex separation systems, since the installation of catch basin inserts is not as complicated as the other structural BMPs, more maintenance may be required depending on the design of these units, since the capacity for trash collection may be limited to the size of the unit. However, the environmental impacts, and mitigation for those impacts, associated with the installation, maintenance and monitoring of catch basin inserts are expected to be similar to those for the vortex separation systems. Therefore, the potential delays in response times for fire and police vehicles due to installation of catch basin inserts after mitigation are less then significant.

Vortex Separation Systems

There is potential for temporary delays in response times of fire and police vehicles due to road closure/traffic congestion during installation of the vortex separation systems. To mitigate potential delays the responsible agencies could notify local emergency and police service providers of construction activities and road closures, if any, and coordinate with the local fire and police providers to establish alternative routes and traffic control during the installation activities. Most jurisdictions have in place established procedures to ensure safe passage of emergency and police vehicles during periods of road maintenance, construction, or other attention to physical infrastructure, and there is no evidence to suggest that installation of these structural devices would create any more significant impediments than other such typical activities. Any construction activity would be subject to applicable building and safety codes and permits. Therefore, the potential delays in response times for fire and police vehicles after mitigation are less then significant.

Since the installation of vortex separation systems would not result in development of land uses for residential, commercial, and/or industrial uses nor would the these units result in an increase of growth, it is reasonably foreseeable that the vortex separation systems would not result in a need for new or altered fire or police protection services. In addition, Emergency Preparedness Plans could be developed in consultation with local emergency providers to ensure that the new vortex separation systems would not contribute to an increase in the cumulative demand for fire and police emergency services.

Once the vortex separation systems are installed and operating, maintenance and monitoring of the devices would be required to verify that the structural BMP is performing properly and as expected. Maintenance and monitoring activities may also cause road closures and/or traffic congestion, but the same measures can be implemented as those for installation of the structures.

Trash Nets

The environmental impacts associated with the installation, maintenance and monitoring of trash nets are similar to those for the catch basin inserts. As with the catch basin inserts, more maintenance may be required depending on the design of these units since, the capacity for trash collection may be limited to the size of the trash net. With implementation of the mitigation presented for the vortex separation systems, this impact would be less than significant.

Gross Solids Removal Devices

There is potential for temporary delays in response times of fire and police vehicles due to road closure/traffic congestion during installation of the Gross Solids Removal Devices. To mitigate potential delays the responsible agencies could notify local emergency and police service providers of construction activities and road closures, if any, and coordinate with the local fire and police providers to establish alternative routes and traffic control during the installation activities. Most jurisdictions have in place established procedures to ensure safe passage of emergency and police vehicles during periods of road maintenance, construction, or other attention to physical

infrastructure, and there is no evidence to suggest that installation of these structural devices would create any more significant impediments than other such typical activities. Any construction activity would be subject to applicable building and safety codes and permits. Therefore, the potential delays in response times for fire and police vehicles after mitigation are less then significant.

Since, the installation of Gross Solids Removal Devices would not result in development of land uses for residential, commercial, and/or industrial uses nor would the these units result in increased growth, it is reasonable foreseeable that the vortex separation system units would not result in a need for new or altered fire or police protection services. In addition, Emergency Preparedness Plans could be developed in consultation with local emergency providers to ensure that the new Gross Solids Removal Devices would not contribute to an increase in the cumulative demand for fire and police emergency services.

Once the Gross Solids Removal Devices are installed and operating, maintenance and monitoring of the devices would be required to verify that the structural BMP is performing properly and as expected. Maintenance and monitoring activities may also cause road closures and/or traffic congestion, but the same measures can be implemented as those for installation of the structures.

Increased Street Sweeping

Non-structural BMPs may include increased street sweeping. The impacts of these increases can be minimized by efficient timing of the increased street sweeping, for example, prior to storm events. By identifying land uses where trash production is high (e.g., commercial retail), an increase in street sweeping would yield the greatest results.

Ordinances

Ordinances are not expected to create any impacts to public services, and no mitigation would be required.

6.11.3 Summary

Installation and maintenance of structural trash-reduction BMPs could result in less than significant environmental effects with regard to public services. Measures, however, can be applied to reduce and/or eliminate these impacts, as described above. These mitigation measures are within the responsibility and jurisdiction of the responsible agencies subject to the final Trash Amendments and can or should be adopted by them. The State Water Board does not direct which compliance measures responsible agencies choose to adopt or the mitigation measures they employ. The State Water Board does, however, recommend that appropriate measures be applied to reduced or avoid potential environmental impacts. It is foreseeable that these measures may not always be capable of reducing these impacts to levels that are less than significant in every conceivable instance. Although there is no information on the record that this would occur, in the event that a specific mitigation measure or alternative may not reduce impacts to levels that are less than significant, the project proponent may need to consider an alternative strategy or combination of strategies to comply with the final Trash Amendments.

6.12 Transportation/Traffic

6.12.1 Thresholds of Significance

A project would normally have a significant effect on the environment if it would:

- Conflict with an applicable plan, ordinance or amendment establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including, but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit.

- Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways.

- Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that result in substantial safety risks.

- Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment). Result in inadequate emergency access.

- Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.

6.12.2 Impacts and Mitigation

Implementation of the final Trash Amendments would not result in a change in air traffic patterns or substantially increase hazards due to design features or incompatible uses.

Vortex Separation Systems

The installation of vortex separation systems may result in additional vehicular movement. These impacts would be temporary and limited in duration to the period of installation. Maintenance requirements for trash removal devices demonstrate that devices could be emptied when they reach 85 percent capacity. Trash removal devices, however, can be designed so that they need be cleaned only once per storm season.

For example, the Los Angeles Water Board staff estimated that 3700 vortex separation systems would be needed in the Los Angeles River watershed. Assuming that these devices are cleaned once per storm season (November 1 to March 31, or 150 days), this translates to approximately 25 vehicle trips per day in the Los Angeles River watershed. An additional 25 trips per day, watershed-wide, would not foreseeably result in a substantial or significant change to traffic flow, other than short-term congestion on limited roadway segments. The approximately 25 trips per day are fewer than the number of trips that would trigger the requirement of a traffic impact analysis per the Los Angeles County Congestion Management Plan (Metropolitan Transit Authority 2004).

Consequently, the proposed project would be in conformance with the existing Los Angeles County Congestion Management Plan, and this impact would be less than significant (Los Angeles Water Board 2007f). As traffic in Los Angeles County represents the maximum impacts related to traffic congestion, impacts of the final Trash Amendments to traffic circulation are expected to be less than or similar to these results throughout the state.

To the extent that site-specific projects entail excavation in roadways, such excavations should be marked, barricaded, and traffic flow controlled with signals or traffic control personnel in compliance with authorized local police or California Highway Patrol requirements. These methods would be selected and implemented by responsible local agencies considering project level concerns. Standard safety measures should be employed including fencing, other physical safety structures, signage, and other physical impediments designed to promote safety and minimize pedestrian/bicyclists accidents. It is not foreseeable that this proposal would result in significant increases in traffic hazards to motor vehicles, bicyclists or pedestrians, especially when considered in light of those hazards currently endured in an ordinary urbanized environment.

In order to reduce the impact of construction traffic, implementation of a construction management plan for specified facilities could be developed to minimize traffic impacts upon the local circulation system. A construction traffic management plan could address traffic control for any street closure, detour, or other disruption to traffic circulation. The plan could identify the routes that construction vehicles would use to access the site, hours of construction traffic, and traffic controls and detours. The plan could also include plans for temporary traffic control, temporary signage, location points for ingress and egress of construction vehicles, staging areas, and timing of construction activity which appropriately limits hours during which large construction equipment may be brought on or off site. Potential impacts could also be reduced by limiting or restricting hours of construction so as to avoid peak traffic times and by providing temporary traffic signals and flagging to facilitate traffic movement. It is anticipated that impacts after mitigation would be less than significant.

Catch Basin Inserts

No construction activity or use of heavy equipment is anticipated for catch basin insert installation. Therefore additional vehicular movement during installation of the catch basin inserts to control trash is unlikely to be significant. Also, it is not anticipated that any such increase would have an adverse effect on traffic and transportation, as they would be limited and short-term. With respect to maintenance, catch basins need to be cleaned regularly. Frequency of cleaning depends on the amount of trash flowing in through the insert. This implementation measure does not require an increase in cleaning frequency above baseline conditions for what is already required for existing permits, therefore no significant increase in traffic is anticipated. Impacts from other maintenance activities, such as street sweeping, are not expected to be significant.

Trash Nets

The number of end-of-pipe trash nets installed would be limited by the number of suitable locations. Installation and maintenance of trash nets would create environmental impacts similar to those of the vortex separation systems.

Mitigation measures to be applied would be the same as those for the vortex separation systems. It is anticipated that impacts after mitigation would be less than significant.

Gross Solids Removal Devices

Gross Solids Removal Devices are the implementation alternatives developed by Caltrans for trash reduction from roadways. Hence their installation would foreseeably be limited to rights of way over which Caltrans has jurisdiction. Clean-outs of Gross Solids Removal Devices are expected to occur only once per year. Therefore, fewer Gross Solids Removal Devices would be installed than vortex separation systems within a given jurisdiction and, cleanout would be less frequent, so the impacts of installation and maintenance of Gross Solids Removal Devices on traffic are expected to be much less than those of vortex separation systems. Consequently, this impact would be a less than significant impact.

Increased Street Sweeping

The number of trips generated by increased street sweeping would depend of the magnitude of increase in sweeping frequency determined by any responsible agency choosing to use this implementation alternative. Increased street sweeping would not foreseeably be implemented alone for the final Trash Amendments. It is not clear how often street sweeping would be increased to comply with the final Trash Amendments at this point. If the stakeholders make decisions on the frequency of street sweeping, the impacts on traffic and transportation caused by increased street sweeping could be analyzed at the project level. Nevertheless, the impacts of increased street sweeping have been included in the reasonably foreseeable methods of compliance, such as catch basin inserts, that may also include increased street sweeping. It is not anticipated that such increases would have a significant impact on traffic and transportation.

Ordinances

Ordinances are not expected to create any impacts to transportation/traffic, and no mitigation would be required.

6.12.3 Summary

The foreseeable methods of compliance may entail short-term disturbances during installation of treatment controls to control trash. The specific project impacts can be mitigated by appropriate mitigation methods during installation. To the extent that significant adverse traffic impacts occur in a given locality, those effects are already occurring and should be considered baseline impacts. Nevertheless, to the extent the locality that originated the trash would become newly exposed to increased traffic from the need to properly dispose of trash generated locally instead of downstream jurisdictions; those impacts could be potentially significant in those locales. Under the final Trash Amendments, municipalities would abate locally generated trash, rather than causing the downstream cities and other stakeholders to suffer the effect of the trash or the cost of cleaning up the trash.

Installation and maintenance of full capture systems and treatment controls could result in potentially significant environmental effects with regard to transportation/traffic. Mitigation measures are available to be applied to reduce and/or eliminate these

impacts; these are described above. These mitigation measures are within the responsibility and jurisdiction of the responsible agencies and can or should be adopted by them. The State Water Board does not direct which compliance measures responsible agencies choose to adopt or which mitigation measures they employ. The State Water Board does, however, recommend that appropriate mitigation measures be applied in order that potential environmental impacts be reduced or avoided. It is foreseeable that these mitigation measures may not always be capable of reducing these impacts to levels that are less than significant in every conceivable instance. Although there is no information on the record that this would occur, in the event that a specific mitigation measure or alternative may not reduce impacts to levels that are less than significant, the project proponent may need to consider an alternative strategy or combination of strategies to comply with the final Trash Amendments.

6.13 Utilities/Service Systems

6.13.1 Thresholds of Significance

A project would normally have a significant effect on the environment if it would:

- Exceed wastewater treatment requirements of the applicable Regional Water Board. (See Environmental Checklist in Appendix B for discussion).
- Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects. (See Environmental Checklist in Appendix B for discussion).
- Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.
- Have insufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed. (See Environmental Checklist in Appendix B for discussion).
- Result in a determination by the wastewater treatment provider which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments. (See Environmental Checklist in Appendix B for discussion).
- Be served by a landfill with insufficient permitted capacity to accommodate the project's solid waste disposal needs. (See Environmental Checklist in Appendix B for discussion).
- Fail to comply with federal, state, and local statutes and regulations related to solid waste. (See Environmental Checklist in Appendix B for discussion).

6.13.2 Impacts and Mitigation

Potential projects undertaken to comply with the final Trash Amendments would not result in the need for a new or substantial alteration to water supply utilities. The implementation of the final Trash Amendments would not result in the development of any large residential, retail, industrial or any other development projects that would significantly increase the demand on the current water supply facilities or require new water supply facilities. There would be no impacts related to water supply and no mitigation is required.

Implementation of the final Trash Amendments involves a progressive reduction in trash discharges to the water bodies of the State through structural BMPs, enforcement of existing litter laws, and institutional controls. These strategies to reduce trash are not related to sewer systems[17] and would not affect Publicly Owned Treatment Works nor would they impact any septic tank systems. The implementation of the final Trash Amendments would not result in the need for a new or alterations to existing sewer or septic tank systems. The structural BMPs that may be implemented such as catch basin inserts would be implemented to update the storm drain system and reduce trash entering state waters. Except as otherwise noted, storm drain systems in California are completely separate from the sewer systems and septic tank systems. Thus, there would be no impacts related to sewer and septic tank systems and no mitigation is required.

Compliance with the final Trash Amendments would require that significant amounts of solid waste that would otherwise enter storm drains, be collected by institutional controls and structural methods for collecting trash, or by source control and proper litter disposal by citizens. To the extent that decreases in available landfill space may occur in a local upstream region, those effects are likely already occurring in downstream communities as a result of the improper disposal of trash by the upstream communities; such effects should be considered baseline impacts, as they are presently carried by downstream communities.

For example, the City of Long Beach uses “clam shell” tractors, other heavy duty equipment, and many, many truck trips to cart away the tons of trash generated from all the upstream cities. So while upstream communities may see an increase in the amount of solid waste delivered to their landfill as a result of the final Trash Amendments, downstream communities would see a proportionate decrease. The overall capacity of landfills throughout the state would not be affected. Furthermore, it is reasonably foreseeable that the final Trash Amendments would precipitate education about the environmental and economic effects of litter, and thereby stimulate greater

[17] The City of Sacramento (downtown area) and the City and County of San Francisco have combined sewer and storm water systems where storm water is conveyed to the Publicly Owned Treatment Works. (The City of Fresno also has a combined system, but its wastewater is discharged to infiltration basins, not to surface water.) Since any trash carried by storm water to the Publicly Owned Treatment Works would be collected at the Publicly Owned Treatment Works and not discharged to surface waters, these systems would not be subject to the final Trash Amendments. However, the Publicly Owned Treatment Works owners may want to implement the controls identified for the proposed Trash Amendments to reduce the amount of trash entering their facilities.

efforts to use less disposable materials, and to recycle more, thus reducing the use of resources and the amount of trash entering the landfills. Increased recycling would be considered a positive environmental impact.

In addition, to trash collected as part of compliance with the final Trash Amendments, there would be nominal amounts of construction debris generated by the installation of structural BMPs. Existing landfills should have adequate capacity to accommodate this limited amount of construction debris. In addition, many municipalities have construction and demolition debris recycling and reuse programs. Recycling and reuse of construction and demolition material has been shown to considerably reduce the amount of debris sent to landfills. For example, according to the County of Los Angeles, except under unusual circumstances, it is feasible to recycle or reuse at least 50% of construction and demolition debris (Los Angeles County Department of Public Works 2005). Impacts on the disposal of solid waste would be less than significant and no mitigation is required.

Storm Water Drainage

In order to achieve compliance with the final Trash Amendments, the storm water drainage systems may need to be retrofitted with structural BMPs such as catch basin inserts and or full capture systems. These structural BMPs have the potential to significantly impact the storm water drainage system. Impacts to the storm drains may range from potentially significant to less than significant with mitigation depending on the specific structural BMP implemented. The agencies implementing and complying with the final Trash Amendments would plan and implement the best full capture systems for their municipality. Overall, the installation of full and partial capture systems may substantially alter storm drain systems.

The most critical potential impact related to implementation of full or partial capture systems is the risk of increased flooding due to improperly designed or maintained structural controls. The trash collected by these devices (not the devices themselves) has the potential to impede the course and flow of flood waters through the storm drain system. This risk is considerably lower with properly designed and maintained full capture systems that include a flood event bypass system. Under large storm conditions, the trash capture unit would be bypassed and the storm water flows and the trash would be directly discharged to the receiving waters. The risk of increased street flooding is greater for the catch basin inserts. In general, the inserts are simple screens that are placed inside the catch basin to prevent large pieces of trash from being discharged into water bodies. If under storm conditions these screens were to become clogged with trash it would impede the flow of the storm water and could possibly cause flooding and adversely affect the operation of the public service facility (also discussed in Section 6.8 Hydrology/Water Quality).

The potential risk of increased flooding can be mitigated by proper design and maintenance. For example, the screens can be engineered to be removable and or retractable; the screens could be removed prior to forecasted large storm events to reduce the risk of flooding and adversely affect the operation of the public service facility (also discussed in Section 6.8 Hydrology/Water Quality).

The prevention and removal of trash from state waters through structural BMPs of catch basin inserts and full capture systems ultimately would lead to improved water quality and protection of aquatic life and habitat; expansion of opportunities for public recreational access; enhancement of public interest in our rivers, lakes, and ocean; public participation in restoration activities; and enhancement of the quality of life of riparian and shoreline residents. These improvements outweigh the risk of potentially increased flooding and adversely affect the operation of the public service facility (also discussed in Section 6.8 Hydrology/Water Quality); furthermore, proper design and maintenance of structural BMPs, as discussed above, would mitigate this risk. This impact is considered potentially significant and mitigation should be incorporated.

Recommended mitigation measures: (i) Design and install full capture systems by a licensed civil engineer or environmental engineer in consultation with a hydrologist to ensure there would be adequate capacity for storm water flows and or a storm water bypass system; and, (ii) Regularly maintain full capture systems to remove trash and to prevent the accumulation of trash -- especially prior to forecasted storm events.

Installation and maintenance of full capture systems and treatment controls would result in potentially significant environmental effects with regard to storm water drainage. Mitigation measures, which can be applied to reduce and/or eliminate these impacts, however, are available as described above. These mitigation measures are within the responsibility and jurisdiction of the agencies responsible for implementing the final Trash Amendments and can or should be adopted by them. The State Water Board directs neither the compliance measures responsible agencies choose to adopt, nor the mitigation measures they employ. The State Water Board does, however, recommend that appropriate mitigation measures be applied in order that potential environmental impacts be reduced or avoided. It is foreseeable that these mitigation measures may not always be capable of reducing these impacts to levels that are less than significant in every conceivable instance. Although there is no information on the record that this would occur, in the event that a specific mitigation measure or alternative may not reduce impacts to levels that are less than significant, the project proponent may need to consider an alternative strategy or combination of strategies to comply with the final Trash Amendments.

6.14 Other Dischargers

The final Trash Amendments would apply to discharges of trash not covered by a NPDES permit. The Water Boards may require the implementation of trash controls in areas or facilities that may generate trash, such as, high usage campgrounds, picnic areas, beach recreation areas, marinas, etc. The discharge of trash into water bodies from these areas usually occurs by direct deposition into the water or wind-borne deposition of trash from nearby areas.

The most likely means of compliance for these areas would be institutional controls including public education (e.g., signage to dispose of trash properly) and providing an appropriate level of trash collection (e.g., the frequency of trash collection is appropriate to prevent the overflow and spillage of trash from trash bins, which can then make its way to nearby waterways). Potential environmental impacts from these activities are

similar to those discussed for institutional controls in the previous sections. The implementation of institutional controls in these areas would not have a significant impact on the environment.

6.15 Time Extension

The proposed Trash Amendments provided a time extension to MS4 Phase I and II permittees with regulatory authority over land uses for each regulatory source control adopted by a MS4 Phase I or II permittee. Each regulatory source control adopted by a permittee could provide such permittee with a one-year time extension to achieve final compliance with either Track 1 or Track 2. The time extension option was proposed to receive public input on the potential advantages and disadvantages to this approach. However, subsequent to the State Water Board's public workshop and the public hearing on the proposed Trash Amendments, Senate Bill 270 (2014 Stats. Ch. 850) was enacted. That new law enacts a state-wide plastic bag carry-out ban pertaining to grocery stores and pharmacies that have a specified amount of sales in dollars or retail floor space, which goes into effect July 1, 2015, and imposes the same ban on convenience stores and liquor stores a year later. Such product ban was generally the type of regulatory source control contemplated and discussed with regard to consideration of the time extension option. Effectively enactment of Senate Bill 270 removed the need for regulatory source controls in the proposed Trash Amendments. With the enactment of Senate Bill 270, the final Trash Amendments omit "regulatory source controls" from a method to comply with Track 2. As a result, the final Trash Amendments omit any allowance of time extensions and will not be evaluated further.

6.16 Low-Impact Development Controls and Multi-Benefit Projects

The final Trash Amendments include compliance options referred to as LID controls and multi-benefit projects. Examples of LID controls are treatment controls that employ natural and constructed features that reduce the rate of storm water runoff, filter out pollutants, facilitate storm water storage onsite, infiltrate storm water into the ground to replenish groundwater supplies, or improve the quality of receiving groundwater and surface water. Examples of multi-benefit projects include projects that are designed to infiltrate, recharge or store storm water for beneficial reuse, develop or enhance habitat and open space through storm water and non-storm water management, prevent water pollution, and/or reduce storm water and non-storm water runoff volume.

Because LID controls and multi-benefit projects are part of a larger suite of compliance options and because these types of projects are highly site specific, the array of potential LID and multi-benefit projects is too vast to discuss within this statewide analysis. The range of potential environmental impacts can vary greatly between projects. For example, the City of Anaheim prepared a Mitigated Negative Declaration for its Brookhurst Street Improvement Project and found potential significant impacts to air quality, biological resources, and cultural resources unless mitigation measures were incorporated into the project (City of Anaheim 2010). The City of Pasadena is preparing an EIR for its Hahamongna Multi-Benefit/Multi-Use Project (City of Pasadena 2012). It has tentatively identified potential impacts to aesthetics, air quality, biological resources,

cultural resources, greenhouse gas emissions, hydrology and water quality, noise, and transportation/traffic.

Potential environmental impacts from LID or multi-benefit projects would depend on the size and location of the project. It is foreseeable that the overall project could have a significant effect on the environment. It would be speculation, however, as to what those impacts might be at this level of review. Furthermore, measures that may be incorporated into the project to account for trash issues would most likely be a minor part of the project as a whole. The final Trash Amendments would not affect what those impacts might be, and as such would not cause or increase the level of impact future LID or multi-benefit projects may or may not have. The permitting authority responsible for future LID and/or multi-benefit projects would need to conduct project-specific environmental reviews pursuant to CEQA, as appropriate.

6.17 Regulatory Source Controls (Ordinances)

"Regulatory source controls" was included in the proposed Trash Amendments as one of the several treatment controls that could be utilized by MS4 permittees with regulatory authority over priority land uses to comply with the prohibition of trash under Track 2. "Regulatory source controls" was defined in the proposed Trash Amendments as:

> Institutional controls that are enforced by an ordinance of the municipality to stop and/or reduce pollutants at their point of generation so that they do not come into contact with storm water. Regulatory source controls could consist of, but not be limited to, bans of single use consumer products.

Single use plastic bag bans are not anticipated to be enacted as ordinances in response to the Trash Amendments because (1) Senate Bill 270 has already enacted a mandatory statewide single use plastic bag ban, (2) the upcoming referendum on Senate Bill 270 won't succeed without a statewide majority vote, and (3) approximately 140 cities and counties have already adopted similar bans, which reflects a significant level of popular support for such bans. If, however, a permittee were to adopt a single use plastic bag ban or other ban as a means of complying with Track 2, it is expected that any such bans would be enacted in a manner similar to those previously adopted, in that they would not result in product substitutions or any significant environmental impacts. As with previously-adopted bans, the impacts of any new bans would be evaluated by the permittee. The courts have already upheld the use of negative declarations or categorical exemptions from CEQA for single use plastic bag bans. As a result, this Final Staff Report does not provide an environmental analysis of a ban on single use plastic bags.

Similar to the prior draft, however, the proposed Final Staff Report retains "institutional controls" as a permissible method an MS4 permittee could employ to comply with Track 2. The proposed final Trash Amendments' definition for "institutional controls" includes "ordinances":

> Institutional controls are non-structural best management practices (i.e., no structures are involved) that may include, but not be limited to, street sweeping, sidewalk trash bins, collection of the trash, anti-litter

educational and outreach programs, producer take-back for packaging, and ordinances.

Pursuant to that definition, a permittee's enactment of an ordinance remains an allowable type of institutional control which may be implemented to comply with Track 2, even though the proposed final Trash Amendments removed "regulatory source controls" as a permissible method. Contrary to ordinances or laws which prohibit distribution of plastic carry-out bags, which are typically accompanied with requirements and/or incentives to utilize reusable bags to avoid a product-substitution effect (such as Senate Bill 270), other types of product bans enacted by ordinance, such as take-out items, may involve a substitution of the banned item. Mere substitution would not result in reduced trash generation if such product substitution would be discarded in the same manner as the banned item. Any such product ban enacted by ordinance would not reduce trash and would not be an allowable Track 2 method to assist in achieving compliance. It is possible that an MS4 permittee's adoption of other types of ordinances (e.g., anti-litter laws or bans on smoking), may still be a reasonably foreseeable method of compliance, but those types of ordinances are not expected to cause potential environmental impacts through use of replacement products or through other indirect impacts.

The other types of institutional controls (e.g., street sweeping, sidewalk trash bins, collection of the trash, etc.) available for a permittee to comply with the trash prohibition under Track 2 are evaluated in the preceding sections under the resource potentially at issue.

7 OTHER ENVIRONMENTAL CONSIDERATIONS

This section of the Final Staff Report identifies and evaluates potential growth-inducing impacts[18] and cumulative impacts[19] that may arise from the final Trash Amendments.

7.1 Growth-Inducing Impacts

In compliance with the requirements to prepare a draft SED and meet the substantive requirements of CEQA, this section describes the potential for the final Trash Amendments to cause potential environmental impacts through the inducement of growth (see also Appendix B, Environmental Checklist, Population and Housing). Growth inducement occurs when projects affect the timing or location of either population or land use growth, or create a surplus in infrastructure capacity. Direct growth inducement occurs when, for example, a project accommodates populations in excess of those projected by local or regional planning agencies. Indirect growth inducement occurs when, for example, a project that accommodates unplanned growth consequently (i.e., indirectly) establishes substantial new permanent employment opportunities (for example, new commercial, industrial, or governmental enterprises). Another example of indirect growth is if a construction project generates substantial short-term employment opportunities that indirectly stimulate the need for additional housing and services.

7.1.1 Types of Growth

The primary types of growth that occur are: (1) development of land and (2) population growth. (Economic growth, such as the creation of additional job opportunities, also

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[18] The State CEQA Guidelines describe growth-inducing impacts as follows:

> …[T]he ways in which a proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are impacts which would remove obstacles to population growth…Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects... [In addition,] the characteristics of some projects...may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment. (14 CCR § 15126.2(d).)

[19] The State CEQA Guidelines define cumulative impacts as follows:

> "Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts:
>
> (a) The individual effects may be changes resulting from a single project or a number of separate projects.
>
> (b) The cumulative impact from several projects is the change in the environment, which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. (14 CCR § 15355.)

could occur; however, such growth generally would lead to population growth and, therefore, is included indirectly in population growth.)

Growth in Land Development

Growth in land development considered in this analysis is the possible physical development of residential, commercial, and industrial structures in and around where implementation of the final Trash Amendments and reasonably foreseeable methods of compliance may be located. Land use growth is subject to general plans, community plans, parcel zoning, and applicable entitlements and is dependent on adequate infrastructure to support development.

Population Growth

Possible population growth considered in this analysis is the possible growth in the number of persons that live and work in the areas in and around where implementation of the final Trash Amendments and reasonably foreseeable methods of compliance may be located. Population growth occurs from natural causes (births minus deaths) and net emigration from or immigration to other geographical areas. Emigration or immigration can occur in response to economic opportunities, life style choices, or for personal reasons. Although land use growth and population growth are interrelated, land use and population growth could occur independently from each other. This has occurred in the past where the housing growth is minimal, but population within the area continues to increase. Such a situation results in increasing population densities with a corresponding demand for services, despite minimal land use growth.

Overall development in the state is governed by local General Plans (developed by counties or cities), which are intended to plan for land use development consistent with California law. The General Plan is the framework under which development occurs, and, within this framework, other land use entitlements (such as variances and conditional use permits) can be obtained.

7.1.2 Existing Obstacles to Growth

The environmental analysis is required to discuss ways in which the proposed project could foster economic or population growth or the construction of additional housing. Included in this analysis is consideration as to whether the final Trash Amendments (or reasonably foreseeable methods of compliance) remove obstacles to population growth or may encourage and facilitate other activities that could significantly affect the environment. See 14 CCR section 15126.2(d). Obstacles to growth could include such things as inadequate infrastructure or public services, such as an inadequate water supply that results in rationing, or inadequate wastewater treatment capacity that results in restrictions in land use development. Policies that discourage either natural population growth or immigration also are considered to be obstacles to growth.

7.1.3 Potential for Compliance with the Trash Amendments to Induce Growth

Direct Growth Inducement

As some of the reasonably foreseeable methods of compliance of the final Trash Amendments focus on non-structural BMPs and improvements to storm drain systems located throughout urbanized portions of the watershed, the final Trash Amendments

would not result in the construction of new housing and, therefore, would not directly induce growth.

Indirect Growth Inducement

Two areas of potential indirect growth inducement are relevant to a discussion of the final Trash Amendments: (1) the potential for compliance with the final Trash Amendments to generate economic opportunities that could lead to additional immigration; and, (2) the potential for the final Trash Amendments to remove an obstacle to land use or population growth.

Installation of full capture systems or other methods of compliance within Track 2 to comply with the final Trash Amendments would occur over a ten-year time period. Installation and maintenance spending for compliance would generate jobs throughout the region and elsewhere where goods and services are purchased or used to install full capture systems. The alternatives would result in direct jobs and indirect jobs.

Although the construction activities associated with implementation of the final Trash Amendments would increase the economic opportunities in an area or region, this construction is not expected to result in or induce substantial or significant growth related to population increase or land use development. The majority of the new jobs that would be created by this construction are expected to be filled by persons already employed and residing in the area or region. The second area of potential indirect growth inducement is through the removal of obstacles to growth. The final Trash Amendments would require retrofit of existing public services or additional design requirements to new services (services that would occur without the final Trash Amendments). The drainage systems would not increase as a result of the final Trash Amendments. As discussed above, any obstacles that may exist to the location of public services and commensurate land use development or to population growth within an area affected by the final Trash Amendments would not be altered by the implementation of the final Trash Amendments.

7.2 Cumulative Impacts Analysis

In compliance with the requirements to prepare a draft SED and meet the substantive requirements of CEQA, this section describes the potential for the final Trash Amendments to cause a considerable contribution to a cumulatively significant impact (see also Appendix B, Environmental Checklist, Mandatory Findings of Significance).The fundamental purpose of the cumulative impacts analysis is to ensure that the potential environmental impacts of any individual project are not considered in isolation. Impacts that may be individually less than significant on a project specific basis, could pose a potentially significant impact when considered with the impacts of other past, present, and probable future projects.

The cumulative impact analysis need not be performed at the same level of detail as a “project level” analysis but must be sufficient to disclose potential combined effects that could constitute a cumulative significant adverse impact. The CEQA Guidelines direct that the cumulative impacts analysis either include a list of the past, present and probable future projects producing related or cumulative impacts or provide a summary

of projections and cumulative impact analysis contained in an applicable adopted plan or related planning document. (§ 15130, subd. (b)(1).)

This draft SED discusses whether the proposed Trash Amendments' incremental effect is cumulatively considerable and, where that is the case, describes the significant cumulative impacts of the proposed project in combination with past, present, and probable future projects. CEQA Guidelines direct that this cumulative impact analysis be either provided through the "list approach" of "projections approach". The cumulative impacts from implementation of the final Trash Amendments are discussed, for this statewide analysis, through analyzing the possible projects that could occur to cause impacts in combination of the final Trash Amendments in relation to existing land use planning throughout the state, in the following two sections: (1) the program level cumulative impacts, and (2) the project level cumulative impacts. On the program level, impacts from reasonably foreseeable statewide water quality actions and regional activities, including multiple TMDLs and permit requirements, are analyzed across the nine regional water boards, on a statewide basis. On the project level, it is not possible to provide an environmental analysis of individual probable future projects that could occur to cause impacts that would combine with impacts of the final Trash Amendments. The cumulative impacts analysis entails a general consideration of construction and other project-level activities that may occur in the vicinity of trash control implementation measures.

7.2.1 Program Cumulative Impacts

The State Water Board currently is developing a wide range of Statewide Policies and Significant General Permits. The entire list of Statewide Policies and Significant General Permits can be found in the State Water Board's Executive Director's report, which is updated on monthly basis.[20] In the April 22, 2014 Executive Director's Report, the active Statewide Policies and Significant General Permits are listed in Appendix B of the report (State Water Board 2014). The majority of these actions are not yet formally proposed but are considered reasonably foreseeable probable future projects, within the temporal scope of implementation of the final Trash Amendments.

Of the Statewide Polices and Significant General Permits actively being addressed by State Water Board, the following four projects have potential nexus to the scope of the final Trash Amendments thereby causing environmental impacts that may, in conjunction with impacts of the final Trash Amendments, cause a cumulative impact: (1) Proposed Toxicity Amendment to the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Toxicity Provisions); (2) Water Quality Control Policy for Wetland Area Protection and Dredge or Fill Permitting (Wetlands Policy); (3) Proposed Amendment to the Statewide Water Quality Control Plan for Ocean Waters to Address Desalination Intakes and Discharges, and to Incorporate Non-Substantive Changes (Desalination Amendment); and (4) Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan).

[20] State Water Board Executive Director's Reports are accessible at: http://www.waterboards.ca.gov/board_info/exec_dir_rpts/

The State Water Board anticipates creating the ISWEBE Plan through the adoption of Toxicity Provisions. The goals of the Toxicity Provisions include: (a) a new method to determine the toxicity of discharges, (b) statewide numeric objectives, and (c) further standardization of toxicity provisions for NPDES dischargers and facilities subject to WDR and conditional waivers.

The Wetlands Policy has the goal of developing: (a) a wetland definition that would reliably define the diverse array of California wetlands based on the United States Army Corps of Engineers' wetland delineation methods to the extent feasible, (b) a regulatory mechanism for discharges of dredged or fill material into waters of the state, based on the 404 (b)(1) guidelines (40 C.F.R. parts 230-233) that includes a watershed focus, and (c) an assessment method for collecting wetland data to monitor progress toward wetland protection and to evaluate program development.

As with the Trash Amendments, the Desalination Amendment proposes to amend the Ocean Plan. The Desalination Amendment has four components: (a) implementation procedures for regional water boards to evaluate the best site, design, technology, and mitigation measures to minimize adverse impacts to aquatic life at new or expanding desalination facilities; (b) industry specific receiving water limits for salinity; (c) alternative implementation procedures for discharges of waste brine; and (d) provisions protecting sensitive habitats, species, Marine Protected Areas, and State Water Quality Protection Areas from degradation associated with desalination intakes and discharges.

The State Water Board is pursuing a four-phased process to develop and implement updates to the Bay-Delta Plan and flow objectives for priority tributaries to the Delta to protect beneficial uses in the Bay-Delta watershed. Phase 1 proposes to update the San Joaquin River flow and southern Delta water quality requirements included in the Bay-Delta Plan. Phase 2 proposes other comprehensive changes to the Bay-Delta Plan to protect beneficial uses not addressed in Phase 1. Phase 3 focuses on changes to water rights and other measures to implement changes to the Bay-Delta Plan from Phases 1 and 2. Phase 4 involves developing and implementing flow objectives for priority Delta tributaries outside of the Bay-Delta Plan updates.

In addition to the State Water Board actions, the regional water boards are in the process of developing a variety of basin plan amendments including TMDLs for different pollutants, as well as issuing various permits throughout the state. Examples include: Aquatic Ecosystem Restoration Policy (North Coast Water Board), Stream and Wetland Protection Policy (San Francisco Bay Water Board), TMDLs for Nitrogen Compounds and Orthophosphates in the Lower Salinas River Watershed (Central Coast Water Board), Implementation Plans for the TMDLs for Metals in the Los Cerritos Channel and for Metals and Selenium in the San Gabriel River and Impaired Tributaries (Los Angeles Water Board), Central Valley Salinity Alternatives for Long-Term Sustainability (Central Valley Water Board), Pesticide Prohibition Basin Plan Amendment (Lahontan Water Board), Revise Indicator Bacteria for a 17-Mile Reach of the Coachella Valley Storm Water Channel (Colorado River Water Board), Recreation Standards for Inland Fresh Surface Waters (Santa Ana Water Board), and Rainbow Creek Nitrogen and Phosphorus TMDLs (San Diego Water Board).

The goal of all of the Water Board's actions is to protect and improve the quality of the state's waters. Implementation measures identified during the development of these policies, amendments, and Basin Plan amendments, as well as the reasonably foreseeable methods of compliance for these actions, may have similar potential impacts as those identified for the final Trash Amendments. As such, there may be a cumulative impact to certain resources depending on the location and timing of the implementation measures. Potential cumulative impacts are discussed further in the following section.

7.2.2 Project Cumulative Impacts

Implementation of the final Trash Amendments would occur throughout the entire state and it would be speculative to attempt to estimate the specific project-level actions that could occur in and around the areas of implementation that would contribute to a cumulative effect of the final Trash Amendments and reasonably foreseeable methods of compliance. The reasonably foreseeable methods of compliance would typically occur in urban areas. The other types of actions that may occur in and around these urban areas are infrastructure maintenance, redevelopment projects, and infill projects. The impacts of these types of actions typically involve air quality, noise and traffic associated with construction and, depending on the timing of the implementation of the reasonably foreseeable methods of compliance, these impacts could combine with the potential impacts of the final Trash Amendments. The cumulative impacts of specific projects that will comply with the requirements of the final Trash Amendments should be considered by the implementing municipality or agency. Implementation of projects related to other nearby projects, however, may result in cumulative effects of the following nature:

1. Noise and Vibration - Local residents in the near vicinity of installation and maintenance activities related to compliance with the final Trash Amendments may be exposed to noise and possible vibration. The cumulative effects, both in terms of added noise and vibration at multiple implementation sites, and in the context of other unrelated projects, would most likely not be considered cumulatively significant due to the typically minor and temporary nature of the installation and maintenance activities that could cause the noise and possible vibration. However, if deemed a considerable contribution to a cumulative impact, mitigation methods include: (1) scheduling installation and maintenance activities during daytime hours; (2) noise and vibration monitoring; (3) noise testing and inspections of equipment; and (4) an active community liaison program.

2. Air Quality - Implementation of the final Trash Amendments, including the reasonably foreseeable methods of compliance, may cause additional emissions of criteria pollutants and slightly elevated levels of carbon monoxide during trash device installation activities and, to a lesser extent, possible maintenance activities. Implementation of the final Trash Amendments, in conjunction with all other activities within the area, may contribute to a region's nonattainment status during the installation period. Since installation and maintenance-related emissions are typically minor and temporary, compliance with the final Trash Amendments is not expected to not result in long-term significant cumulative air quality impacts. In the

short-term, cumulative impacts could be significant if the combined emissions from the individual projects exceed the threshold criteria for the individual pollutants. In this case, mitigation measures include: (1) use of construction, and maintenance vehicles with lower-emission engines; (2) use of soot reduction traps or diesel particulate filters; and (3) use of emulsified diesel fuel.

3. Transportation and Circulation - Compliance with the final Trash Amendments may involve contemporaneous installation activities at a number of sites. Further, installation of treatment controls may occur in the same general time and space as other related or unrelated projects. In these instances, construction activities from all projects could produce cumulative traffic effects which may be significant, depending upon a range of factors including the specific location involved and the precise nature of the conditions created by the dual construction activity. Mitigation to address this potentially significant cumulative impact would involve special coordination efforts by local, regional, and state entities regarding the timing of various construction and other activities adversely affecting traffic. Overall, with this mitigation, significant cumulative impacts are not anticipated since coordination can occur and, as appropriate, transportation mitigation methods are available as discussed previously.

4. Utilities and Service Systems – Compliance with the final Trash Amendments would involve the disposal of trash that is removed or prevented from entering state waters. The amount of trash collected as a result of the final Trash Amendments is not expected to increase substantially over baseline conditions. In addition, the final Trash Amendments are not expected to substantially affect other public services. Therefore, the cumulative effects of compliance activities, construction activities and other related projects on utilities such as land disposal sites is not a considerable contribution to the cumulative impact.

5. Greenhouse Gas Emissions - Compliance with the final Trash Amendments may involve contemporaneous installation activities at a number of sites. Further, installation of trash devices and other compliance measures, including maintenance activities and additional street sweeping, may occur in the same general time and space as other related or unrelated projects. In these instances, construction activities from all projects could produce greenhouse gas emissions which may have a significant cumulative impact, depending upon a range of factors (e.g., location, vehicular activity, machinery usage, etc.). As stated previously, the construction and maintenance activities associated with implementation of the final Trash Amendments would be short term and are not expected to cause substantial greenhouse gas emissions. However, the cumulative effect of greenhouse gases has been identified as a concern within California, the United States, and global climate and, therefore, this impact are considered potentially significant. With the incorporation of BMPs (see Section 6.6.2) and compliance with greenhouse gas reduction plans, amendments, or regulations, the cumulative effect of greenhouse gas emissions could be reduced to less-than-significant levels.

8 ALTERNATIVES ANALYSIS

State Water Board regulations require this SED to contain an analysis of range of reasonable alternatives to the project and reasonably foreseeable methods of compliance that could feasibly meet the project objectives and to avoid or substantially reduce any potentially significant adverse environmental impacts.[21] The State Water Board has identified the following six alternatives for analysis in the SED.

8.1 No Project Alternative

The purpose of assessing a No Project Alternative in an environmental document such as this SED is to allow decision makers and the public to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The No Project Alternative would involve the State Water Board deciding not to approve any amendments to the Ocean Plan or the ISWEBE Plan.

Under the No Project Alternative, trash would continue to accumulate in state waters and the adverse effects identified in Section 1 and Appendix A would continue to occur. Consistent with baseline conditions, beneficial uses of water would not be protected. Additionally, the number of trash-related 303(d) listing and TMDLs would continue for an increasing number of water bodies with a lack of statewide consistency. The lack of consistency would continue from a lack of a water quality objective specific for trash and variability between existing trash-related water quality objectives among Basin Plans. For this reason, the State Water Board determines that this is not the preferred alternative.

8.2 Regional Water Board Alternative

In the Regional Water Board Alternative, each regional water board would either adopt a water quality objective for trash to the respective basin plan or adopt individual TMDLs for 303(d) listed water bodies for trash. If the individual amendments and TMDLs (as well as their respective implementation strategies) were similar to the final Trash Amendments, the potential environmental impacts would also be similar. There is, however, the potential that the individual regional water boards would develop different trash water quality objectives and implementation provisions, resulting in a continued lack of statewide consistency. Furthermore, it would be an inefficient use of staff time (and corresponding costs) to develop up to eight different approaches to trash-control in state waters. For these reasons, the State Water Board determines that this is not the preferred alternative.

8.3 Full Capture System Alternative

The Full Capture System Alternative would meet the goals of preventing trash from entering state waters, provide consistency statewide, and establish a water quality objective. In this alternative, NPDES permittees would have installation, operation and maintenance requirements across all land uses, regardless of trash generation rates,

[21] 23 CCR § 3777, subd. (b)(3).

and only have a single option for compliance. The potential, however, for environmental impacts to occur would increase due to the increase in the amount of required construction and maintenance. Furthermore, costs associated with implementing this alternative would be significantly higher than under the final Trash Amendments. The incremental improvement of this alternative over using the final Trash Amendments' targeted land-use approach with dual compliance track options, which include institutional controls in combination with treatment controls and multi-benefit projects, does not appear to provide substantial benefits related to trash removal versus potential impacts to the environment. For these reasons, the State Water Board determines that this is not the preferred alternative.

8.4 Institutional Control Alternative

The Institutional Control Alternative would meet the goal of preventing trash from entering state waters, provide consistency, and establish a water quality objective. In this alternative, NPDES storm water permits would contain requirements that permittees increase their use of institutional controls (such as street sweeping, clean-up events, education programs, additional public trash cans and increased collection frequency expanded recycling and composting efforts, and adoption of ordinances) in order to comply with the prohibition of discharge. This alternative's focus on the use of institutional controls rather than full capture systems could potentially decrease the environmental impacts from the installation of full capture systems and retrofitting of catch basins. The increase of institutional controls, such as street sweeping, collection of trash cans, and construction of recycling and composting facilities, however, could also result in environmental impacts, such as increased noise and vibration, or and poorer air quality caused by the increased frequency of street sweeping. Because street sweeping trucks move slowly, there may be an impact on transportation within high trash generating areas, which would require coordination with street parking rules. Nevertheless, the potential environmental impacts from this Institutional Control Alternative are not predicted to be significant. Permittees should have flexibility to determine the most effective means of controlling trash because of particular conditions within each jurisdiction, such as conditions of sites, types of trash, and the resources available for maintenance and operation. Therefore, the Trash Amendments propose the dual compliance options of Track 1 and Track 2.

8.5 Reduced Land Use Alternative

To reduce potential environmental impacts from trash control strategies, the Reduced Land Use Alternative would focus on a fewer number of land uses within a municipality. As a representative example, the City of Los Angeles monitored trash generation rates and found that the three highest trash generating land uses were residential (36 percent), commercial (33 percent), and industrial (19 percent) (City of Los Angeles 2002). The priority land uses for the Reduced Land Use Alternative would focus on the top two trash generating land uses: residential (high density and mixed urban) and commercial. Reducing the number of priority land uses would still reduce the discharge of trash from a municipality and reduce the number of treatment and institutional controls that would need to be implemented by permittees in California.

In addition, the Reduced Land Use Alternative would provide consistency statewide, establish a water quality objective, and prevent some trash from entering state waters; however it would not reduce the discharge of trash as much as the final Trash Amendments would. The final Trash Amendments focus on controlling the discharge of trash from more high trash generating areas than this alternative would, namely: high-density residential, commercial, industrial, mixed urban, and public transportation station land uses.

By reducing the number of implementation measures necessary for compliance, the potential environmental impacts of this approach would also be reduced. The reduction in impacts could include less noise and vibrations from installation and maintenance of full capture systems, comparatively fewer emissions of criteria pollutants, carbon monoxide, and greenhouse gases due to the reduced amount of construction and installation of full capture systems, and less impact to land disposal sites. This Alternative, however, would not be as protective of beneficial uses as the final Trash Amendments would be, because land uses such as industrial land uses, would not be captured. The goals of the project to protect beneficial uses and reduce the discharge of trash would only be partially achieved under this alternative. For these reasons, the State Water Board determines that this is not the preferred alternative.

8.6 Reduced NPDES Permittee Alternative

The Reduced NPDES Permittee Alternative would reduce the number of permits with specific trash-control requirements. While the Reduced NPDES Permittee Alternative would establish a water quality objective, and prevent some trash from entering State Waters, it would not reduce the discharge of trash as much as the final Trash Amendments. The final Trash Amendments focus on controlling the discharge of trash from the dominant transport pathway – storm water. Thus, the final Trash Amendments require implementation provisions to be incorporated into NPDES permits, namely the MS4 Phase I, MS4 Phase II, Caltrans, IGP, and CGP.

The potential for the transport of trash via storm water to receiving water bodies is highest among the MS4 Phase I, MS4 Phase II, and Caltrans permittees due to the combination of land use types, area of land, and number of people within these MS4 permittees' respective jurisdictions. At present, the IGP and CGP already contain components of the final Trash Amendments. Specifically, the IGP has a prohibition of discharge of preproduction plastics, and the CGP contains a prohibition of discharge of any debris from construction sites. Therefore, the Reduced NPDES Permittee Alternative would focus specific requirements for trash in MS4 Phase I, MS4 Phase II, and Caltrans permits.

In this alternative, comparatively fewer permittees would be required to institute increased trash controls. To this end, programmatically is it is possible that there would be reduced environmental impacts. The reduction in impacts may include less noise and vibrations from installation and maintenance of full capture systems, comparatively fewer emissions of criteria pollutants, carbon monoxide, and greenhouse gases due to the construction and installation of full capture systems, and less impact to land disposal sites. At a programmatic level, the potential environmental impacts may be slightly reduced with the Reduced NPDES Permittee Alternative. This Alternative, however,

would not be as protective of beneficial uses, as trash from light industrial facilities would not be removed from storm water. The goals of the project to protect beneficial uses and reduce the discharge of trash would only be partially achieved under this Alternative. For these reasons, the State Water Board determines that this is not the preferred alternative.

9 WATER CODE SECTIONS 13241 AND 13242 AND ANTIDEGRADATION

California Water Code section 13241 requires assessment of specific factors when adopting water quality objectives. These factors consist of:

- Past, present, and probable future beneficial uses of water.
- Environmental characteristics and water quality of the hydrographic unit under consideration.
- Water quality conditions that could be reasonably attained through coordinated control of all factors affecting water quality.
- Economic considerations.
- The need for developing new housing.
- The need to develop and use recycled water.

The final Trash Amendments would alter existing water quality objectives for state waters; therefore, CWC section 13241 does apply to these final Trash Amendments.

9.1 Past, Present and Future Beneficial Uses of Water

The presence of trash impairs the established beneficial uses present in basin plans and the Ocean Plan, as discussed in Section 1 and Appendix A.

The final Trash Amendments, including the water quality objective for trash, would protect all beneficial uses in state waters. The final Trash Amendments support the Water Boards' existing water quality control plans and policies, and provide a better means to ensure that any future beneficial uses are also protected from trash impairments.

9.2 Environmental Characteristics and Water Quality of the Hydrographic Unit Under Consideration

The final Trash Amendments apply to all waters of the state. More specifically, the final Trash Amendments are primarily focused on areas of high trash generation within the jurisdictions of NPDES MS4 Phase I and MS4 Phase II municipalities, Caltrans, and facilities and sites covered under the IGP and CGP. The environmental characteristics of all hydrographic units affected by the final Trash Amendments are described in Section 3.

9.3 Water Quality Conditions that Could Reasonable be Attained Through Coordinated Control of All Factors Affecting Water Quality

The Water Boards are required to ensure that all discharges, regardless of type, comply with all water quality control plans and policies. The proposed water quality objective for trash can be implemented through a prohibition of discharge to all surface waters of the state, with the exception of those waters within the jurisdiction of the Los Angeles Water Board with trash or debris TMDLs that are in effect prior to the effective date of the Trash Amendments. Compliance of the prohibition of discharge would be specified through NPDES permits issued pursuant to section 402(p) of the Federal Clean Water Act, WDRs, and waivers of WDRs.

9.4 Economic Considerations

Under the requirements of Water Code sections 13170 and 13241, subdivision (d) and 23 CCR section 3777, subdivisions (b)(4) and (c), the State Water Board must consider economics when establishing water quality objectives. This consideration of economics is not a cost-benefit analysis, but a consideration of potential costs of a suite of reasonably foreseeable measures to comply with the final Trash Amendments. This economic analysis utilized two basic methods to estimate the incremental cost of compliance for permitted storm water discharge: the first method was based on cost of compliance per capita, and the second method was based on land cover.

This economic analysis estimated the incremental annual cost to comply with the requirements of the final Trash Amendments ranged from $4 to $10.67 per year per capita for MS4 Phase I NPDES permittees and from $7.77 to $7.91 per year per capita for smaller communities regulated under MS4 Phase II permits. For IGP facilities, the estimated compliance cost is $33.9 million or $3,671 per facility. To comply with the final Trash Amendments, expenditures by Caltrans are estimated to increase by $34.5 million in total capital costs and $14.7 million per year for operation and maintenance of structural controls.

The full economic consideration is described in Appendix C.

9.5 The Need for Developing Housing

The adoption of the final Trash Amendments is not expected to constrain housing development in California. The implementation requirements of the final Trash Amendments would need to be incorporated into the CGP and requirements for new urban development within MS4 Phase I or MS4 Phase II Permits. The trash requirements are anticipated to be minimal in cost to the overall costs of development. Additionally, the incorporation of trash treatment controls during the construction and development of storm drain inlets in new housing developments would be lower in cost than retrofitting storm drains with trash treatment controls. As a result, the final Trash Amendments would not interfere with the need for developing new housing.

9.6 The Need to Develop and Use Recycled Water

The adoption of the final Trash Amendments is not expected to restrict the need to develop and use recycled water. Currently, there are no restrictions on recycling of water due to trash. Therefore, the final Trash Amendments and possible alternatives are consistent with the need to develop and use recycled water. Removing trash from the wastewater should be beneficial to the recycled water treatment process.

9.7 Water Code Section 13242

California Water Code section 13242 requires that the program of implementation for achieving the water quality objective within the final Trash Amendments include a description of the nature of the actions which are necessary to achieve the objective, time schedules for actions to be taken, and a description of surveillance to be undertaken to determine compliance with the water quality objective. In compliance with CWC section 13242, the final Trash Amendments include a prohibition of discharge

and program of implementation in order to achieve the objective, time schedules for compliance, and monitoring and reporting requirements - all as described in Section 2 as well as Appendix D for the Ocean Plan and Appendix E for the ISWEBE Plan.

9.8 Antidegradation

Federal and state antidegradation policies found at 40 CFR section 131.12 and in State Water Board Resolution No. 68-16, respectively, impose levels of protection for state waters depending on the highest quality of the receiving water at issue since 1968 – the year that the State Water Board adopted California's antidegradation policy. Where a receiving water is of higher quality than applicable water quality standards, that higher quality must be maintained unless certain conditions are met.

The State Water Board does not anticipate any degradation of water quality as a result of the adoption and implementation of the final Trash Amendments. Upon adoption of the final Trash Amendments, the state would, for the first time, have a water quality objective for trash and implementation provisions that would apply to all surface waters of the state, with the exception of those waters within the jurisdiction of the Los Angeles Water Board with trash or debris TMDLs that are in effect prior to the effective date of the final Trash Amendments. The final Trash Amendments would not result in a degradation of water quality standards in those waters, as the existing TMDL provisions are more stringent than the final Trash Amendments.

Furthermore, the San Francisco Water Board's San Francisco Bay MRP (Order No. R2-2009-0074) requires MS4 permittees to develop and implement "Short-Term Trash Load Reduction Plans". This includes implementation of a mandatory minimum level of trash capture; cleanup and abatement progress on a mandatory minimum number of trash hot spots; and implementation of other control measures and best management practices, such as trash reduction ordinances, to prevent or remove trash loads from MS4s to attain a 40% reduction in trash loads by July 1, 2014. The San Francisco Bay MRP has an existing set of annual monitoring and reporting requirements. The required trash load reduction through the Short-Term Trash Load Reduction Plans does not conflict with the implementation provisions set forth in the proposed final Trash Amendments. The San Francisco Water Board can determine a San Francisco Bay MRP permittee implementing controls substantially equivalent to Track 2 has a submitted an implementation plan that is equivalent to the implementation plan requirement in the Trash Amendments. As such, the proposed final Trash Amendments would not result in a degradation of water quality standards in waters regulated by the San Francisco Bay MRP, because the final Trash Amendments are at least as protective of water quality as the San Francisco Bay MRP.

As a result, the adoption and implementation of the final Trash Amendments would not lead to the degradation of any water quality standards, and would instead enhance water quality across the state.

10 SCIENTIFIC PEER REVIEW

California Health and Safety Code section 57004 requires external scientific peer review of the scientific basis for any rule proposed by any board, office or department within CalEPA. Scientific peer review is a mechanism for ensuring that regulatory decisions and initiatives are based on sound science. Scientific peer review also helps strengthen regulatory activities, establishes credibility with stakeholders, and ensures that public resources are managed effectively. Scientific peer review on the scientific elements of the proposed Trash Amendments and Draft Staff Report was conducted through an Interagency Agreement between CalEPA and the University of California. The Peer Review process commenced on March 10, 2014 with a Request for External Scientific Peer Review and concluded on July 14, 2014. Three peer reviewers were selected and participated in reviewing the scientific elements of the Draft Staff Report. Peer Review was overall supportive of the proposed Trash Amendments and Draft Staff Report with recommendations to strength the scientific basis of the analysis. The proposed Final Staff Report contains the additional scientific studies recommended following Peer Review.

The three peer reviewers are following:

- Tamara Galloway, Ph.D.
  Professor of Ecotoxicology
  College of Life & Environmental Sciences
  University of Exeter
- David Barnes, Ph.D.
  Professor, Civil & Environmental Engineering
  College of Engineering and Mines
  University of Alaska
- Detlef Knappe, Ph.D.
  Professor, Department of Civil, Construction, & Environmental Engineering
  North Carolina State University

The Peer Review response is available at:
http://www.waterboards.ca.gov/water_issues/programs/peer_review/trash_control/

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APPENDIX A: TRASH BACKGROUND

I. Beneficial Uses Impacted by Trash

The final Trash Amendments are directed toward achieving the highest water quality consistent with the maximum benefit to California. Beneficial uses, as defined by Porter-Cologne section 13050, are the uses of surface water and groundwater that may be protected against water quality degradation. The Water Boards are charged with protecting these uses from pollution and nuisance that may occur as a result of waste discharges. Beneficial uses of surface waters, ground waters, marshes, and wetlands serve as a basis for establishing water quality objectives and discharge prohibitions to attain these goals and are defined in the basin plans for each regional water board and the Ocean Plan.

There are many beneficial uses in California, defined in the basin plans for each regional water board and the Ocean Plan, which can be impacted by trash. This section discusses the impacts of trash to beneficial uses associated with aquatic life and public health (Figure 27).

Trash is a threat to aquatic habitat and life as soon as it enters state waters. Mammals, turtles, birds, fish, and crustaceans are threatened following the ingestion or entanglement of trash (Moore et al. 2001, U.S. EPA 2002). Ingestion and entanglement can be fatal for freshwater, estuarine, and marine life. Similarly, habitat alteration and degradation due to trash can make natural habitats unsuitable for spawning, migration, and preservation of aquatic life. These negative effects of trash to aquatic life can impact twelve beneficial uses. A summary of specific impacts associated with each aquatic life beneficial use are presented in Table 13.

Figure 27. Trash Impacting Beneficial Uses (NOAA Marine Debris Program, Algalita Marine Research Institute, California Coastal Commission, and LA County Flood Control District).

Impacts of Trash to Aquatic Habitat and Life

Regardless of the method trash reaches waterways, trash is a threat to aquatic habitat and life as soon as it enters state waters. Mammals, turtles, birds, fish, and crustaceans are threatened following the ingestion or entanglement of trash (Moore et al. 2001, U.S. EPA 2002). Ingestion and entanglement can be fatal for freshwater, estuarine, and marine life. Similarly, habitat alteration and degradation due to trash can make natural habitats unsuitable for spawning, migration, and preservation of aquatic life. These negative effects of trash to aquatic life can impact several beneficial uses. A summary of specific impacts associated with each aquatic life beneficial use is presented in Table 13.

Table 13. Trash-Related Impacts to Aquatic Life Beneficial Uses.

Beneficial Use	Impact of Trash to Specific Aquatic Life Beneficial Use
Warm Freshwater Habitat Cold Freshwater Habitat	• Ingestion and entanglement by fish or wildlife (including invertebrates). • Freshwater habitat alteration or degradation. • Interference with ecosystem function, including interference with benthic communities. • Transportation of invasive species from floating trash.
Inland Saline Water Habitat	• Ingestion and entanglement by fish or wildlife (including invertebrates). • Saline water habitat alteration or degradation. • Interference with ecosystem function, including interference with benthic communities. • Transportation of invasive species from floating trash.
Estuarine Habitat	• Ingestion and entanglement by fish or wildlife (including estuarine mammals, waterfowl, and shorebirds). • Ingestion of toxic compounds (including shellfish) associated with trash. • Estuarine habitat alteration or degradation. • Interference with ecosystem function, including interference with benthic communities and shellfish. • Transportation of invasive species from floating trash.
Marine Habitat	• Ingestion and entanglement by fish or wildlife (including marine mammals, birds, and turtles). • Ingestion of toxic compounds (including shellfish) associated with trash. • Marine habitat alteration or degradation, including alterations to kelp habitat. • Interference with ecosystem function, including interference with benthic communities, shellfish and kelp. • Transportation of invasive species from floating trash.
Wildlife Habitat	• Ingestion and entanglement by wildlife (including mammals, birds, reptiles, amphibians, and invertebrates). • Terrestrial habitat alteration or degradation, including alterations to wildlife water and food sources. • Interference with ecosystem function. • Transportation of invasive species from floating trash.

Beneficial Use	Impact of Trash to Specific Aquatic Life Beneficial Use
Preservation of Biological Habitats	• Habitat alteration and degradation, including alterations to established refuges, parks, sanctuaries, and ecological reserves. • Interference with ecosystem function. • Transportation of invasive species from floating trash, potentially leading to species displacement.
Preservation of Areas of Special Biological Significance	• Habitat alteration or degradation of marine life refuges, ecological reserves, and designated Areas of Special Biological Significance. • Interference with ecosystem function, including interference with kelp propagation. • Transportation of invasive species from floating trash, potentially leading to species displacement.
Rare, Threatened, or Endangered Species	• Ingestion and entanglement by plant or animal species listed as rare, threatened or endangered. • Alteration or degradation of habitat that supports plant or animal species listed as rare, threatened or endangered. • Interference with ecosystem function. • Transportation of invasive species from floating trash, potentially leading to species displacement.
Migration of Aquatic Organisms	• Alteration or degradation of habitat that supports migration or other temporary activities by aquatic organisms. • Interference with ecosystem function.
Spawning, Reproduction, and/or Early Development	• Alteration or degradation of habitat that is suitable for reproduction and early development of fish. • Interference with ecosystem function.
Wetland Habitat	• Ingestion and entanglement by fish, invertebrates, and insects. • Ingestion of toxic compounds (including shellfish) associated with trash. • Natural or man-made wetland ecosystem alteration or degradation. • Interference with ecosystem function, including interference with benthic communities and shellfish. • Transportation of invasive species from floating trash.

Effects of Trash on Aquatic Habitat

Trash that settles to a riverbed, bottom of a bay, or ocean floor can interfere with normal ecosystem functions and have immediate and long-term effects on the aquatic habitat. Settled trash is a problem for bottom feeders and dwellers and can contribute to sediment pollution. Settled trash can smother the growth of aquatic vegetation, disrupt nurseries and spawning areas, and disturb benthic communities (United Nations Environment Program 2009). Trash can alter the aquatic habitat and impact the aquatic biodiversity as it introduces hard surfaces for colonization as well as provides increased places of refuge for mobile species. Hard surfaces may attract hard-substratum sessile species that may have been previously limited and, consequently, displace soft bottom species due to competition and predation (Katsanevakis et al. 2007). Serious alterations, such as hypoxia and anoxia conditions, can result when the gas exchange between the overlying waters and pore waters of the sediments is prohibited by the accumulation of trash, specifically plastic trash (Goldberg 1994). Settled trash can also disturb benthic communities by mechanical scouring as trash twists and moves with

flow, currents, and tides, damaging the bottom fauna (United Nations Environment Program 2009). Furthermore, aquatic life can be threatened by trash when it causes increased siltation and turbidity resulting in blocking of essential sunlight or smothering of sea grass species.

Trash is found settling in the deep-sea to depths of 13,028 feet. Specifically in the Monterey Canyon, trash is most abundant where aggregation and downslope transport of trash from the continental shelf are enhanced by canyon dynamics (Figure 28). Based on 1,149 video records over a 22-year time period, the majority of trash was plastic (33%) and metal (23%) with relatively high number of observations of trash in the deep-sea environment (Schlining et al. 2013). Thus, submarine canyons can function to transport trash from coastal to deep-sea habitats.

Figure 28. A Discarded Tire in Monterey Canyon (Monterey Bay Aquarium Research Institute).

Trash that does not settle can float and be suspended for great distances. Floating trash, specifically plastic trash, is capable of carrying and distributing potentially harmful, non-native species of animals and plants to foreign aquatic habitats (Winston 1982, Highsmith 1985, Minchin 1996, Barnes 2002, Masó et al. 2003). Trash is found to more than double the rafting opportunities for biota at 30 remote islands across subtropics locations and higher latitudes (Barnes 2002). Trash drifting on ocean currents eventually becomes home to entire communities of encrusting and attached organisms. Aquatic life that uses trash as transport includes bryozoans, barnacles, polychaete worms, hydroids, and mollusks (Barnes 2002). Plastics are not readily biodegradable, but travel slowly in oceans, making them a more effective invasive species dispersal mechanism than vessels or ballast water (Barnes 2002). Although plastics constitute the larger percentage of floating trash, other common anthropogenic floating objects include polystyrene, wooden items, and fishing gear (Barnes and Milner 2005). While these studies have largely focused on trash in marine waters, similar conditions are expected to occur in estuarine, freshwater, and saline systems.

Not only can trash serve as a vessel for aquatic life, but trash, particularly plastic trash, can serve as a transport medium for pollutants and sorb persistent organic pollutants in the marine environment (Carpenter et al. 1972, Mato et al. 2001, Derraik 2002). Although the quantities and effects of these contaminants have yet to be fully determined, plastic trash in the marine environment, including resin pellets, plastic fragments have been found to contain organic contaminants, including polychlorinated biphenyls, polycyclic aromatic hydrocarbons, petroleum hydrocarbons, organochlorine pesticides, phthalate ester plasticizers, polybrominated diphenylethers, and alkylphenols and bisphenol- A (Giam et al. 1978, Teuten et al. 2009; DG Europe

2011). Some of these compounds are added during plastic manufacture (e.g., nonylphenol, bisphenol- A, and polybrominated diphenylethers), while others (e.g., polychlorinated biphenyls and DDT) are sorbed from the surrounding seawater (Mato et al. 2001, Moore et al. 2005, Teuten et al. 2009, Hirai et al. 2011). Although plastic trash may have the capacity to sorb toxins, there is limited research on the extent of toxic exposure from plastic vectors compared to other exposure pathways such as atmospheric deposition and ocean currents (Gouin et al. 2011). Microplastics are unlikely to be an important global geochemical reservoir for historically released persistent organic pollutants such as polychlorinated biphenyls, dioxins, and DDT, and it is not clear if microplastics play a larger role as chemical reservoirs on smaller scales (NOAA 2008b).

Persistent organic pollutants found in or carried by trash may present potential threats in aquatic environments as they can leach from surface of trash to state waters. Leaching and degradation of plasticizers, polymers, and other plastic additives are complex phenomena dependent on environmental conditions and the chemical properties of each additive (Teuten et al. 2009). Persistent organic pollutants, however, have a high affinity for plastic in seawater, which may elevate POP concentrations on microplastic particles but reduce their bioavailability (NOAA 2008b).

Effects of Trash Ingestion on Wildlife, Freshwater, Estuarine, and Marine Aquatic Life

Many species, including mammals, birds, turtles, and fish, have been reported to ingest several different forms of trash. Ingestion of trash may occur either because of misidentification of trash items or accidental consumption during feeding and normal behavior. The effects of trash ingestion include starvation, suffocation, and internal injuries and infections. Ingested items can block air passages, prevent breathing, and be fatal (U.S. EPA 1992; 2002). In addition, some trash (e.g., diapers, medical and household waste, and chemicals) can be a source of bacteria, viruses, and toxic substances that can impact aquatic life. As described below, many studies have been completed on the impact of trash ingestion in marine environments; the effects of trash ingestion are expected to be the same in freshwater, saline, and estuarine environments.

For birds, ingestion of small plastic fragments and preproduction plastic pellets floating at the water surface pose a significant threat. At least 50 species of seabirds are known to ingest plastic debris (Day et al. 1985). Birds confuse these plastic fragments and preproduction plastic pellets with normal prey items, such as fish eggs or larvae, which are similar in both size and color.

Ingestion of trash by marine mammals has been reported to cause fatalities. In 2008, the ingestion of floating trash was fatal to two large sperm whales that were found stranded along the northern California coast (Jacobsen et al. 2010).

Sea turtles are especially prone to ingestion of marine trash, particularly plastics. Sea turtles, mistaking them for food, swallow plastic bags that block the turtle's digestive tract and lead to starvation (U.S. EPA 1992). Trash items that have been found in digestive tracts of turtles include plastic bags, tar, fishing lines, ropes, polystyrene, rubber, fishing hooks, charcoal, aluminum cans, aluminum foil, cardboard, net

fragments, cloth, plastic spherules, strings, wood, cigarette filters, cellophane, bottles, vinyl films, pieces of latex balloons, and beer crown corks (Balazs 1985, Gramentz 1988, Plotkin and Amos 1990, Bjorndal et al. 1994, Tomás et al. 2002). Numerous studies that have reported high incidence of trash ingestion include: 10 of 33 leatherback turtles (30.3%) (Sadove and Morreale 1990); 19 of 32 sea turtles (59.4%) (Duronslet et al. 1991); 25 of 51 sea turtles (49%) (Bjorndal et al. 1994), and 23 of 38 green turtles (60.5%) (Bugoni et al. 2001). Even small quantities of trash can be fatal as seen by the death of two sea turtles where the trash represented only 4.6 and 5.8 percent of wet mass and 3.2 and 9.8 percent of volume of gut contents of the two turtles, respectively (Bjorndal et al. 1994).

Ingestion of trash can be particularly detrimental to aquatic life when trash contains or carries toxic compounds. Trash, particularly plastic trash, has plastic additives and can sorb contaminants ambient in state waters such as polychlorinated biphenyls and DDT. These contaminants can be assimilated by aquatic life through ingestion. Ryan et al. (1988) found that the mass of ingested plastic in birds was positively correlated with polychlorinated biphenyls in their fat tissue and eggs. Also, Teuten et al. (2007) found that a priority pollutant, phenanthrene, was transmitted to a lugworm by plastic that was mixed into the sediments inhabited by the worm. Phenanthrene is not a plastic additive, but was sorbed by the plastic from the ambient water.

Although there is limited research on the bioaccumulation of toxic compounds associated with plastics, a preliminary experiment demonstrating the transfer of contaminants from plastics to higher trophic level organisms was performed by Endo et al. (2005). The results of this study suggest that plastic-derived polychlorinated biphenyls are transferrable to biological tissue of birds after ingestion, especially lower-chlorinated congeners commonly found in plastic resin pellets. Since lower-chlorinated congeners are easily metabolized and cannot be biomagnified through the food chain, their presence in animal tissue is indicative of plastic ingestion. This phenomenon was also demonstrated by Yamashita et al. (2011), which found that the mass of ingested plastic in short-tailed shearwaters in the North Pacific Ocean was positively correlated with concentrations of lower-chlorinated congeners. Given the limited research of the biological uptake and bioaccumulation of toxics from plastics, plastic trash is not a significant vector of toxics relative to other exposure processes, such as atmospheric deposition and ocean currents (Gouin et al. 2011). Using lungfish and North Sea cod as model species, Koelmans et al. (2014) determined the potential leaching of nonylphenol and bisphenol A in the intestinal tracts from plastic ingestion. They found that plastic ingestion will make a negligible contribution to the transfer of additive as compared to other routes of exposure. However, salinity has been shown likely to have a strong effect on the sorption of contaminants, especially polymers, on plastic (Velzeboer et al. 2014). The transport and movement of contaminants by plastic particles in the aquatic environment are greatly influenced by local conditions. The transport of pollutants, such as DDT and polyaromatic hydrocarbons, is from freshwater and estuarine to fully marine conditions (Bakir et al. 2014). Overall, while the uptake and bioaccumulation of pollutants from plastics has been shown to occur, there is limited understanding of the significance in comparison to other modes of pollutant transfer in the environment.

Ingestion of toxic compounds and aquatic fatalities in freshwater, estuarine, and marine water systems negatively impact beneficial uses of aquatic life. Fatalities induced by trash ingestion or toxicity can affect aquatic life in warm and cold freshwater, inland saline water, estuarine, marine, wetland, and terrestrial habitats. Beneficial uses can be impacted when the ingestion of trash causes aquatic life fatalities or physiological stress in ASBS, and mortality or physiological stress in rare, threatened, or endangered species. See Table 13 for a summary of specific impacts of trash ingestion associated with each aquatic life beneficial use.

Effects of Trash Entanglement on Wildlife, Freshwater, Estuarine, and Marine Aquatic Life

In addition to ingestion, entanglement can result when an animal becomes encircled or ensnared by trash. Entanglement can cause wounds and associated infections, strangulation or suffocation, and impair the ability of an animal to swim, fly, find food, and escape predators (Figure 29; U.S. EPA 1992). Once entangled, animals have trouble eating, breathing or moving, all of which can be fatal. Similar to the discussion on trash ingestion, the studies describing effects of trash entanglement in marine environments also apply to freshwater and estuarine environments since the impacts are the same, regardless of the aquatic habitat.

Figure 29. Trash Entanglement (NOAA Marine Debris Program 2013).

According to the US Marine Mammal Commission, 136 marine species have been reported in entanglement incidents, including six species of sea turtles, 51 species of seabirds, and 32 species of marine mammals (Marine Mammal Commission 1996). Marine animals, particularly seals and sea lions, become entangled because of the natural curiosity and tendency to investigate unusual objects in the environment. Between 1982 and 2006, 268 entanglements of the endangered monk seal were documented in the Northwestern Hawaiian Islands. Additionally, many birds, including ducks geese, cormorants, and gulls have been found entangled in six-pack rings (U.S. EPA 1992), and nearly one million seabirds are thought to die from entanglement or ingestion of floatable material each year (U.S. EPA 2002).

Although entanglement is considered a serious mortality factor, the mortality rate due to entanglement is difficult to quantify. Many species vulnerable to entanglement are oceanic or migratory and are scattered across wide areas. Animals that become entangled and die either quickly sink or are consumed by predators, eliminating them from potential detection (Laist 1987). For these reasons, the estimated mortality rates and the effects of trash entanglement may actually be underestimated.

Fatalities induced by entanglement can affect aquatic life in warm and cold freshwater habitats, as well as inland saline water, estuarine, marine, wetland, and terrestrial habitats. Aquatic life fatalities in these habitats impact the beneficial when entanglement causes aquatic life fatalities in preserved areas of biological significance and fatalities of rare, threatened, or endangered species. See Table 13 for a summary of specific impacts associated with trash entanglement on each aquatic life beneficial use.

Impacts of Trash on Public Health

Trash in state waters can impact humans by means of jeopardizing public health and safety and posing harm and hindrance to recreational, navigational, and commercial activities. Trash can also affect the traditional and cultural rights of indigenous people or subsistence fishers to waters of the state. Specific impacts associated with each public health beneficial use are presented in Table 14.

Table 14. Trash-Related Impacts to Public Health Beneficial Uses.

Beneficial Use	Impact of Trash to Specific Public Health Beneficial Use
Municipal and Domestic Supply	• Alterations or degradation to waters that are used for community, military, or individual water supply systems (including drinking water). • Health hazards due to ingestion of water where diseases were transported by trash.
Navigation	• Safety hazards (including hazards to boats, rafts or other vessels used for shipping, travel, or transportation by private, military or commercial vessels).
Water Contact Recreation	• Health and safety hazards (including hazards from bacteria, viruses, toxic substances, mosquito production, and injuries). • Health hazards due to consumption of fish with diseases transported by trash or ingestion of water where diseases were transported by trash. • Safety hazards (including hazards to boats, rafts or other recreational vessels). • Alterations or degradation to waters that support contact water recreation.
Non-Contact Water Recreation	• Safety hazards (including hazards to boats, rafts or other recreational vessels). • Alterations or degradation to waters that support non-contact water recreation.
Commercial and Sport Fishing	• Safety hazards (including hazards to boats, rafts or other commercial or recreational vessels). • Health hazards due to consumption of fish, shellfish, or other aquatic species with diseases transported by trash. • Alterations or degradation to waters that support commercial and sport fishing.
Aquaculture	• Health hazards due to consumption of aquatic plants or animals with diseases transported by trash. • Alterations or degradation to waters that support aquaculture.
Shellfish Harvesting	• Safety hazards (including hazards to boats, rafts or other commercial or recreational vessels). • Health hazards due to consumption of filter-feeding shellfish with diseases transported by trash. • Alterations or degradation to waters that support shellfish harvesting.

Beneficial Use	Impact of Trash to Specific Public Health Beneficial Use
Native American Culture	• Health hazards due to consumption of fish or shellfish with diseases transported by trash. • Elimination/reduction of native fish or shellfish populations that support the cultural and/or traditional rights of indigenous people. • Alteration or degradation to the habitat of or death to aquatic life that support the cultural beliefs of indigenous people. • Alterations or degradation to waters that support Native American culture.
Subsistence Fishing	• Health hazards due to consumption of fish or shellfish with diseases transported by trash. • Alterations or degradation to waters that support subsistence fishing.
Note: Not all kinds of trash impact the specific human life beneficial uses.	

Effects of Trash on Public Health

Trash poses health and safety hazards for the safety of fishermen, recreational boaters, and children playing in the waterways and beaches. Items such as broken glass, medical waste, rope, and fishing line pose immediate risks to human safety. Injuries incurred by incisions from glass and metal can expose a person's bloodstream to microbes in the stream's water that may cause illness (Los Angeles Water Board 2010). Swimmers, divers, and snorkelers can become entangled in submerged or floating trash such as rope or fishing line. Some trash (e.g., diapers and medical and household waste) can be a source of bacteria, viruses, and toxic substances (Musmeci et al. 2010). Medical and personal hygiene trash, for instance, can indicate the presence of pathogenic contaminants such as streptococci, fecal coliform, and other bacterial contamination. Consumption or contact with water contaminated with these pathogens could result in infectious hepatitis, diarrhea, bacillary dysentery, skin rashes, and even typhoid and cholera. Also, some debris, such as containers or tires, can collect water and support mosquito production and associated risks of diseases such as encephalitis and the West Nile Virus (Los Angeles Water Board 2010). Trash, specifically plastic waste, has a potential to expose humans to chemicals, such as bisphenol A and phthaletes (DG Europe 2011).

Trash in state waters can pose serious risks to recreational users including incisions and exposure to disease. Because of these health and safety hazards, trash may be an immediate threat to public health depending on the type of trash, where there is bodily contact with water, and where ingestion of water is reasonably possible. Therefore, waters designated with the beneficial use water contact recreation (Table 14) can be negatively impacted by the presence of trash. In addition, beneficial uses associated with the human consumption of water, shellfish, aquatic plants and animals, and commercial and sport fish, may be impacted by trash. Specifically, the ingestion of water or food that may be contaminated by bacteria, viruses, or toxic compounds found in trash poses a significant public health concern.

Effects of Trash on Contact & Non-Contact Water Recreation, Commercial and Sport Fishing, and Navigation

Beyond the immediate health and safety hazards caused by trash, the presence of trash in state waters can also affect beneficial uses of waters where there is less bodily contact with water. Damage to boats, rafts, and other recreational vessels through entanglement of equipment and propellers can lead to potentially hazardous and perhaps fatal situations for boaters (Figure 30). For these circumstances, trash present in waters designated for recreational activities and for transportation can impact the beneficial uses of non-contact water recreation and navigation, respectively.

Figure 30. Entangled Propeller (NOAA Marine Debris Program).

Effects of Trash on Native American Culture

Some waters within the jurisdiction of the North Coast Water Board are protected by the beneficial use, Native American Culture. This beneficial use describes waters that support the cultural and/or traditional rights of indigenous people such as subsistence fishing and shellfish gathering, basket weaving, jewelry material collection, navigation to traditional ceremonial locations, and ceremonial uses. Trash affects this use by reducing the numbers of fish and/or shellfish, and/or by introducing toxic compounds to the waters making the waters too dangerous or unsuitable for this beneficial use. The North Coast Water Board also has a subsistence fishing beneficial use that protects the use of waters for subsistence fishers. Many people living near freshwater or marine areas depend on food from their nearby water bodies for survival. Similar to the Native American Culture use, trash affects the subsistence fishing use if waters are void of fish and/or shellfish or if toxic compounds associated with trash impact the aquatic life. The effect on these uses is similar to the aquatic life and public health impacts of trash described above.

II. Trash in the Environment

The presence of trash in surface waters, especially in coastal and marine waters, is a serious issue in California. According to California's 2008-2010 Integrated Report, there are 73 water bodies listed as having impaired water quality due to the presence of large

amounts of trash. Trash discarded on land is frequently transported through storm drains and to waterways, shorelines, the seafloor, and the ocean. Statewide and local studies have documented the presence of trash in state waters and the accumulation of land-based trash in the ocean. Street and storm drain trash studies conducted in regions across California have provided insight into the composition and quantity of trash that flows from urban streets into the storm drain system and out to adjacent waters (Figure 31).

Figure 31. Don't Trash California (Caltrans).

Composition of Trash

Since 1986, the California Coastal Commission and the Ocean Conservancy have organized the Coastal Cleanup Day to collect trash from beaches, inland waterways, coastal waters, and underwater annually through voluntary efforts at sites around the world (Figure 32). In 2012, volunteers removed 854,496 pieces of trash totaling 1,444,546 from 2,023 miles of Coastal Cleanup sites throughout California. The top ten items collected from 1989-2012 were: (1) cigarette butts; (2) bags (paper and plastic); (3) food wrappers and containers; (4) caps and lids; (5) cups, plates, forks, knives, and spoons; (6) straws and stirrers; (7) glass beverage bottles; (8) plastic beverage bottles; (9) beverage cans; and (10) building materials. These items made up nearly 90 percent of the items removed and cataloged by Coastal Cleanup Day events. These data generated by the Coastal Cleanup Day efforts provide valuable information on the sources of debris, as well as the types and quantity of debris in California.

In addition to the dominance of consumer products in the waste stream, preproduction plastics pellets are a particular concern when the raw material is improperly disposed and reaches a water body. A 1998 study, conducted in Orange County by Moore et al., found the most abundant debris items on beach sites were preproduction plastics, foamed plastics, and hard plastics. A 2009 collaborative baseline study conducted by the Southern California Coastal Water Research Project and the State Water Board estimated that preproduction plastic made up 95 percent of the debris on California's beaches, and other plastic debris items made up an additional 4.6 percent (Moore et al. 2013). The densest distribution of debris was found in the San Diego, Orange, Los Angeles and San Francisco County Regions, and appears to correlate with the more densely populated coastal watersheds in California.

Plastic, the largest component and among the longest of life spans of trash materials, is an increasingly local and global threat to aquatic and marine life and environments.

Although plastics are one of the most common forms of trash and may have lasting and deleterious impacts, all forms of trash are a threat to state waters.

Figure 32. California Coastal Cleanup Day Advertisements (California Coastal Commission).

Transport of Trash in the Environment

Trash in state waters is related to the direct and indirect activities of inhabitants inland, along coastal shorelines, and offshore (NOAA 2008a). A major source of trash is either intentionally or accidentally improperly discarded waste, thrown or deposited on land and in water bodies. If trash occurs on land, it is commonly transported to nearby water bodies by wind and/or rain or dry weather runoff. The five primary sources and transport mechanisms for trash to state waters are (Figure 33):

1. Littering by the public on or adjacent to waterways;
2. Storm events draining watersheds and carrying trash originating from littering, inadequate waste handling or illegal dumping via the storm drain system to receiving waters;
3. Wind-blown trash, also originating from littering, inadequate waste handling or illegal dumping;
4. Illegal dumping into or adjacent to water bodies, and;
5. Direct disposal (overboard disposal and/or dumping) of trash into water bodies from vessels involved in commercial, military, fishing or recreational activities.

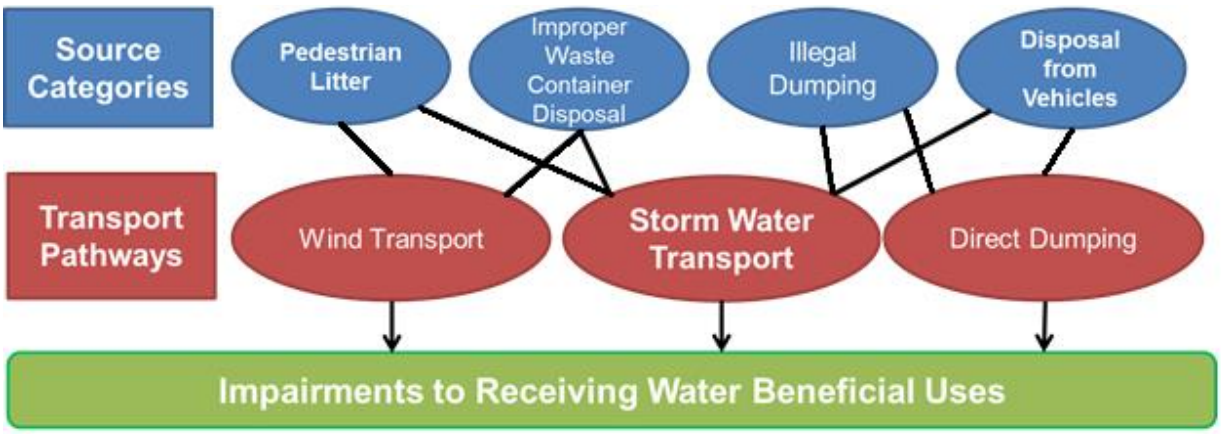

Figure 33. Transport of Trash to Waters of the State.

Littering is commonly the first route for trash to enter the environment. It is considered as a land-based source of trash and frequently accumulates in the vicinity of shopping centers, car parking lots, fast food outlets, railway and bus stations, roads, schools, public parks and gardens, garbage bins, landfill sites, and recycling depots. Results of trash generation studies conducted in Los Angeles County and City of Los Angeles in 2001 and 2004 concluded that high trash generation rates occur at highly populated and highly visited areas that attract vehicular and pedestrian traffic. Objects that can be easily transported by wind, such as plastic and paper trash, are a particular problem because they can become floatable trash even when originally disposed of in an appropriate manner. Uncontained trash can be blown directly into inland surface waters (including rivers, lakes, estuaries, and drains), enclosed bays, and the ocean, or it can be transported to the ocean if blown into a river, stream, or enclosed bay that empties to coastal waters (U.S. EPA 2002, San Diego CoastKeeper 2010).

Storm water can also wash trash into drainage systems, where it is able to travel via the storm water systems, streams, rivers, lakes, and estuaries until it eventually reaches coastal waters (Armitage and Rooseboom 2000, Richmond and Clendenon 2011). Trash will accumulate in areas of generation until the local authority either removes it or it is transported by wind and/or storm water runoff to nearby drainage systems and water bodies (Armitage and Rooseboom 2000). During storms and other periods of high winds or high waves, almost any kind of trash (including glass, metal, wood, and medical waste) can be deposited into the waters of the state (U.S. EPA 2002). A significant contribution from runoff has been shown in recent studies monitoring the density of marine trash before and after storm events. A study conducted on the Los Angeles and San Gabriel Rivers found the greatest abundance of plastic trash occurred after a rain event (Moore et al. 2011). A study conducted off the Southern California coast found trash increased after a storm event, reflecting inputs from land-based runoff and re-suspended matter (Lattin et al. 2004).

According to NOAA, it is estimated that 80 percent of marine trash comes from land-based sources (1999). Evidence of floating trash and trash on the seafloor suggests that trash from land-based sources can travel and impact waters downstream, along coastal shores, and in marine waters of the state. Trash that ends up on California beaches is indicative of trash accumulated from upstream sources, as well as other

sources such as visitor littering, poor management of waste containers, and recreational water activities. The transport of trash from land-based sources is not unique to California; the transport of trash is occurring globally. For example, the Danube River in Austria is reported to have a net flow rate of 4.2 tons of trash per day, with industrial raw materials accounting for over 70 percent of the reported items (Lechner et al. 2014). In the Tamar Estuary in London, plastics accounted for 82 percent of the trash found and the tidal cycle was a factor in the transport of trash (Sadri et al. 2014).

Illegal dumping and direct disposal of trash can take place in both fresh and marine waters. Trash is directly deposited into surface waters from accidental loss, improper waste management or by illegal disposal. Sources may include commercial fishing vessels; merchant, military and research vessels; recreational boats; cruise ships; and offshore petroleum platforms and associated supply vessels; beach recreation; and illegal encampments adjacent to waterways and water bodies. Trash deposition associated with recreational boating (Richmond and Clendenon 2001) also contributes to the problem, a majority of which is found to be plastic trash (Milliken and Lee 1990). One study that assessed trash generation along the shorelines of Orange County, suggested that water-based sources, such as overboard disposal were more significant than littering or wind deposition at these locations (Moore et al. 2001). While there are laws regulating the dumping of trash from boats and vessels in rivers, streams, marinas and seas, the global nature of trash, the inability to confine trash within territorial boundaries and the complexity of identifying trash sources have made laws difficult to develop and even harder to enforce.

Trash Assessment Studies

Potential sources of trash have been identified in trash assessment studies performed in the San Francisco Bay Region, Los Angeles River watershed and in Santa Clara County. Collectively, these trash assessments have identified the following as potential sources: direct littering and dumping, downstream transport and accumulation, recreational land-uses, industrial land-uses, urban runoff, pedestrians, vehicles, and improper management of waste containers (Santa Clara Valley Urban Runoff Pollution Prevention Program 2007, Surface Water Ambient Monitoring Program 2007, U.S. EPA 2012b).

Over the 2003-2005 monitoring period, the San Francisco Bay Region Rapid Trash Assessment study found that over 50 percent of the trash collected in urban streams was composed of plastic items. Glass (19%) and biodegradable items (10%) were also commonly found. Direct littering and dumping as well as downstream transport and accumulation were the two major transport mechanisms identified as responsible for the trash in streams in this region (Surface Water Ambient Monitoring Program 2007). High trash deposition rates were generally associated with wet weather, which reflects accumulation from upstream sources. As for dry season deposition, elevated deposition rates were primarily associated with localized littering and dumping, wind-blown trash from nearby sources, and, at certain sites, accumulation from upstream sources due to dry season runoff. Overall, trash levels generally increased in a downstream direction from headwaters to the mouth of the watershed. Other sources of trash near creek channels were identified as parks, schools, roads, or poorly kept commercial facilities.

In the Los Angeles River Watershed, the U.S. EPA and Los Angeles Water Board staff performed Rapid Trash Assessment in the lakes, along lakeshores, near fences and at the outlet of storm drains to document the impairment of Los Angeles area lakes. Rapid Trash Assessment site visits evaluated different land use types surrounding the lakes such as recreational use, industrial businesses, and urban runoff (U.S. EPA 2012b). The study suggests that trash in recreational areas surrounding the lake is likely transported from people littering in the area and from uncovered trash cans. In recreational areas, trash problems were primarily caused by overflowing trash cans and littering of small trash items, such as cigarette butts. Facilities in recreational areas, such as bathrooms and parking lots, were also identified as key hotspots for trash. Although industrial sites surrounding Peck Road Park Lake were too steep to appropriately conduct a quantitative trash assessment, items observed from a distance included plastic bags, milk jugs, a tire, a cooler, metal cable, and industrial scraps. Lastly, an inlet to Peck Road Park Lake was assessed to evaluate trash derived from urban runoff. This area demonstrated heavy accumulation of trash and evidence of trash dumping. Specific items found in the inlet of the lake included semiconductors, pepper sprays, spray paint cans, cigarette butts, large furniture items, foamed polystyrene, and plastic pieces (U.S. EPA 2012b).

Based on urban creek trash assessments in Santa Clara County, four source categories of trash have been identified by Santa Clara Valley Urban Runoff Pollution Prevention Program: pedestrians, vehicles, waste containers, and illegal dumping (Santa Clara Valley Urban Runoff Pollution Prevention Program 2007). Pedestrian locations are likely the greatest source of trash that ends up in local water bodies. Areas most affected by trash include high foot traffic locations (e.g., shopping plazas, convenience stores, and parks), transition points (e.g., bus stops, train stations, and entrances to public buildings), and special event venues (e.g., concerts, sporting events, and fairs). Drivers and passengers are also responsible for trash when they litter directly from vehicles or do not adequately cover their vehicles when transporting trash. Land areas that may accumulate trash from vehicles include roads, highways, and parking lots. Waste containers that are overflowing or uncovered and the improper handling of trash during curbside collection may also contribute to the problem. Illegal dumping of trash may occur within a watershed or directly into a waterway. High occurrences of illegal dumping often are by illegal encampments near or within riparian areas (Santa Clara Valley Urban Runoff Pollution Prevention Program 2007).

Land-Based Generation Studies

Studies show that trash is predominantly generated on land and then transported to a receiving water body. The main transport pathway of trash to receiving water bodies is through storm water transport. Several studies have been conducted to determine the sources of land-based trash generation and the rates of trash generation areas. The land areas evaluated in these studies typically included the following: high density residential, low density residential, commercial services, industrial, public facilities, education institutions, military institution, transportation, utilities, mixed urban, open space, agriculture, water, and recreation land uses.

In 2001, the City of Los Angeles Watershed Protection Division performed a geographical analysis of trash generation in the City of Los Angeles. The study showed

that trash is most severe in Central City (Downtown LA) and nearby communities where commercial, industrial, and residential land uses are predominant (City of Los Angeles 2002). According to the 2004 Trash Baseline Monitoring results in Los Angeles County, the highest trash-generating land-uses were high-density residential, mixed use urban, commercial, and industrial land uses in the Ballona Creek and Los Angeles River Watershed, respectively (County of Los Angeles Department of Public Works 2004a; 2004b). The results indicate that high generation of trash is commonly found at highly populated and highly visited areas that attract high vehicular and pedestrian traffic.

BASMAA worked collaboratively with the permittees of the San Francisco Bay Area's Regional Stormwater Permit to develop a regionally consistent method to establish baseline trash loads from their municipality. The project, BASMAA Baseline Trash Generation Rates Project, assisted the permittees in establishing a baseline by which to demonstrate progress towards trash load reduction goals. The project assessed the baseline trash generation rates at 137 monitoring sites at nine different land uses, determined that the four land uses with the highest trash generation rates are (1) retail and wholesale, (2) high-density residential, (3) K-12 schools, and (4) commercial/services and industrial, and developed a conceptual model for trash generation rates (EOA, Inc. 2012a). The project provided a scientifically-sound method for developing trash generation rates that can be adjusted, based on permittee/site specific conditions, and used to develop baseline loading rates and loads (EOA, Inc. 2012a). Baseline loads form the reference point for comparing trash load reductions achieved through control measure implementation (EOA, Inc. 2012b).

Outfall and Storm Drain Monitoring

Outfall and storm drain monitoring results are useful in determining the types of trash that is transported to receiving waters from inland locations. Paper, plastics, cigarette butts, and vegetation are common forms of trash collected in the outfalls and storm drains by Caltrans and municipalities such as Fresno and Stockton.

The Litter Management Pilot Study conducted in 1998 through 2000 by Caltrans identified that trash collected during outfall monitoring in the Los Angeles area consists of paper, plastic, wood, cigarette butts, foamed polystyrene, metal, and glass (Caltrans 2000). Further evaluation of the Litter Management Pilot Study data indicated that smoking- and food-related trash accounted for 20-30 percent of the trash by weight and volume and that approximately 90 percent of the trash collected at the storm drain outfall is floatable (Caltrans 2000). The high percentage of floatable trash can be indicative of the short residence time in the drainage system. Though plastics are one of the more common forms of trash in receiving waters (Moore et al. 2001, Moore et al. 2005; 2011), the Litter Management Pilot Study showed that non-plastics represent 67 percent of trash composition by weight, 57 percent by volume and 66 percent by count (Caltrans 2000). Caltrans reported that polystyrene items represented 5 percent by weight and 15 percent by volume. Plastic film including bags represented 7 percent by weight and 12 percent by volume.

During the 2001-2002 monitoring season, the Caltrans Public Education Litter Monitoring Study collected storm water trash data at Caltrans highway sites in Fresno and Stockton, California. The majority of material collected was vegetation. Trash,

however, as defined as manufactured items greater than 5 millimeters, ranged from 5 to 18 percent by weight and 11 to 43 percent by volume (Caltrans 2004).

Street and Storm Drain Trash Audits

Street and storm drain trash audits characterize trash that can be transported to surface waters by wind, runoff, or storm water collection systems. Trash audits reveal the composition of littered products depicting the materials (paper, plastic, metal, and glass), type of product (bottle, cup, can, and cigarette butt), and sometimes the land-based sources of littered items. In California, two studies that have collected and assessed trash for brands and identifiable sources are the Source Reduction Pilot Project in the San Francisco Bay area and the storm drain trash audit of the City of Oxnard. A street trash audit was conducted in San Francisco, but the sources of the trash were not identified.

In 2010-2011, Clean Water Action coordinated a Source Reduction Pilot Project in which trash was characterized at isolated sites in four jurisdictions: Oakland, Richmond, San Jose, and South San Francisco. The results of the project identified that cigarette butts were the most common item found in trash. The leading quantifiable type of trash on city streets was food and beverage packaging (67%) (Clean Water Action 2011a). Altogether, 81 percent of trash collected originated from food establishments, including fast food, cafes, grocery stores, and convenience food stores. The results of this study suggest that businesses that sell “take-out” food and beverages are the largest sources of trash after cigarette smokers. These studies are instructive because businesses and institutions that decide to purchase packaged and disposable products influence the quantity of potential material that is available to become littered, dumped, improperly disposed, and thus potentially transported to nearby waters.

In 2005, the City of Oxnard completed a study of trash in the open channel storm drain system. According to the Stormdrain Keeper program, the most common trash items collected were plastic, cellophane, paper products, and foamed polystyrene (Pumford 2005). While much of the trash removed from the storm drain open channel was unmarked, key contributors of marked trash were fast food businesses and markets.

A street trash audit was conducted in San Francisco in April 2007 and April 2008. Within this study, trash was classified as “large” for items over four square inches or as “small” for items smaller than four square inches. For both monitoring periods, the most significant type of large trash observed was paper products, followed by plastic materials. Plastic materials include plastic packaging, wrap, plastic bags, and beverage containers. As for small trash observations, the most significant type of small trash was chewing gum, followed by glass pieces (City and County of San Francisco 2007, City of San Francisco 2008).

III. Current Efforts to Address Concerns Related to Trash in California Waters

Regulations and policies are currently implemented in California to address trash in state waters. These efforts are discussed in the following sections.

State Laws and Local Ordinances

Statewide laws and local ordinances have been adopted in California to address trash. For instance, California prohibits littering where such litter "creates a public health and safety hazard, a public nuisance, or a fire hazard" (Penal Code § 374.4). The California Vehicle Code provides that no one may throw or trash, including cigarettes onto highways and adjacent areas (§ 23111 and 23112).

In 2006, California passed Assembly Bill (AB) 2449, the Plastic Bag Recycling Law. This law requires certain retail establishments (grocery stores and pharmacies) that make plastic bags available at checkout to set up in store recycling programs to accept plastic bags. AB 2449 restricted the ability of cities and counties to regulate single-use plastic grocery bags through the imposition of a fee on plastic bags. In 2012, Senate Bill (SB) 1219 repealed the provisions that preempted local regulatory action, and extended recycling requirements for large supermarkets that distribute plastic bags to collect them for recycling until 2020.

California is the leader in implementing local ordinances with goals of reducing trash, specifically plastics. The two types of ordinances passed by local governments focus on addressing single-use disposable items: expanded polystyrene foam and single-use plastic bags. At least 65 jurisdictions have either banned expanded polystyrene foam food containers completely or have prohibited use by government agencies or at public events. A few jurisdictions that have banned or partially banned polystyrene for takeout food packaging include San Francisco, Los Angeles County, Sonoma County, Malibu, and Berkeley (Clean Water Action 2011b).

In 2006, the City of San Francisco passed a ban on single-use plastic bags in grocery stores and pharmacies. Since then, at least 72 local jurisdictions have adopted city and county ordinances for single-use plastic bags (Environment California Research and Policy Center 2011). In 2013, the City of Los Angeles became the largest city in the United States to adopt a single-use carryout bag ordinance. Most ordinances have a paper bag fee as well as a ban on plastic due to the desire to promote reusable bags as the bag of choice. Some large retailers also offer a five cent credit or other discounts for bringing a reusable bag. Statewide, several attempts have been made to pass plastic bag ban bills over the past several years, including AB 1998 in 2010 and SB 405 in 2013, although none have been passed in the State Legislature (West Coast Governors' Alliance on Ocean Health 2013).

On September 30, 2014, Governor Edmund G. Brown Jr. signed the nation's first statewide ban on single-use plastic bags—Senate Bill 270 (Sen. Padilla)(2014 Stat. Ch. 850)(adding Chapter 5.3 to Part 3 of Division 30 of the Public Resources Code). Senate Bill 270 aligns state law with the ordinances passed by local governments in California to reduce plastic waste. The new law prohibits grocery stores and pharmacies that have a specified amount of sales in dollars or retail floor space from providing single-use carry-out plastic bags as of July 1, 2015, and enacts the same ban for convenience stores and liquor stores on or after the following year. The legislation prohibits stores from selling or distributing a recycled paper bag or compostable bags at the point of sale for at a cost of less than $0.10.

The proposals to ban plastic bags and polystyrene food containers could result in the use of alternative materials with a variety of potential impacts. Data from the City of San Francisco's Streets Litter Re-Audit report confirmed that eliminating all food-related polystyrene would simply change the type of litter found on our streets and in our waterways, and result in an increase in the non-polystyrene related litter items, thus, showing no overall reduction in litter (or trash to the waterways) (City of San Francisco 2008). Without a ban on all plastic and paper carryout bags, a ban on only plastic bags would simply cause a shift back to paper. According to some lifecycle data, which did not look at end-of-life impacts, greenhouse gas emissions would double due to releases associated with paper bag production and use (Boustead Consulting & Associates Ltd. 2007). In addition, some studies show that policies which force consumers to switch from plastic bags to paper will double energy use and quadruple the amount of waste generated. Similarly, bans on polystyrene food containers would cause a shift to materials with other significant environmental impacts (University of California at San Diego 2006).

No Existing Trash-Specific Water Quality Objectives

Each regional water board has adopted narrative objective(s) for pollutants in its basin plan (Table 15). These narrative objectives refer to trash-related pollutants and other pollutants such as foam and sediment in general terms (i.e., floatable, suspended, and settleable material), but do not specifically refer to trash as a specific pollutant. The Ocean Plan also has similar floatable, suspended, and settleable material objectives, but no specific mention of trash as a pollutant. As summarized in Table 15, there is variability among the existing narrative objectives in the basin plans and the Ocean Plan. Additionally, the ISWEBE Plan lacks a trash-related water quality objective.

Table 15. Trash-Related Water Quality Objectives.

Basin Plan / Ocean Plan	Water Quality Objective
North Coast	*For inland surface waters, enclosed bays and estuaries* Floating Material: Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses. Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses. Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
San Francisco Bay	*For all surface waters except the Pacific Ocean* Floating Material: Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses. Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses. Settleable Material: Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.

Basin Plan / Ocean Plan	Water Quality Objective
Central Coast	*For all inland surface waters, enclosed bays and estuaries* Floating Material: Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses. Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses. Settleable Material: Waters shall not contain settleable material in concentrations that result in deposition of material that causes nuisance or adversely affects beneficial uses.
Los Angeles	*For inland surface waters and enclosed bays and estuaries (including wetlands)* Floating Material: Floating materials can be an aesthetic nuisance as well as provide substrate for undesirable bacterial and algal growth and insect vectors. Waters shall not contain floating materials, including solids, liquids, foams and scum, in concentrations that cause nuisance or adversely affect beneficial uses. Solid, Suspended, or Settleable Materials: Surface waters carry various amounts of suspended and settleable materials from both natural and human sources. Suspended sediments limit the passage of sunlight into waters, which in turn inhibits the growth of aquatic plants. Excessive deposition of sediments can destroy spawning habitat, blanket benthic (bottom dwelling) organisms, and abrade the gills of larval fish. Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.
Central Valley Sacramento and San Joaquin Basins	*All surface waters in the basin* Floating Material: Water shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses. Settleable Material: Waters shall not contain substances in concentrations that result in the deposition of material that causes nuisance or adversely affects beneficial uses. Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
Central Valley Tulare Lake Basin	*For inland surface waters* Floating Material: Waters shall not contain floating material, including but not limited to solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses. Settleable Material: Waters shall not contain substances in concentrations that result in the deposition of material that causes nuisance or adversely affects beneficial uses. Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

Basin Plan / Ocean Plan	Water Quality Objective
Lahontan	*For all surface waters* Floating Materials: Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect the water for beneficial uses. For natural high quality waters, the concentrations of floating material shall not be altered to the extent that such alterations are discernible at the 10 percent significance level. Settleable Materials: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or that adversely affects the water for beneficial uses. For natural high quality waters, the concentration of settleable materials shall not be raised by more than 0.1 milliliter per liter. Suspended Materials: Waters shall not contain suspended materials in concentrations that cause nuisance or that adversely affects the water for beneficial uses. For natural high quality waters, the concentration of total suspended materials shall not be altered to the extent that such alterations are discernible at the 10 percent significance level. *Specific to Pine Creek Watershed* Settleable Material: The concentration of settleable material shall not be raised by more than 0.2 milliliter per liter (maximum) and by no more than an average of 0.1 milliliter per liter during any 30-day period.
Colorado River	*All surface waters* Aesthetic Qualities: All waters shall be free from substances attributable to wastewater of domestic or industrial origin or other discharges which adversely affect beneficial uses not limited to: - Settling to form objectionable deposits; - Floating as debris, scum, grease, oil, wax, or other matter that may cause nuisances; and - Producing objectionable color, odor, taste, or turbidity. Suspended Solids and Settleable Solids: Discharges of wastes or wastewater shall not contain suspended or settleable solids in concentrations which increase the turbidity of receiving waters, unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in turbidity does not adversely affect beneficial uses. *Specific to New River (has Trash TMDL)* The waters of the River shall be essentially free from trash, oil, scum, or other floating materials resulting from human activity in amounts sufficient to be injurious, unsightly, or to cause adverse effects on human life, fish, and wildlife. Persistent foaming shall be avoided.

Basin Plan / Ocean Plan	Water Quality Objective
Santa Ana	*For enclosed Bays and estuaries* Floatables: Floatables are an aesthetic nuisance as well as a substrate for algae and insect vectors. Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses. Solids, Suspended and Settleable: Settleable solids are deleterious to benthic organisms and may cause anaerobic conditions to form. Suspended solids can clog fish gills and interfere with respiration in aquatic fauna. They also screen out light, hindering photosynthesis and normal aquatic plant growth and development. Enclosed bays and estuaries shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses as a result of controllable water quality factors. *For inland surface waters* Floatables: Floatables are an aesthetic nuisance as well as a substrate for algae and insect vectors. Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses. Solids, Suspended and Settleable: Settleable solids are deleterious to benthic organisms and may cause anaerobic conditions to form. Suspended solids can clog fish gill and interfere with respiration in aquatic fauna. They also screen out light, hindering photosynthesis and normal aquatic plant growth and development. Inland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses as a result of controllable water quality factors.
San Diego	*For all inland surface waters, enclosed bays and estuaries, coastal lagoons and ground waters* Floating Material: Floating material is an aesthetic nuisance as well as a substrate for algae and insect vectors. Waters shall not contain floating material, including solids, liquids, foams, and scum in concentrations which cause nuisance or adversely affect beneficial uses. Suspended and Settleable Solids: Suspended and settleable solids are deleterious to benthic organisms and may cause the formation of anaerobic conditions. They can clog fish gills and interfere with respiration in aquatic fauna. They also screen out light, hindering photosynthesis and normal aquatic plant growth and development. Waters shall not contain suspended and settleable solids in concentrations of solids that cause nuisance or adversely affect beneficial uses.

Basin Plan / Ocean Plan	Water Quality Objective
Ocean Plan	*Objectives* 1. Floating particulates and grease and oil shall not be visible. 2. The discharge of waste shall not cause aesthetically undesirable discoloration of the ocean surface. 3. Natural light shall not be significantly reduced at any point outside the initial dilution zone as the result of the discharge of waste. 4. The rate of deposition of inert solids and the characteristics of inert solids in ocean sediments shall not be changed such that benthic communities are degraded. *Implementation Provisions* Waste discharged to the ocean must be essentially free of: 1. Material that is floatable or will become floatable upon discharge. 2. Settleable material or substances that may form sediments which will degrade benthic communities or other aquatic life. 3. Substances which will accumulate to toxic levels in marine waters, sediments or biota. 4. Substances that significantly decrease the natural light to benthic communities and other marine life. 5. Materials that result in aesthetically undesirable discoloration of the ocean surface.
ISWEBE Plan	No water quality objective applicable to trash.

Current NPDES Permits and Existing Trash TMDLs

The CWA establishes the NPDES permit as the primary mechanism for achieving water quality standards in navigable waters. NPDES permits are issued to point source dischargers and include effluent and receiving water limitations. Effluent limitations are based on the water quality objectives in the applicable basin plan and are designed to attain and maintain water quality standards in the receiving waters. Currently, existing NPDES permits, such as MS4 Phase I, MS4 Phase II, and Caltrans, have some existing requirements for trash reduction in the form of institutional controls, such as street sweeping and educational programs. These existing requirements can be applicable to multiple types of urban storm water pollutants, including trash.

For those waters that do not attain water quality standards even after NPDES permits are issued to point sources with the effluent limitations described above, the CWA requires states to adopt TMDLs for the pollutants causing the impairment in a water body. TMDLs are designed to restore water quality by controlling the pollutants that cause or contribute to such excursions. A TMDL assigns waste load allocations for specific pollutants to point sources discharging effluent pursuant to the terms and conditions of NPDES permits. A TMDL also assigns load allocations to nonpoint source discharges. Attainment of all load and waste load allocations would, in most cases, result in compliance with the water quality standards within a reasonable time period.

Additionally, discharges not subject to NPDES permits are regulated under Porter-Cologne through WDRs, waivers of WDRs, and prohibitions of discharge. WDRs are

issued by regional water boards and are issued individually for a specific discharge or generally to cover a category of discharges. WDRs may include effluent limitations or other requirements designed to implement applicable water quality control plans, and they may specify when and where a discharge of waste will not be permitted.

The presence of trash in California waters has resulted in a number of waters listed as impaired on the CWA section 303(d) list of Water Quality Limited Segments over the past several listing cycles. According to California's 2008-2010 section 303(d) list of impaired waters, there are 73 listings due to trash in California waters. These impairments will ultimately require some action to address the listing (e.g., TMDLs or other actions). According to the 2010 Integrated Report, 73 water bodies have approved TMDLs for impairments due to trash and debris. Although listings occur in four Regions (San Francisco Bay, Los Angeles, Colorado River Basin, and San Diego), TMDLs have only been developed to date in the Los Angeles Region and the Colorado River Basin Region. In the Colorado River Basin, a TMDL for trash was adopted for the New River (at the international boundary) that included a numeric target of zero trash (Colorado River Basin Water Board 2006). In the Los Angeles Region, fifteen TMDLs were adopted for trash and debris by either the Los Angeles Water Board or U.S. EPA: San Gabriel River East Fork, Ballona Creek, Los Angeles River Watershed, Revolon Slough, Beardsley Wash, Ventura River Estuary, Malibu Creek Watershed, Lake Elizabeth, Munz Lake, Lake Hughes, Legg Lake, Machado Lake, Santa Monica Bay Nearshore and Offshore, Peck Road Park Lake, Echo Park Lake, and Lincoln Park Lake (Table 16; Los Angeles Water Board 2000; 2004; 2007a; 2007b; 2007c; 2007d; 2007e; 2007f; 2008g; 2010, U.S. EPA 2012a).

The Los Angeles Water Board's trash and debris TMDLs set the numeric target for trash in the applicable water bodies to zero, as derived from the water quality objective in the basin plans. The TMDLs have all also defined trash to be "man-made litter," as defined by the California Government Code (§ 68055.1(g)). Implementation plans vary slightly but are mostly based on phased percent reduction goals that can be achieved through discharge permits, BMPs, and structural controls.

Table 16. Existing Trash and Debris TMDLs.

TMDL Name (Year TMDL Effective)	Numeric Target	Implementation
Los Angeles Water Board		
Santa Monica Bay Near and Offshore (2012)	0 (zero) trash and plastic pellets	For trash, the TMDL recommended implementation of full capture systems, MFAC program, or nonstructural BMPs (e.g., trash collection, public education, and bans on certain non-degradable items). For plastic pellets, industries must comply with the Statewide Industrial Permit or other general or individual industrial permits, which require a Stormwater Pollution Prevention Plan.
Peck Road, Lincoln Park, and Echo Park Lakes (2012)	0 (zero) trash	Recommended implementation of full capture systems, MFAC program, or nonstructural BMPs (e.g., trash collection, public education, and bans on certain non-degradable items).

TMDL Name (Year TMDL Effective)	Numeric Target	Implementation
Malibu Creek Watershed (2009)	0 (zero) trash	100% reduction, 8 years from effective date of TMDL using full capture systems or MFAC program for point sources; MFAC or appropriate alternative program for nonpoint sources
Lake Elizabeth, Munz Lake, and Lake Hughes (2008)	0 (zero) trash	10% reduction after third year and 20% per year thereafter using full capture systems or MFAC program for point sources; MFAC or appropriate alternative program for nonpoint sources
Legg Lake (2008)	0 (zero) trash	100% reduction, 8 years from effective date of TMDL using full capture systems or MFAC program for point sources; MFAC or appropriate alternative program for nonpoint sources
Los Angeles River (2008)	0 (zero) trash	40% reduction after first year and 10% per year thereafter using any combination of full/partial capture systems or institutional controls
Machado Lake (2008)	0 (zero) trash	Full capture systems or MFAC program for point sources; MFAC or appropriate alternative program for nonpoint sources
Revolon Slough and Beardsley Wash (2008)	0 (zero) trash	100% reduction, 8 years from effective date of TMDL Full capture systems or MFAC program for point sources; MFAC or appropriate alternative program for nonpoint sources
Ventura River (2008)	0 (zero) trash	100% reduction, 8 years from effective date of TMDL using full capture systems or MFAC program for point sources; MFAC or appropriate alternative program for nonpoint sources
Ballona Creek (2005)	0 (zero) trash	Phased reduction of 10% per year over a 10-year period using capture systems (e.g., catch basin inserts, structural vortex separation system, end of pipe nets) and/or institutional measures (e.g., street sweeping, enforcement of litter laws)
San Gabriel River East Fork (2001)	0 (zero) trash	Litter prevention, trash sweeps, patrol staff enforcing litter laws, trash receptacles and signs
Colorado River Basin Water Board		
New River (2007)	0 (zero) trash	75% reduction within 2 years from effective date of TMDL; 100% reduction within 3 years.

The San Francisco Bay Water Board uses provisions in the San Francisco Bay MRP to address trash in the 27 303(d) listed water bodies in the Region (Order R2-2009-0074). The San Francisco Bay MRP applies to 76 large, medium and small municipalities and flood control agencies in the San Francisco Bay Region. The San Francisco Bay MRP prohibits the discharge of "rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas." The trash-related receiving water limitations identified in the San Francisco Bay MRP do not place numeric targets on trash but use narrative language to prohibit trash discharges. In the San Francisco Bay MRP, trash is as defined in the California Government Code section 68055.1(g).

Compliance with the discharge prohibition and trash-related Receiving Water Limitations is met through a timely implementation of control measures, BMPs, and any trash reduction ordinances or mandatory full trash capture devices to reduce trash loads from MS4s by set percent reductions (San Francisco Water Board 2009). The San Francisco Bay MRP requires that permittees reduce trash from their storm sewer systems by 40 percent by July 1, 2014. The San Francisco Bay MRP permittees are developing and implementing a Short-Term Trash Load Reduction Plan. The implementation of the Short-Term Trash Load Reduction Plan includes a mandatory minimum level of trash capture systems, cleanup and abatement progress on a mandatory minimum number of Trash Hot Spots[22], and implementation of other control measures and BMPs, such as trash reduction ordinances, to prevent or remove trash loads from MS4s to attain a 40 percent reduction in trash loads by July 1, 2014 (City of Cupertino 2012, City of San Jose 2012).

State Policy Efforts

In response to the increasing problem of trash within the state, particularly plastic trash, policymakers have initiated efforts such as the California Ocean Protection Council's Resolution on Reducing and Preventing Marine Debris (2007) and subsequent Implementation Strategy for Reducing Marine Litter (2008). These policies respectively call for target reductions of trash within a set timeline, and prioritize state efforts for source reduction of "worst offender" plastic trash, such as cigarette butts, plastic bottle caps, plastic bags, and polystyrene. The Implementation Strategy also prioritizes extended producer responsibility for packaging waste, which has already been embraced in Canada, the EU, and other countries (California Ocean Protection Council 2007; 2008). Neither the California Ocean Protection Council Resolution nor the Implementation Strategy details methodologies for decreasing trash in the context of NPDES storm water permitting or other federal and state clean water laws.

In 2013, the West Coast Governor's Alliance on Ocean Health introduced a Marine Debris Strategy. The objectives of the Strategy are to prevent marine debris from entering the ocean or littering beaches; maximize recovery of marine debris in the ocean or on shore; reduce and prevent the negative impacts of marine debris; and enhance existing efforts through communication and collaboration among interested parties on the West Coast. The Strategy provides a toolbox of key actions that may be implemented collaboratively or individually by western states at its discretion and allows for the successful achievement of target milestones through various reduction methods.

[22] Trash Hot Spots are to be cleaned up to a level of "no visual impact" at least one time per year for the term of the permit. Trash Hot Spots shall be at least 100 yards of creek length or 200 yards of shoreline length.

APPENDIX B: ENVIRONMENTAL CHECKLIST

Background

PROJECT TITLE: Amendment to the Water Quality Control Plan for the Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California

LEAD AGENCY: State Water Recourses Control Board

Division of Water Quality

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PROJECT LOCATION: Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California, and Water Quality Control Plan for Ocean Waters of California.

DESCRIPTION OF PROJECT: The State Water Board is proposing an Amendment to the Water Quality Control Plan for Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California. The amendment to control trash and Part 1 Trash Provisions are collectively referred to as the "Trash Amendments".[23] The provisions proposed in the proposed final Trash Amendments include six elements: (1) water quality objective, (2) applicability, (3) prohibition of discharge, (4) implementation provisions, (5) time schedule, and (6) monitoring and reporting requirements. The

[23] The State Water Board intends to amend the Water Quality Control Plan for Enclosed Bays and Estuaries of California to create the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan (ISWEBE Plan). The State Water Board intends that the Part 1 Trash Provisions will be incorporated into the ISWEBE Plan, once it is adopted.

proposed provisions would apply to all surface waters of the state, with the exception of those waters within the jurisdiction of the Los Angeles Water Board with trash or debris TMDLs that are in effect prior to the effective date of the Trash Amendments.

The State Water Board's project objective for the final Trash Amendments is to address the impacts of trash on surface water bodies across California (with the exception of those waters within the jurisdiction of the Los Angeles Water Board with trash or debris TMDLs that are in effect prior to the effective date of the Trash Amendments) through development of a statewide plan governing trash. The project objective for the final Trash Amendments is to provide statewide consistency for the Water Boards' regulatory approach to protect aquatic life and public health beneficial uses, and reduce environmental issues associated with trash in state waters, while focusing limited resources on high trash generating areas.

The reasonably foreseeable methods of compliance with the final Trash Amendments are described in Section 5, and the environmental effects are described in Section 6 of the Final Staff Report. The reasonably foreseeable methods of compliance are addressed by type of trash-control method, namely: treatment controls (e.g., catch basin inserts, vortex separation systems, trash nets, and Gross Solids Removal Devices), institutional controls (e.g., enforcement of litter laws, street sweeping, storm drain cleaning, public education, and ordinances), and LID and multi-benefit projects.

Environmental Impacts

The environmental factors checked below could be potentially affected by this project. See the Section 6 of the Final Staff Report for more details.

☐	Aesthetics	☐	Agriculture and Forestry Resources	☑	Air Quality
☑	Biological Resources	☑	Cultural Resources	☑	Geology/Soils
☑	Greenhouse Gas Emissions	☑	Hazards & Hazardous Materials ☐ Energy and Mineral Resources	☑	Hydrology/Water Quality
☑	Land Use/Planning	☐	Mineral Resources	☑	Noise
☐	Population/Housing	☑	Public Services	☐	Recreation
☑	Transportation/Traffic	☑	Utilities/Service Systems	☐	Mandatory Findings of Significance

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
AESTHETICS. Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☑	☐

b)	Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☑
c)	Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☑	☐
d)	Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?	☐	☐	☐	☑

Although the final Trash Amendments do not require land alteration, it is expected that some minimal land alteration would be associated with several of the reasonably foreseeable methods of compliance. While compliance may require the installment of full capture systems, it is unlikely that the aesthetics of the natural environment would be adversely affected by improvements to existing infrastructure.

The general aesthetic characteristic of those portions of the state where the final Trash Amendments would be implemented are densely urbanized. Implementing trash reduction measures should reduce the visual effects of litter generated within the jurisdiction and should reduce the visual effects of the high volumes of trash that collect downstream from the upstream sources. Trash may collect near storm water inlets where capture devices block trash from entering the storm water system. The amount of trash that may accumulate at these locations should not differ from baseline conditions, and the trash accumulating would not be entering the storm water system. Increased street sweeping and other institutional controls could lessen the amount of trash near storm water drop inlets, decreasing the amount of trash that may accumulate. Implementation of the final Trash Amendments would eventually improve the overall aesthetic appeal of the state by the removal of visible trash, thus resulting in a positive impact.

Since vortex separation system units and catch basin inserts would be installed within already existing storm drain networks, it is also not foreseeable that the installation of a vortex separation system or catch basin insert would substantially damage scenic resources and/or degrade the existing visual character or quality of any particular location and its surroundings. It is not foreseeable that the installation activities associated with these units would result in any substantial adverse effect on the scenic vistas of the location. Catch basin insert are unlikely to create an aesthetically offensive site after installation because they are installed at street level.

Installation of in-line trash nets would not foreseeably obstruct scenic vistas or opens views to the public as their installation will be limited to locations within the storm drain system and not in open channels. To the extent that a particular control at a particular site could obstruct scenic views, such an impact could be avoided by employing non-structural controls such as increased litter enforcement. End-of-Pipe trash nets are surface devices and could impair the aesthetics of the installation site. This impairment could be alleviated by employing alternative structural devices, such as in-line trash nets, or by employing nonstructural controls, such as increased litter enforcement.

Trash nets could also become targets of vandalism. Improved security measures and enforcement of anti-vandalism regulations could decrease instances of vandalism.

Gross Solids Removal Devices are subsurface devices and, as such, would not foreseeably obstruct scenic vistas or open views after installation. The installation of Gross Solids Removal Devices, however, may affect the aesthetics of the installation site. This effect on aesthetics could be lessened by using construction BMPs, such as screening off the construction site. Standard architectural and landscape architectural practices can be implemented to reduce impacts from aesthetically offensive structural impacts. Any effects would be short-term and not be considered to substantially degrade the existing visual character or quality of the site and its surroundings.

Gross Solids Removal Devices, as well as trash nets, could also become targets of vandalism. Vandalized structures may become an aesthetically offensive site. Vandalism, however, already exists to some degree in most urbanized areas and adding new structures are not likely to have any impact upon current vandalism trends over baseline conditions. Improved security measures and enforcement of anti-vandalism regulations could decrease instances of vandalism.

Neither increased street sweeping, enforcement of litter laws, ordinances, nor public education result in impairment of scenic and open views. Rather, these alternatives would pose a positive aesthetic impact by reducing visible trash.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

AGRICULTURAL AND FOREST RESOURCES. In determining whether impacts to agricultural resources are significant environmental impacts, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping & Monitoring Program of the California Resources Agency, to non-agricultural uses?	☐	☐	☐	☑
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☑
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)) or timberland (as defined by Public Resources Code section 4526)?	☐	☐	☐	☑

d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☑
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	☐	☐	☐	☑

The final Trash Amendments would not affect agriculture or farmland as they do not alter zoning laws or require conversions to different land uses. Significant trash generation is not expected on agricultural or forestry lands, therefore the use of structural BMPs is not likely in these areas.

Increased street sweeping would be implemented in currently urbanized areas, and it is unlikely that this implementation would cause the removal, disturbance or change in agricultural or forest resources. The implementation would not result in new population or employment growth at the extent that could create a need for new housing development on agricultural or forest land. The implementation also would not require any off-site road improvements or other infrastructure that could result in conversion of farmland to non-agricultural use or forest land to non-forest use.

Enforcements of litter laws, ordinances, and public education would be implemented in currently urbanized areas. There are no foreseeable impacts on agricultural or forest resources.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☑	☐	☐
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☑	☐	☐
c) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☑	☐
d) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?	☐	☑	☐	☐

e) Create objectionable odors affecting a substantial number of people?	☐	☑	☐	☐

Potential impacts to air quality due to implementation of the final Trash Amendments are discussed in Section 6.2 Air Quality of the Final Staff Report.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
BIOLOGICAL RESOURCES. Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?	☐	☑	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?	☐	☐	☑	☐
c) Have a substantial adverse effect on federally-protected wetlands as defined by Section 404 of the federal Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, *etc.*) through direct removal, filling, hydrological interruption or other means?	☐	☐	☑	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory corridors, or impede the use of native wildlife nursery sites?	☐	☑	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☑	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☑	☐

Potential impacts to biological resources due to implementation of the final Trash Amendments are discussed in Section 6.3 of the Final Staff Report.

	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant

Issues (and Supporting Information Sources):	Impact	Incorporated	Impact	No Impact
CULTURAL RESOURCES. Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	☐	☑	☐	☐
b) Cause a substantial adverse change in the significance of an archaeological resource as defined in § 15064.5?	☐	☑	☐	☐
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☑	☐	☐
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☑	☐	☐

Potential impacts to cultural resources due to implementation of the final Trash Amendments are discussed in Section 6.4 Cultural Resources of the Final Staff Report.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
GEOLOGY and SOILS. Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated in the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines & Geology Special Publication 42.	☐	☐	☐	☑
ii) Strong seismic ground shaking?	☐	☐	☐	☑
iii) Seismic-related ground failure, including liquefaction?	☐	☑	☐	☐
iv) Landslides?	☐	☐	☐	☑
b) Result in substantial soil erosion or the loss of topsoil?	☐	☑	☐	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	☐	☐	☐	☑

d) Be located on expansive soils, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☑
e) Have soils incapable of adequately supporting the use of septic tanks or alternate wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☑

Potential impacts to geological and soil resources due to implementation of the final Trash Amendments are discussed in Section 6.5 Geology/Soils of the Final Staff Report.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
GREENHOUSE GAS EMISSIONS. Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	❒	☑	❒	❒
b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?	❒	❒	❒	☑

Potential impacts from greenhouse gas emissions due to implementation of the final Trash Amendments are discussed in Section

6.6 Greenhouse Gas Emissions of the Final Staff Report.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
HAZARDS and HAZARDOUS MATERIALS. Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☑	☐	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☑	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within ¼ mile of an existing or proposed school?	☐	☑	☐	☐

d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code § 65962.5 and, as a result, would it create a significant hazard to the public or to the environment?	☐	☑	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or a public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☑	☐	☐
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☑	☐	☐
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☑	☐	☐
h) Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☑

Potential impacts from hazards or hazardous materials due to implementation of the final Trash Amendments are discussed in Section 6.7 Hazards and Hazardous Materials of the Final Staff Report.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
HYDROLOGY and WATER QUALITY. Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☑
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (*e.g.*, the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☑
Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	☐	☐	☐	☑

Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☑	☐	☐
Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☑
Otherwise substantially degrade water quality?	☐	☐	☑	☐
Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☑
Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	☐	☐	☐	☑
Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☑
Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☑

Potential impacts to hydrology and water quality due to implementation of the final Trash Amendments are discussed in Section

6.8 Hydrology/Water Quality of the Final Staff Report.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
LAND USE AND PLANNING. Would the project:				
a) Physically divide an established community?	☐	☐	☐	☑
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☑	☐
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☑

Potential impacts to land use and planning due to implementation of the final Trash Amendments are discussed in Section

6.9 Land Use/Planning of the Final Staff Report.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
MINERAL RESOURCES. Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of future value to the region and the residents of the State?	☐	☐	☐	☑
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	☐	☐	☐	☑

The final Trash Amendments will not have a substantial impact on mineral resources. Any mineral resources that may occur within areas chosen for the installation of structural controls will have already been made unavailable by the existence of the current land uses and related infrastructure. Implementation of the final Trash Amendments will not further impact any potential mineral resources.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
NOISE. Would the project result in:				
a) Exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☑	☐	☐
b) Exposure of persons to, or generation of, excessive groundborne vibration or groundborne noise levels?	☐	☑	☐	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☑
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☑	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing in or working in the project area to excessive noise levels?	☐	☑	☐	☐
f) For a project within the vicinity of a private airstrip, would the project expose people residing in or working in the project area to excessive noise levels?	☐	☑	☐	☐

Potential noise impacts due to implementation of the final Trash Amendments are discussed in Section 6.10 Noise and Vibration of the Final Staff Report.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
POPULATION AND HOUSING. Would the project:				
a) Induce substantial population growth in an area either directly (*e.g.*, by proposing new homes and businesses) or indirectly (*e.g.*, through extension of roads or other infrastructure)?	☐	☐	☐	☑
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☑
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☑

The final Trash Amendments would not induce population growth, affect housing, or displace individuals. See also Section 7.1 Growth-Inducing Impacts of the Final Staff Report for further discussion.

Vortex separation systems (i.e., Continuous Deflective Separation units) are installed below grade and are appropriate for highly urbanized areas where space is limited. The installation of vortex separation systems may require modification of storm water conveyance structures. These devices can be installed in existing storm drain infrastructure, therefore, no additional land is required nor is there a need to displace existing housing. Maintenance of the vortex separation system involves the removal of the solids either by using a vactor truck, a removable basket or a clam shell excavator depending on the design and size of the unit. Therefore, it is not reasonably foreseeable that the installation and maintenance of vortex separation systems would directly or indirectly induce population growth, displace people or existing housing, or create a demand for additional housing. To the extent that these devices, if employed, would displacement of available housing, it is not reasonably foreseeable that the responsible agencies would install such a device. Rather, an agency would foreseeably opt for non-structural control measures, such as enforcing litter ordinances.

The Gross Solids Removal Devices were developed by Caltrans to be retrofitted below grade into existing highway drainage systems or installed in future highway drainage systems. These devices are appropriate for highly urbanized areas where space is limited. The Gross Solids Removal Devices can be designed to accommodate vehicular loading. Maintenance of the devices involves the removal of the solids either by using a vactor truck or other equipment. The installation of Gross Solids Removal Devices may require modification of storm water conveyance structures; however, these units would generally be sited below grade and within existing storm drain infrastructure. The installation of Gross Solids Removal Devices is not expected to require additional

land nor is there a need to displace existing housing. To the extent that these devices, if employed, may conceivably require the displacement of available housing, it is not reasonably foreseeable that the responsible agencies would install such a device. Rather, an agency would foreseeably opt for non-structural control measures, such as enforcing litter ordinances.

It is not reasonably foreseeable that the installation and maintenance of trash nets or catch basin inserts would induce population growth, displace people or existing housing or create a demand for additional housing. These units are installed entirely within existing storm drain infrastructure.

It is not reasonably foreseeable that increased street sweeping would induce population growth, displace people or existing housing or create a demand for additional housing. Current street sweeping, whether infrequent or frequent, does not have this effect. It is not reasonably foreseeable that enforcement of litter laws would induce population growth, displace people or existing housing or create a demand for additional housing. Current litter laws do not have this effect. It is not reasonably foreseeable that public education and ordinances would induce population growth, displace people or existing housing or create a demand for additional housing.

Issues (and Supporting Information Sources):		Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
PUBLIC SERVICES. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service rations, response times or other performance objectives for any of the public services:					
a)	Fire protection?	☐	☑	☐	☐
b)	Police protection?	☐	☑	☐	☐
c)	Schools?	☐	☐	☐	☑
d)	Parks?	☐	☐	☐	☑
e)	Other public facilities?	☐	☐	☐	☑

Because of the expected location of the proposed project and reasonably foreseeable methods of compliance, it is not expected to be in the vicinity of or affect the objectives for schools, parks, or other public facilities. Potential impacts to fire and police protection public services due to implementation of the final Trash Amendments are discussed in Section

6.11 Public Services of the Final Staff Report.

		Potentially Significant	Less Than Significant With Mitigation	Less Than Significant

Issues (and Supporting Information Sources):	Impact	Incorporated	Impact	No Impact
RECREATION. Would the project:				
a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☑	☐
b) Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	☐	☐	☑	☐

The final Trash Amendments would not have a substantial impact on recreation.

Treatment controls (e.g., vortex separation systems, catch basin inserts, etc.), can be installed at or below grade in existing storm drain systems, which should not require any additional land. Therefore, it is not reasonably foreseeable that park land, recreational of open space areas will be needed for the installation of structural controls.

Installation of treatment controls may temporarily impact the usage of existing recreational sites. For instance, bike lanes or parking locations for recreational facilities may be temporarily unavailable during installation of structural controls. These potential impacts will be short in duration and have a less-than-significant effect on recreation.

It is not reasonably foreseeable that increased street sweeping, enforcement of litter laws, ordinances, or public education would impact the quality or quantity of existing recreational opportunities. In addition, implementation of the final Trash Amendments is designed to improve the quality of the affected water bodies and associated beaches and shorelines. This will likely create a positive impact and increase recreational opportunities throughout the watersheds.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
TRANSPORTATION / TRAFFIC. Would the project:				
a) Exceed the capacity of the existing circulation system, based on an applicable measure of effectiveness (as designated in a general plan policy, ordinance, etc.), taking into account all relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	☐	☑	☐	☐
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	☐	☑	☐	☐

c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that result in substantial safety risks?	☐	☐	☐	☑
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☑
e) Result in inadequate emergency access?	☐	☑	☐	☐
f) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☑	☐	☐

Potential impacts to transportation/traffic due to implementation of the final Trash Amendments are discussed in Section 6.12 Transportation/Traffic of the Final Staff Report.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
UTILITIES AND SERVICE SYSTEMS. Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☑
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental impacts?	☐	☐	☐	☑
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental impacts?	☐	☑	☐	☐
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☑
e) Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☑
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☑	☐
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☑

Potential impacts related to storm drainage to implementation of the final Trash Amendments are discussed in Section 6.13 Utilities/Service Systems of the Final Staff Report.

Issues (and Supporting Information Sources):	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
MANDATORY FINDINGS OF SIGNIFICANCE.				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☑	☐	☐
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)	☐	☑	☐	☐
c) Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☑	☐	☐

The final Trash Amendments would neither degrade the environment nor adversely affect cultural resources. The installation of structural controls may temporarily impact environmental resources, but as discussed in Section 6 of the Final Staff Report, implementation of the mitigation measures identified in the draft SED should reduce potential impacts to less-than significant levels.

As discussed in Section 7.2 Cumulative Impacts Analysis of the Final Staff Report, adoption of the final Trash Amendments would not result in significant cumulatively considerable impacts with implementation of mitigation measures. The overall effect of the final Trash Amendments would be a reduction in the amount of trash entering the State's water bodies thereby improving water quality and protecting the beneficial uses of those waters.

The final Trash Amendments would not, in any way, cause substantial adverse effects on human beings. Where temporary effects have been identified in the Final Staff Report (i.e., transportation/traffic), mitigation measures have also been identified to reduce those impacts to less-than-significant levels.

APPENDIX C: ECONOMIC CONSIDERATIONS FOR THE FINAL AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE OCEAN WATERS OF CALIFORNIA TO CONTROL TRASH AND PART 1 TRASH PROVISIONS OF THE WATER QUALITY CONTROL PLAN FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES OF CALIFORNIA

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Summary and Findings

California communities spend more than $428 million annually to control trash from entering waters of the state, or $10.71 per capita. This economic analysis estimates that between $2.93 and $7.77 more per resident might need to be spent each year for the next ten years to implement the final Trash Amendments. The economic analysis also finds that communities in the Los Angeles Region implementing a trash and debris Total Maximum Daily Load (TMDL) are spending an average of $5.3 per resident per year more than communities not implementing a trash or debris TMDL.

This economic analysis provides an estimate of the compliance costs and considers the incremental costs applicable National Pollutant Discharge Elimination System (NPDES) permitted storm water dischargers and other dischargers may need to incur based on the implementation provisions and time schedules in the final Trash Amendments. The NPDES storm water permits addressed in this economic analysis include Municipal Separate Storm Sewer Systems (MS4s) Phase I and Phase II, Department of Transportation (Caltrans), Industrial General Permit (IGP), and the Construction General Permit (CGP).

Two basic methods[24] to estimate the incremental cost of compliance were used in this economic analysis. The first method is based on cost of compliance per capita, and the second method is based on land cover.

The estimated incremental annual cost to comply with the requirements of the final Trash Amendments ranged from $4[25] to $10.67[26] per year per capita for MS4 Phase I NPDES permittees and from $7.77[27] to $7.91[28] per year per capita for smaller communities regulated

[24] The introduction includes a more detailed description of the methods used in this economic analysis.

[25] The estimated incremental cost of $4.09 is based on a mixture of full capture systems and institutional controls. See Table 18 ($67 M divided by a population of 16.4 M).

[26] The estimated cost is based on all capital expenditures occurring in one single year. See Table 13 ($176 M divided by a population of 16.4 M).

[27] The estimated incremental cost of $7.77 is based on a mixture of full capture systems and institutional controls. See Table 25 ($32.9 M divided by a population of 4.2 M).

under MS4 Phase II NPDES permits. For IGP facilities, the estimated compliance cost is $33.9 million or $3,671[29] per facility. Caltrans currently spends $52 million on trash control[30]. To comply with the final Trash Amendments, expenditures by Caltrans are estimated to increase by $34.5 million in total capital costs and $14.7 million per year for operation and maintenance of structural controls[31]. A summary of the findings are presented in Table 1 with detailed discussion in body of the economic analysis.

In addition to employing trash control, permittees would need to prepare implementation plans and submit monitoring reports. Cost associated with implementation plans and monitoring and reports were not included in this analysis due to the uncertainty of the costs of implementing these new requirements.

This economic analysis fulfills the requirements of Water Code sections 13170 and 13241, subdivision (d) that require the State Water Board to consider economics when establishing water quality objectives. This economic analysis is not a cost-benefit analysis, but a consideration of potential costs of a suite of reasonably foreseeable measures to comply with the final Trash Amendments.

[28] The estimated cost is based on all capital expenditures occurring in one single year. See Table 21 ($33.5 M divided by a population of 4.2 M).

[29] See Table 28 and Table 30. Total cost divided by number of facilities.

[30] McGowen, Scott. California Department of Transportation. Letter to Diana Messina, State Water Resources Control Board. November 7, 2014.

[31] See Table 30.

Table 1. Summary of Estimated Compliance Costs of the Final Trash Amendments for NPDES Storm Water Permits

NPDES Storm Water Permit	Number of Entities Accessed	Population /Size	Baseline of Current Trash Control Costs: Total and Per Capita Per Year	Estimated Incremental Cost for Track 1:Total and Per Capita Per Year	Estimated Incremental Cost for Track 2:Total and Per Capita Per Year (at Year 10)
MS4 Phase I (Based on per capita estimate approach)	193 communities	16,498,556	$160 M Total ($9.7 per capita) $22 M for Full Capture System costs ($1.36 per capita) $138 M Institutional Controls ($8.34 per capita)	**Highest Annual Incremental Cost** [a]: $65 M (total) $3.95 (per capita) **Total Capital Cost** [b]**:** $123M (total) $7.47 (per capita) **Operation & Maintenance:** $52.8 M per year $3.20 (per capita)	$67,481,061 $4.09 per capita
MS4 Phase II (Based on per capita estimate approach)	148 communities	4,310,345	$49 M Total ($11.53 per capita) $6.8 M for Full Capture System ($1.62 per capita) $42 M Institutional Controls ($9.91 per capita)	**Highest Annual Incremental Cost**[a]: $12.4 M (total) $2.93 (per capita) **Total Capital Cost** [b]**:** $23.4M $5.54 (per capita) **Operation & Maintenance:** $10 M per year $2.37 (per capita)	$32,922,053 $7.77 per capita
MS4 Phase I and Phase II (Based on Land Coverage Approach)	262,302 acres of developed, high intensity land coverage	20,736,141	$209 M Total ($10.1 per capita) $29 M for Full Capture System ($1.39 per capita) $180 M Institutional Controls ($8.68 per capita)	**Highest Annual Incremental Cost**[a]: $81 M (total) $3.93 (per capita) **Total Capital Cost** [b]**:** $188.6 M (total) $9.1 (per capita) **Operation & Maintenance:** $80.8 M per year $3.90 (per capita per year)	Not Estimated

Industrial General Permit	9,251 facilities	N/A	Unknown	$33.9 M[d] $3,671 per facility	
Construction General Permit	6,121 facilities	N/A	Unknown	No expected increase	No expected increase
Caltrans	N/A	50,000 lane miles (15,000 centerline miles)	$80 M per year	**Total Capital Cost :** $34.5M **Operation & Maintenance:** $14.7 M per year	N/A

[a] Annual cost at Year 10 (highest cost year) is assumed to be 10% of the total capital cost plus the total operation and maintenance cost for treatment controls.

[b] Total capital costs are incremental total costs to achieve full compliance with the final Trash Amendments.

[c] Operation and maintenance costs are annual costs after full installation of all required treatment controls.

[d] Since the current baseline costs are unknown, all trash control costs are conservatively assumed to be incremental.

Table of Contents

1. INTRODUCTION

The presence of trash in surface waters, especially coastal and marine waters, is a serious issue in California. The State Water Resources Control Board (State Water Board) is proposing an Amendment to the Water Quality Control Plan for Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California. This economic analysis shall collectively refer to the amendment to control trash and Part 1 Trash Provisions as "Trash Amendments".[32] The final Trash Amendments would amend the Water Quality Control Plans for Ocean Waters of California (Ocean Plan) and be incorporated to the forthcoming Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan). The final Trash Amendments aim to provide statewide consistency for the Water Boards' regulatory approach to protect aquatic life and public health beneficial uses, and reduce environmental issues associated with trash in state waters, while focusing limited resources on high trash generating areas.

The final Trash Amendments would apply to all surface waters of the state: ocean waters, enclosed bays, estuaries, and inland surface waters, with the exception of those waters within the jurisdiction of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) with trash or debris TMDLs that are in effect prior to the effective date of the Trash Amendments. The provisions proposed in the final Trash Amendments include six elements: (1) water quality objective, (2) applicability, (3) prohibition of discharge, (4) implementation provisions, (5) time schedule, and (6) monitoring and reporting requirements.

A central element of the final Trash Amendments is a land-use based compliance approach to focus trash control to areas with high trash generation rates. Within this land-use based approach, a dual alternative compliance Track approach is proposed for permitted storm water dischargers (i.e., MS4 Phase I, MS4 Phase II, Caltrans, IGP, and CGP) to implement the prohibition of discharge for trash. Table 2 outlines the proposed alternative compliance Tracks for permitted storm water dischargers. Specifics of the final Trash Amendments are described in Section 2 of the Final Staff Report.

[32] The State Water Board intends to amend the Water Quality Control Plan for Enclosed Bays and Estuaries of California to create the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan (ISWEBE Plan). The State Water Board intends that the Part 1 Trash Provisions will be incorporated into the ISWEBE Plan, once it is adopted.

Table 2. Overview of Proposed Compliance Tracks for NPDES Storm Water Permits

	Track 1	Track 2
NPDES Storm Water Permit	MS4 Phase I and II IGP/CGP*	MS4 Phase I and II Caltrans IGP/CGP*
Plan of Implementation	Install, operate and maintain full capture systems in storm drains that capture runoff from one or more of the priority land uses/facility/site.	Implement a plan with a combination of full capture systems, multi-benefit projects, institutional controls, and/or other treatment controls to achieve full capture system equivalency.
Time Schedule	10 years from first implementing permit but no later than 15 years from the effective date of the Trash Amendments.**	10 years from first implementing permit but no later than 15 years from the effective date of the Trash Amendments.**
Monitoring and Reporting	Demonstrate installation, operation, and maintenance of full capture systems and provide mapped location and drainage area served by full capture systems.***	Develop and implement set of monitoring objectives that demonstrate effectiveness of the selected combination of controls and compliance with full capture system equivalency.***

* IGP/CGP permittees would first demonstrate inability to comply with the outright prohibition of discharge of trash.

** MS4 permittees designated after the effective date of the implementing permit would be in full compliance ten years after the date of designation. Where a permitting authority makes a determination that a specific land use or location generates a substantial amount of trash, the permitting authority has the discretion to determine a time schedule with a maximum of ten years. IGP/CGP permittees would demonstrate full compliance with deadlines contained in the first implementing permit.

*** No trash monitoring requirements for IGP/CGP, however, IGP/CGP permittees would be required to report trash controls.

This economic analysis provides an estimate of the compliance costs and considers the incremental costs permitted storm water dischargers and other dischargers may need to incur based on the implementation provisions and time schedules proposed in the final Trash Amendments. The economic analysis was conducted under a set of assumptions identified in each section. All costs are expressed in February 2014 dollars, unless otherwise noted.

a. Data Sources, Methodology and Assumptions, Limitations and Uncertainties

This analysis applies general economic principles and generally accepted methods of economic analysis. This section provides an overview of the data sources, a description of the methodology used, the assumptions and the limitations of the analysis.

Data Sources

The data used in this analysis has been obtained from secondary sources and previous studies conducted by universities and other organizations. All data and reports used are publicly available.

Data has been obtained primarily from three sources:

- Cost Considerations conducted for trash and debris TMDLs by the Los Angeles Water Board.
- Studies and surveys conducted by:
    - Kier Associates. The Cost of West Coast Communities of Dealing with Trash, Reducing Marine Debris. September 2012. Prepared for United States Environmental Protection Agency (U.S. EPA).
    - Kier Associates. Waste in Our Water: The Annual Cost to California Communities of Reducing Litter that Pollutes Our Waterways. August 2013. Prepared for the National Resources Defense Council (NRDC).
    - Black & Veatch. Quantification Study of Institutional Measures for Trash TMDL Compliance. November 2012. Prepared for the City of Los Angeles.
- Office of Water Programs, California State University. NPDES Stormwater Cost Survey. January 2005. Prepared for State Water Board.

The economic analysis used Federal 2010 Census data for estimates of land use, population and median household income. For other social and economic information, we relied on the information publicly released by the Demographic Research Unit of the California Department of Finance[33].

We compiled the available cost data and analyzed it by categories of costs[34]. Average and per capita costs were computed and tallied for each category based on the size of the communities. To control for anomalous spending patterns in communities, total annual expenditures were divided by total populations to yield weighted averages (within each population size group).

Methodology and Assumptions

This economic analysis provides a summary overview of the costs associated with reasonably foreseeable means of compliance permittees may select to be in compliance with the final Trash Amendments. This economic analysis is conducted at the macro level to assess the estimated overall impact of the final Trash Amendments. It does not specify the compliance cost for specific permittees. A more detailed analysis would be needed to estimate costs at the micro or project-specific level for each individual permittee.

With respect to MS4s Phase I and Phase II permittees, this economic analysis uses data gathered from individual municipalities regarding current trash control expenditures to establish the baseline of control costs. The economic analysis considers two potential methods to estimate compliance costs with the final Trash Amendments. The first method estimates the current expenditures of trash control per capita and the per capita costs to comply with the final Trash Amendments. The second method estimates the per acre cost for high intensity land cover, e.g., proxy for priority land uses.

The cost factors were used to estimate the potential cost of compliance with the final Trash Amendments to MS4 Phase I and Phase II permittees based on respective population sizes and urban areas classified as high intensity. The estimated incremental compliance costs represent the cost of the additional level of trash control above and beyond the current level of costs

[33] The Economic Research Unit prepares economic forecasts and analyses of various economic developments, advises state departments and local government agencies, and provides economic information to the public. Available at: http://www.dof.ca.gov/research/economic_research_unit/

[34] Categories of cost include, street sweeping, storm drain cleaning and maintenance, storm water capture devices, manual cleanup and public education.

incurred by MS4 Phase I or Phase II permittees subject to the final Trash Amendments. To avoid the disproportionate influence on the overall average cost of large communities, compliance costs were estimated based on population size group.

For IGP permittees, we assumed that smaller facilities would choose to comply with the final Trash Amendments implementing institutional controls rather than full capture systems. It is likely that only larger facilities would choose to install full capture systems. We identified two groups based on facility size. For Track 1 analysis, we estimated similar installation and annual operation and maintenance costs as the municipalities. For Track 2 analysis, we estimated the costs of institutional controls to include a $500 initial training and an annual cost of $300 in other measures. This approach is described in more detail in Section 7.

For Caltrans, the final Trash Amendments focus trash control to significant trash generating areas within its jurisdiction. Currently, there is a lack of information about the specific locations where additional trash control will be implemented. Using a GIS analysis, we made the conservative assumption that significant trash generating areas could be approximated using a percentage of Caltrans facilities located within urban areas. We estimated similar installation and annual operation and maintenance costs as the municipalities. This approach is described in more detail in Section 8.

Estimates Based on Costs per Capita

Humans are the only source of trash as defined in the final Trash Amendments. It is reasonable to assume that the amount of trash generated is directly proportional to the population of each community. Areas with high trash generation rates are influenced by land use type and population density. Factors to take into consideration when evaluating cost of compliance are the size of the community, population density and land use types[35].

To estimate the potential incremental costs of compliance with the final Trash Amendments for MS4 Phase I and Phase II permittees not included in the Los Angeles Region, the average annual per capita cost of implementing full capture systems (Track 1) is estimated using the current average per capita annual cost of areas that are already in compliance with the trash and debris TMDLs within the Los Angeles Region. Per capita cost factors were applied to the entire population in each MS4 Phase I and Phase II. By using this method, the potential cost of compliance with the final Trash Amendments is likely overestimated since not all members of the population would be living in high trash generating areas. At the same time, this method is more accurate at estimating the cost of complying with institutional controls that are proportional to the population size group. To address this potential source of error, we developed specific cost estimates for each MS4 Phase I and Phase II by population size group. This should mitigate for potential variability, such as an observed proportional relationship between high trash generating land uses and MS4 Phase I and Phase II population size groups[36].

Estimates Based on Land Uses

Trash generation rates can vary by land use, therefore a second method was used to estimate the compliance cost of a full capture system based on land coverage[37]. The number of storm

[35] Available land coverage data was used in proxy of land use information. See Section 6 of the Economic Analysis.

[36] See Section 4(b)(i) for a discussion of high density residential areas in proportion to population.

[37] Land cover data was utilized as a proxy to predictively identify priority land uses subject to the final Trash Amendments. The analysis assumes that priority land uses correlates with land cover information. This assumption may underestimate the total area subject to compliance with the final Trash Amendments.

drains per acre varies, depending on the type of land use (e.g., high density residential, commercial, mixed urban, and public transportation stations).

Land coverage data was used to calculate the number of storm drains within each segmented road and land cover. Information on land coverage specific for each specific community regulated under an MS4 Phase I and Phase II permit is not readily available. A total statewide number is estimated based on land coverage of high intensity[38].

This method is the most accurate method to estimate the cost of implementing full capture systems (Track 1)[39]. Using land coverage to estimate the total cost of compliance focuses on the actual priority land use area that would be impacted and excludes other low density populated areas. This methodological approach may reduce the error generated when using per capita estimates on large communities with large populations and proportionally low developed density. This method, however, may overestimate costs by including high intensity land coverage that is not part of an MS4. Since the final Trash Amendments define priority land uses based on the different types of land uses, using land coverage for the analysis may be underestimating the area subject to trash controls.

Limitations and Uncertainties

The economic analysis estimates the potential cost of compliance following two methodologies. The two selected methods have advantages and limitations. The first method is based on average cost per capita and may overestimate the total cost of compliance by assuming that all populations in each community will bear the cost of implementing full capture systems. The second method is based on area defined as developed, high-intensity land coverage, which is assumed to be a proxy for priority land uses as defined in the final Trash Amendments. The analysis, based on cost per capita, would provide best estimates for small and medium size communities with a smaller ratio of resident per acre of high density residential; however this may inflate the total cost for large communities with a small acreage of low density residential areas or communities with an even acreage range of low to high density residential areas. This method is more accurate to estimate the cost of complying with institutional controls that are proportional to the population size group, but this method is less accurate to estimate the cost of implementing full capture systems. Using both methods of analysis would help minimize the potential error in the estimates inherent to each method individually.

Assumption Regarding Compliance Schedules

The final Trash Amendments provide ten years from the first implementing permit for certain permittees to achieve full compliance[40]. Cost estimates for compliance in this economic analysis include the operational costs of treatment and institutional controls. These cost estimates assume a 10% per year expenditure of capital cost in order to achieve full implementation in ten years.

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[38] USGS Multi-Resolution Land Characteristics Consortium Land Cover Data 2006. Available at: http://www.mrlc.gov/nlcd06_leg.php

[39] It would be less accurate when estimating the cost of implementing Track 2, because means of compliance through Track 2 has high diversity with available trash controls. Some institutional trash control options, such as education, are not simply relatable to land use area in contrast to locations of full capture systems.

[40] The final Trash Amendments include a 15-year cap, so if a Water Board delays in adopting or reissuing, permittees may not have the full ten years to comply.

b. Organization of This Economic Analysis

The economic analysis is organized as follows. Sections 1, 2, and 3 describe the permitted storm water dischargers subject to the final Trash Amendments and their current trash control expenditures that are used as the baseline for the remainder of the economic analysis. Sections 4 and 5 estimate the potential incremental costs for MS4 Phase I and II permittees based on cost per capita. Section 6 estimates the potential incremental costs of compliance based on land coverage for MS4 Phase I and II permittees implementing full capture systems. Section 7 estimates the potential costs for facilities regulated under the IGP. Section 8 estimates the potential costs for Caltrans. Finally, Section 9 includes information on other dischargers subject to the final Trash Amendments. A summary of the conclusions reached in each section is stated at the outset of each section, for the convenience of the reader.

2. PERMITTEES SUBJECT TO THE FINAL TRASH AMENDMENTS

One of the main transport mechanisms of trash to receiving waters is through the storm water system. The final Trash Amendments therefore focus on trash control by requiring that NPDES storm water permits, specifically the MS4 Phase I and Phase II Permits, Caltrans Permit, the CGP, and the IGP, to contain implementation provisions that require permittees to comply with the prohibition of discharge. These provisions focus on trash control in the locations with high trash generation rates, in order to maximize the value of limited resources spent on addressing the discharge of trash into state waters.

As of August 6, 2013, the Water Boards reported[41] 16,996 storm water facilities regulated under the Storm Water Construction Facilities, Storm Water Industrial Facilities, and Storm Water Municipal NPDES Permits (Table 3).

Table 3. Facilities and Municipalities Regulated Under the Storm Water Permitting Program

Regional Water Board	Construction	Industrial	Municipal (Phase I and Phase II)	Total
1	179	337	14	538
2	1,069	1,316	109	2,494
3	457	401	45	903
4	1,193	2,683	100	3,976
5F	554	453	25	1,032
5R	173	198	3	374
5S	887	1,094	67	2,048
5 all.	*1,614*	*1,745*	*95*	*3,454*
6A	72	40	5	117
6B	307	190	5	502
6 all.	*379*	*230*	*10*	*619*
7	253	172	19	444
8	1,136	1,583	62	2,781
9	924	784	79	1,787
TOTAL	**7,204**	**9,251**	**532**	**16,996**

a. MS4 Phase I and Phase II Permits

The State Water Resources Control Board and Regional Water Quality Control Board's (collectively, the Water Boards) Municipal Storm Water Permitting Program regulates storm water discharges from MS4s. Storm water is runoff from rain or snow melt that runs off surfaces such as rooftops, paved streets, highways or parking lots and can carry with it trash. The runoff

[41] Water Boards' Fiscal Year 2012-2013 Performance Report released on September 2013. Available at: http://www.waterboards.ca.gov/about_us/performance_report_1213/regulate/21200_npdes_sw_facilities.shtml

with trash can then drain directly into a local stream, lake or bay. The MS4[42] permits are issued in two categories or phases: MS4 Phase I and MS4 Phase II.

Some permittees have provisions specific to the control of trash. For example, the San Francisco Bay Municipal Regional Stormwater Permit requires discharges to meet water quality objectives and ensure the protection of the beneficial uses of receiving waters and their associated habitats. Permittees must demonstrate compliance with trash-related receiving water limitations through implementation of structural controls and institutional controls to reduce trash loads from MS4s. The San Francisco Bay Water Board set load reductions for trash from storm water discharges at 40% by 2014.

In the Los Angeles Region, fifteen TMDLs were adopted for trash and debris by either the Los Angeles Water Board or U.S. EPA. The Los Angeles Water Board's trash and debris TMDLs set the numeric target for trash in the applicable water bodies to zero, as derived from the water quality objective in the basin plans. The TMDLs have all also defined trash to be "man-made litter," as defined by the California Government Code (§ 68055.1(g)). Implementation plans vary slightly but are mostly based on phased percent reduction goals that can be achieved through discharge permits, best management practices (BMPs), and structural controls.

In this economic analysis, the communities regulated under the MS4 NPDES program have been grouped based on factors such as size, land use zones, and population.

b. California Department of Transportation

Caltrans is responsible for the design, construction, management, and maintenance of the state highway system, including freeways, bridges, tunnels, Caltrans' facilities, and related properties. Caltrans is subject to the permitting requirements of CWA section 402(p). Caltrans' discharges consist of storm water and non-storm water discharges from state owned rights-of-way.

Before July 1999, discharges from Caltrans' MS4 were regulated by individual NPDES permits issued by the Regional Water Boards. On July 15, 1999, the State Water Board issued a statewide permit (Order No. 99-06-DWQ) which regulated all discharges from Caltrans MS4s, maintenance facilities and construction activities. On September 19, 2012, the Caltrans' permit was re-issued (Order No. 2012-0011-DWQ) and became effective on July 1, 2013.

Caltrans' System-Wide Management Program describes the procedures and practices used to reduce or eliminate the discharge of pollutants to storm drainage systems and receiving waters. A revised System-Wide Management Program must be submitted to the State Water Board for approval by July 1, 2014.

c. Permitted Storm Water Industrial and Construction Facilities

Under the industrial program, the State Water Board issues an NPDES Industrial General Permit to 9,200 dischargers associated with ten broad categories of industrial activities (Order No. 97-03-DWQ). The permit also requires that dischargers develop a Storm Water Pollution Prevention Plan (SWPPP) and a monitoring plan. Through the SWPPP, dischargers are

[42] **Municipal Stormwater Phase I Facilities**: The Municipal Storm Water Permits regulate storm water discharges from MS4s. Under Phase I, which began in 1990, the Water Boards have issued NPDES MS4 permits to permittees serving populations greater than 100,000 people. Many of these permits are issued to a group of co-permittees encompassing an entire metropolitan area. These permits are reissued as the permits expire.

Municipal Stormwater Phase II Facilities: Under Phase II, the State Water Board adopted a General Permit for the Discharge of Storm Water from Small MS4s (WQ Order No. 2003-0005-DWQ) to provide permit coverage for smaller municipalities (10,000 to 100,000 people), including non-traditional small MS4s which are governmental facilities such as military bases, public campuses, prisons and hospital complexes.

required to identify sources of pollutants, and describe the means to manage the sources to reduce storm water pollution. For the monitoring plan, facility operators may participate in group monitoring programs to reduce costs and resources. The regulated industrial sites by regional water board are presented in Table 4.

Table 4: Facilities Regulated under the Storm Water Industrial and Construction Program **(as of June 30, 2013)**

Regional Water Board	Industrial Storm Water Facilities	Construction Storm Water Facilities
1	334	134
2	1,319	922
3	396	391
4	2,689	1,072
5	1,721	1,341
6	227	313
7	172	219
8	1,573	892
9	770	835
TOTAL	9,201	6,121

CGP permittees are already required to comply with a prohibition of debris discharge from construction sites[43]. Although current costs for trash control by CGP permittees are unknown, there is no expected increase of costs as a result of the final Trash Amendments.

d. Other Facilities and Activities Subject to the Proposed Trash Amendments

The final Trash Amendments include a prohibition of discharge for discharges not regulated under NPDES permits, waste discharge requirements (WDRs) or waivers of WDRs. The prohibition also applies to the discharge of preproduction plastic by manufacturers of preproduction plastics, transporters and users of preproduction plastics to surface waters of the state.

Also, the final Trash Amendments include a provision allowing the Water Boards to require trash controls in areas or facilities that may generate trash, such as high usage campgrounds, picnic areas, beach recreation areas, or marinas.

Due to the uncertainty surrounding the activities and facilities potentially subject to these requirements, these groups were not included in the economic analysis.

[43] State Board Action 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ. Prohibition III. D. page 21. Available at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo2009_0009_dwq.pdf
Debris is defined as "Litter, rubble, discarded refuse, and remains of destroyed inorganic anthropogenic waste."

3. CURRENT TRASH CONTROL EXPENDITURES

Communities in California spend approximately $428 million per year to combat and cleanup trash, which is $10.71 per resident[44]. Communities within the jurisdiction of the Los Angeles Water Board are already complying with trash and debris TMDLs, and they are currently spending[45] $15.04 on average per resident per year to do so. This is 55% higher than the communities not implementing trash or debris TMDLs[46].

Caltrans spends approximately $80 million a year on "litter removal" (i.e., trash control), or approximately $1,600 per lane-mile [47].

Specific information about the current costs that IGP permittees incur to control trash is unknown. CGP permittees are already required to comply with a prohibition of debris discharge from construction sites[48], so though current costs for trash control by CGP permittees are unknown, they are not expected to increase as a result of the f Trash Amendments.

a. Summary of Existing Trash Control Studies

In 2012, Kier Associates published a study[49] for U.S. EPA to quantify the overall costs of managing trash. The study found that, on average, small and medium West Coast communities (in California, Oregon and Washington) spend at least $14 per year per resident in trash management and marine debris reduction efforts. The study concluded that the largest cities did not enjoy much in the way of "economies of scale". The largest cities are spending, conservatively, $13 per year per resident on trash management and marine debris reduction efforts.

In August 2013, NRDC released another study[50] (NRDC Study) assessing the annual cost to California communities of reducing litter that pollutes waterways. The NRDC Study is based on a direct survey of 221 randomly selected communities. The NRDC Study found that California communities spend $428,400,000 each year to combat and clean up litter and to prevent it from ending up in the state's rivers, lakes, canals and oceans. The NRDC Study indicated a large disparity in the annual average compliance cost per capita ranging between $8.94 and $18.33 per resident to manage litter (Table 5). The annual average statewide spending was $10.71 per resident (Figure 1). The highest reported expenditure was the City of Del Mar in San Diego County with an average of $71 per resident.

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[44] Kier Associates. 2013. Waste in Our Water: The Annual Cost to California Communities of Reducing Litter That Pollutes Our Waterways. Prepared for NRDC. Available at: http://docs.nrdc.org/oceans/files/oce_13082701a.pdf, page 19.

[45] Not including costs associated with beach cleanups specific to coastal communities.

[46] Communities not implementing trash or debris TMDL are spending an average of $9.68 per resident per year.

[47] See fn. 32, *ante*.

[48] State Board Action 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ. Prohibition III. D. page 21. Available at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo2009_0009_dwq.pdf . Debris is defined as "Litter, rubble, discarded refuse, and remains of destroyed inorganic anthropogenic waste."

[49] Kier Associates. 2012. The Cost to West Coast Communities of Dealing with Trash, Reducing Marine Debris. Prepared for U.S. EPA, Region 9. Available at: http://www.epa.gov/region9/marine-debris/cost-w-coast-debris.html#report

[50] Kier Associates. 2013. Waste in Our Water: The Annual Cost to California Communities of Reducing Litter That Pollutes Our Waterways. Prepared for NRDC. Available at: http://docs.nrdc.org/oceans/files/oce_13082701a.pdf

The NRDC Study collected information from 95 communities ranging from 700 residents (Etna in Siskiyou County) to more than 4 million residents (the City of Los Angeles) regarding six categories of litter management:

- Waterway and beach cleanup
- Street sweeping
- Installation of storm water capture devices
- Storm drain cleaning and maintenance
- Manual cleanup of litter
- Public education

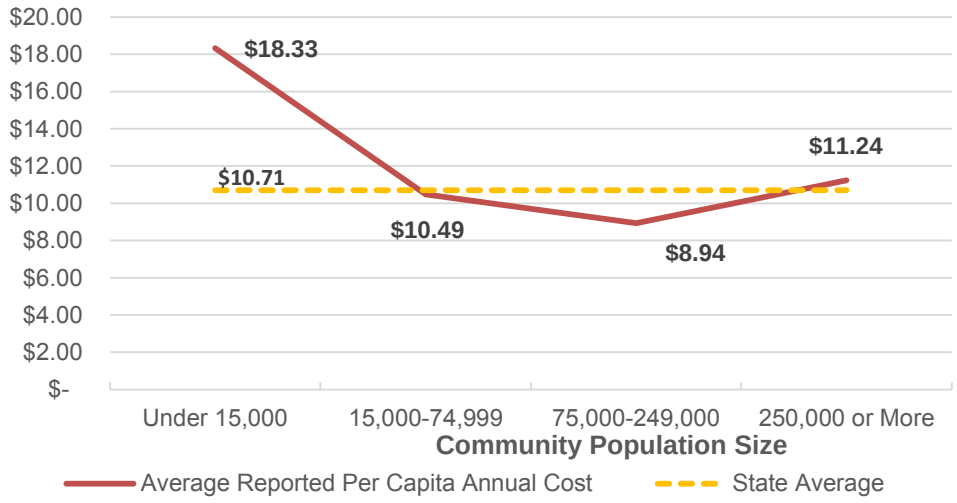
Table 5 and Figure 1 summarize the findings of the NRDC Study.

Table5. Estimated Current Annual Costs of Trash Control

Community Size	Population Range	Range of Annual Reported Cost	Average Reported Annual Costs	Average Reported Per Capita Cost
Largest	250,000 or more	$2,877,400-$36,360,669	$13,929,284	$11.24
Large	75,000-249,000	$350,158-$2,379,746	$1,131,156	$8.94
Midsize	15,000-74,999	$44,100-2,278,877	$457,001	$10.49
Small	Under 15,000	$300-$890,000	$144,469	$18.33

Source: NRDC Study 2013

Figure 1. Trash Annual Control Costs Per Capita by Community Population Size Group



b. Use of Existing Studies in This Economic Analysis

The final Trash Amendments include an exception for waters of the state where existing trash and debris TMDLs adopted by the Los Angeles Water Board or U.S. EPA are in effect prior to the final Trash Amendments. This may result in some limitations in extrapolating statewide costs directly from the studies described above. To address this limitation, we combined the data in the NRDC Study and the Kier Associates' U.S. EPA Study to calculate a baseline of current costs. The costs were stratified based on community type and size. The summary of the average annual cost per capita for communities outside of the Los Angeles Water Board boundaries by type of trash control type are presented in Table 6.

Table 6. Estimated Current Annual Average Cost Per Capita by Type of Trash Control and by Community Size of MS4 Phase I and Phase II (Not Including Communities within the Los Angeles Region)

MS4 Communities by Population Size (Not Including Los Angeles Communities)	Street Sweeping	Storm Drain Cleaning & Maint.	Storm Water Capture Devices	Manual Cleanup	Public Education	Total Annual Cost Per Capita
>500,000	$4.19	$3.28	$1.19	$1.27	$0.65	**$10.41**
100,000-500,000	$3.73	$2.24	$1.18	$0.51	$0.55	**$7.64**
75,000-100,000	$5.65	$1.07	$0.93	$1.89	$0.51	**$9.15**
50,000-75000	$5.33	$3.15	$1.53	$1.57	$0.42	**$10.20**
25,000-50,000	$3.94	$2.75	$1.90	$1.86	$0.37	**$9.73**
10,000-25,000	$3.61	$1.21	$3.26	$2.21	$0.50	**$10.09**
0-10,000	$9.26	$2.31	$1.25	$2.32	$1.69	**$15.34**
All MS4 Communities	**$4.38**	**$2.79**	**$1.29**	**$1.28**	**$0.58**	**$9.68**

Source: NRDC Study 2013

In comparison, the average cost per capita in communities within Los Angeles Water Board boundaries are presented in Table 7.

Table 7. Estimated Current Annual Average Cost Per Capita by Type of Trash Control and by Community Size within the Los Angeles Region

Los Angeles Region MS4 Communities by Population Size	Street Sweeping	Storm Drain Cleaning & Maint.	Storm Water Capture Devices	Manual Cleanup	Public Education	Total Annual Average Cost Per Capita
>500,000	$6.52	$1.23	$2.64	$4.16	$1.21	**$15.76**
100,000-500,000	$5.22	$2.26	$1.57	$0.05	$0.15	**$9.22**
75,000-100,000	$7.62	$0.26	$7.92	$1.19	$0.39	**$16.79**
50,000-75000	$6.57	$0.50	$6.42	$1.81	$0.22	**$14.46**
25,000-50,000	$5.28	$1.52	$0.75	$1.20	$0.46	**$7.79**
10,000-25,000	$10.58	$4.62	$16.00	$4.10	$0.85	**$29.84**
0-10,000						
All Los Angeles MS4 Communities	**$6.72**	**$1.87**	**$6.54**	**$2.25**	**$0.48**	**$15.04**

Source: NRDC Study 2013

On average, the annual expenditures per capita in communities in the Los Angeles Region are 55% greater than the average cost in the rest of California. The data was collected in 2011 and 2012; as such not all communities were in full compliance with the Los Angeles Water Board's existing trash and debris TMDLs.

Table 8 compares the total estimated annual current expenditures (including those in the Los Angeles Region) for trash control with economic factors such as State Domestic Product, per capita income, and other economic indicators. For example, the City of Los Angeles budget for FY 13-14[51] is $7.69 billion. The City of Los Angeles' annual total expenditures related to trash control identified in the NRDC Study are $36,360,669[52] which represents 0.473% of its annual budget. The City of San Diego[53] spends 0.51%[54] of its annual budget on trash control. At the other end of the spectrum, the City of San Anselmo, with a population of 12,336, expends $161,000 in trash controls or approximately 1.3% of its annual budget of $12.4 million[55].

Caltrans annually spends $80 million [56] on litter removal. This is approximately 6.7% of their $1.2 billion maintenance budget for FY 13-14. Caltrans manages over 50,000 lane-miles of roadways; owns and operates 265 state highways; and owns and manages 12,300 bridges and

[51] City of Los Angeles Budget for FY 13-14. Available at: http://cao.lacity.org/budget/summary/2013-14BudgetSummaryBooklet.pdf

[52] Kier Associates. Waste in Our Water. Appendix A, page XVI, Table 13.

[53] City of San Diego. Proposed 2014 Budget. Available at: http://www.sandiego.gov/fm/proposed/pdf/2014/vol1/v1executivesummary.pdf

[54] Calculated from Kier Associates-WASTE IN OUR WATER, Appendix B, page ii, Table 9 and City of San Diego's Proposed 2014 Budget.

[55] City of San Anselmo. 2012 Budget. Available at: http://www.marinij.com/ci_21546177/san-anselmo-council-approves-2012-budget

[56] See fn. 32, *ante*.

665 buildings and other structures. Caltrans spends an average of $1,600 per lane-mile on litter removal.

Table 8. Existing Trash Control Expenditures in Perspective

Statistic	Budget/Value	Annual Expenditures on Trash Control	Conclusion
California 2012 Gross State Domestic Product	$2.0035 trillion	$428[57] million	Californians spend **0.02%** of the State Domestic Product in trash controls.
California 2013 average income per capita	$28,341	$10.71	Californians spend **0.03%** of their average income per capita in trash controls.
California State Budget for FY 2013-14	$145.3 billion	$428 million	The California State budget is 7.25% of the California State Domestic product. The cost of trash controls is approximately **0.3%** of the State Budget.
The City of Los Angeles Budget for FY 13-14	$7.69 billion	$36.3 million	The City of Los Angeles spends **0.47%** of their annual budget on trash control.
City of San Diego Budget for FY 2014	$2.75 billion	$14[58] million	The City of San Diego spends **0.51%** of their annual budget on trash control.
City of San Anselmo Budget (population of 12,336)	$12.4 million	$161,000[59]	The City of San Anselmo spends **1.31%** of their annual budget on trash control.
Caltrans Division of Maintenance	$1.2 billion	$80 million	Caltrans spends **6.7%** of their annual maintenance budget on litter removal (approximately $1,600 per lane-mile).

c. Cost Information from Adopted Trash and Debris TMDLs

In the Los Angeles Region, fifteen TMDLs were adopted for trash and debris by either the Los Angeles Water Board or U.S. EPA. Six of the fifteen trash and debris TMDLs include cost considerations that identify the least expensive method of compliance to be catch basin inserts (CBI), which is a type of full capture system (Table 9). The six trash TMDLs were selected as a representative baseline for the cost of adopted trash TMLDs to provide a cost comparison to the proposed Trash Amendments. The existing trash and debris TMDLs are assumed an installation cost factor for a CBI unit of $800 and annual operations and maintenance cost of $342[60] per unit. Catch basin inserts must be monitored frequently and must be used in conjunction with frequent street sweeping. Based on the six trash TMDLs, the annual costs to

[57] Kier Associates. 2013. Waste in Our Water: The Annual Cost to California Communities of Reducing Litter That Pollutes Our Waterways. Prepared for NRDC. Available at: http://docs.nrdc.org/oceans/files/oce_13082701a.pdf, page 19.

[58] Kier Associates. Waste in Our Water. Appendix A, page XVII, Table 13.

[59] Kier Associates. Waste in Our Water. Appendix A, page XIX, Table 14.

[60] Los Angeles Water Board. 2007. Trash TMDL for Los Angeles River Watershed Final Staff Report dated August 9, 2007. Available at: http://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/2007-012/09_0723/L.%20A.%20River%20Trash%20TMDL_Final%20%20Staff%20Report_August%209,%202007.pdf Section VIII. Cost Considerations. Subsection B. Cost of Implementing Trash TMDL. Subdivision 1. Catch Basin Inserts. Paragraph 1. Page 38. The annual operations and maintenance of $342 is estimated based on the information provided in the Trash TMDL and is the result of dividing the $51.3 million required in servicing and capital costs (see Table 9 on page 38 of the Los Angeles River Trash TMDL) by the 150,000 catch basins that would need to be retrofitted with inserts to cover 574 square miles of the watershed. See paragraph 1 on page 38 of Los Angeles River 2007 trash TMDL.

install and operate full capture systems range between $5 per capita to $22.95 per capita, with an average of $14.33 cost per capita (Table 9).

Table 9. Costs Identified in Trash and Debris TMDLs Adopted by the Los Angeles Water Board

TMDL	Adoption Date	Population/ Household	Total Area and Developed, High Intensity Areas (in acres)	Capital Cost	Operations and Maintenance Annual Cost	Total Annualized Cost	Total Annual Cost Per Capita	Annual Cost Per Acre "Developed, High Intensity"
Los Angeles River Watershed 2007-012	Sept. 23, 2008	4,414,748 1,367,890 households	531,612 (42,730)	$120 million	$51.3 million	$63.3 million	$14.33	$1,481
Ventura River Estuary 2007-008	Mar. 6, 2008	15,630 4,867 households	26,176 (58)	$607,200	$303,600	$425,000	$27.19	$7,350
Malibu Creek 2008-007	July 7, 2009	59,461 21,794 households	48,438 (29)	$1,600,000	$785,000	$1,099,800	$18.5	$38,040
Ballona Creek 2004-023	Aug. 11, 2005	1,501,881 597,311 households	81,972 (16,264)	$25 million	$12.5 million	$15 million	$10	$922
Dominguez Channel 2007-006	Mar. 6, 2008	245,000 82,000 households	13,452 (7,680)	$1,805,000	$902,000	$1,082,500	$4.41	$141
Calleguas Creek 2007-007	Mar. 6, 2008	65,000 21,000 households	32,326 (505)	$1,200,000	$596,000	$835,000	$12.88	$1,653

Assumptions used in the TMDLs' cost considerations: Capital costs are fully spent in ten years. Operations and maintenance cost is based on full implementation. After ten years, full capture systems need to be fully replaced (10% a year). Total cost is estimated after implementation. Average of three persons per household. CBIs are considered the lowest cost method of compliance.

As part of the economic analysis, we analyzed the potential compliance costs for MS4 communities within the Los Angeles Water Board's jurisdiction implementing trash TMDLS as if they have to comply with the final Trash Amendments instead of full compliance with their current trash TMDLs.

The most significant difference between the Los Angeles Region trash and debris TMDLs and the final Trash Amendments is the focus on trash control in high trash generating areas. We estimated the compliance cost with Track 1 or the installation of full capture systems in "developed, high intensity" land coverage in Los Angeles Region, and compared the results with the current compliance costs.

The current annualized cost of compliance (Table 10) for the selected trash and debris TMDLs in the Los Angeles Region is calculated to be $81.7 million ($12.97 per capita). The estimated cost for the same communities if complying with only the final Trash Amendments would be $28.4 ($4.5 per capita); therefore those communities would have saved approximately $53 million a year ($8.47 per capita) if they had to comply only with the final Trash Amendments.

Table 10. Compliance Costs for Municipalities Complying with Select[61] Trash TMDLs Compared to Estimated Compliance Costs for the Final Trash Amendments

Trash TMDL	Population	Area "Developed, High Intensity" (acres)	Estimated Total Capital Cost (to comply with Trash Amendments only)	Estimated Cost Per Capita (to comply with Trash Amendments only)	Estimated O&M Annual Cost (to comply with Trash Amendments only)	Estimated Annualized Cost (to comply with Trash Amendments only)	*Current Annualized Costs of Compliance with trash TMDLs*	*Current Cost Per Capita*
Los Angeles River 2007-012	4,414,748	42,730	$34,184,000	$4.08	$14,613,660	$18,032,060	*$63,300,000*	*$14.33*
Ventura River 2007-008	15,630	58	$46,400	$1.57	$19,836	$24,476	*$425,000*	*$27.19*
Malibu Creek 2008-007	59,461	29	$23,200	$0.21	$9,918	$12,238	*$1,099,800*	*$18.50*
Ballona Creek 2004-023	1,501,881	16,264	$13,011,200	$4.57	$5,562,288	$6,863,408	*$15,000,000*	*$10.00*
Dominguez Channel 2007-006	245,000	7,680	$6,144,000	$13.23	$2,626,560	$3,240,960	*$1,082,500*	*$4.41*
Calleguas Creek 2007-007	65,000	505	$404,000	$3.28	$172,710	$213,110	*$835,000*	*$12.88*
TOTAL	**6,301,720**	**67,266**	**$53,812,800**	**$4.50**	**$23,004,972**	**$28,386,252**	***$81,742,300***	***$12.97***

[61] The six presented trash TMDLs in Table are the most representative trash TMDL that cover areas similar to the high trash generating areas of the final Trash Amendments.

4. MS4 Phase I Permittees: Cost Per Capita Method

a. MS4 Phase I Statistics

Data was obtained for MS4 Phase I permittees using the California Integrated Water Quality System (CIWQS). MS4 Phase I permittees were then grouped by population size. Of the 376 MS4 Phase I permittees, the permittees associated with Caltrans and those records that did not have complete information necessary for the analysis, such as population, were removed from the analysis. The remaining 289 MS4 permittees were used in this analysis (Table 11).

Table 11. MS4 Phase I Permittees by Regional Water Board

Number of MS4 Phase I Communities by Population Size	Regional Water Board 1	2	3	4	5	6	7	8	9	Grand Total
>500,000		1		2	1				1	5
100,000-500,000		11	1	16	4			17	4	53
75,000-100,000		5		10	2			6	5	28
50,000-75,000		12		13	4			15	6	50
25,000-75,000		20		24	3		6	8	9	70
10,000-25,000		12		22	3	1	3	9	5	55
0-10,000		8		10	1	2	1	4	2	28
Grand Total		**69**	**1**	**97**[62]	**18**	**3**	**10**	**59**	**32**	**289**

Out of the 289 MS4 Phase I permittees identified for the economic analysis, 192[63] are located outside the Los Angeles Water Board boundaries and would be subject to the final Trash Amendments. Table 12 shows the population living in locations regulated under a Phase I MS4 permit.

[62] The 97 facilities are subject to an existing trash and debris TMDLs and thus removed from this economic analysis.

[63] Of the 193 MS4 Phase I permittees outside the Los Angeles Region, one was a duplicate in the database and removed from the analysis.

Table 12. Population Regulated Under MS4 Phase I Permits

MS4 Phase I Communities by Population Size	Regional Water Board 1	2	3	4	5	6	7	8	9	Grand Total
>500,000		894,943		4,917,745	799,407				1,223,400	7,835,495
100,000-500,000		1,715,218	150,441	2,380,622	1,498,871			3,191,801	911,063	9,848,016
75,000-100,000		407,979		865,587	175,603			523,614	411,052	2,383,835
50,000-75,000		749,499		785,896	234,054			889,346	339,605	2,998,400
25,000-75,000		658,814		904,866	112,580		233,462	323,637	356,748	2,590,107
10,000-25,000		201,038		385,651	62,781	23,609	59,535	157,235	104,895	994,744
0-10,000		40,063		36,533	1,420	8,890	3,816	28,528	5,609	124,859
Grand Total		**4,667,554**	**150,441**	**10,276,900**	**2,884,716**	**32,499**	**296,813**	**5,114,161**	**3,352,372**	**26,775,456**

The number of MS4 Phase I permittees considered in this economic analysis is limited to 289, which represents a total population of 26,775,456 or 72% of the population of California (37,253,959[64]). The 192 MS4 Phase I permittees outside the Los Angeles Region have a total population of 16,498,556 or 45% of California population.

b. Potential Compliance Options

The final Trash Amendments propose a dual alternative Track approach for compliance with the prohibition of discharge of trash.

i. Track 1: Full Capture Systems

To determine the incremental cost of compliance, we needed to establish the baseline cost for the MS4 Phase I permittees in this analysis using available cost data from the NRDC (Table 6). For those permittees without the NRDC Study cost data, the average NRDC Study cost factors were applied for each permittee size group (assuming a similar level of current expenditures). Based on that data, the 192 MS4 Phase I permittees are spending $22,412,501 ($1.36 per capita) per year to install, operate and maintain full capture systems.

Generally, larger communities have a larger proportion of developed, high intensity in proportion to their population. To compensate for this, a Geographic Information Systems (GIS) analysis was used to determine the ratio of high intensity land coverage for each permittee population size group. We estimated separate per capita cost for each community size based on existing land coverage data for permittees outside the Los Angeles Region. The areas of San Francisco and Sacramento serviced by a combined sewer system were excluded. We used the actual

[64] U.S. Census Bureau. 2010.

land coverage area classified as high intensity to estimate, for each community size, the number of acres that would need to install full capture systems. The estimated capital cost for each full capture system were assumed as $800, the annual operations and maintenance is $342, and an average of one full capture system per acre. The cost estimate assumes all costs are incurred in the same year (Year 10).

The increased cost of implementing full capture systems is estimated to be $176 million or $10.67 more on average per capita per year, assuming all full capture systems are installed in a year. This estimate includes the operation and maintenance of the full capture systems (Table 13). This incremental cost per capita varies based on the size of the permittee. For example, some permittees may have an increase of $13.76 per capita per year, while others may only see an increase of $5.61 on average per capita per year.

Table 13. Incremental Cost of Compliance for MS4 Phase I Communities Using Full Capture Systems by Community Size

MS4 Phase I Community Size	MS4 Phase I Communities	Total Population (A)	Current Cost (baseline)	Current Cost Per Capita (baseline B)	Estimated Annual Cost Per Capita (After Full Implementation in Year 10) (C+D)	*Estimated Total Capital Costs Per Capita (C)*	*Estimated Annual O&M Per Capita (in Year 10) (D)*	Total Estimated Incremental Cost Of Compliance (C+D-B) X A
>500,000	3	2,917,750	$2,451,409	$0.84	$14.60	*$10.22*	*$4.38*	$40,077,769
100,000-500,000	37	7,467,394	$10,469,051	$1.40	$12.80	*$8.96*	*$3.84*	$85,245,951
75,000-100,000	18	1,518,248	$1,293,517	$0.85	$10.50	*$7.35*	*$3.15*	$14,646,291
50,000-75,000	37	2,212,504	$3,059,738	$1.38	$11.00	*$7.70*	*$3.30*	$21,335,016
25,000-75,000	46	1,685,241	$3,033,531	$1.80	$8.70	*$6.09*	*$2.61*	$11,629,598
10,000-25,000	33	609,093	$2,028,291	$3.33	$7.70	*$5.39*	*$2.31*	$2,675,719
0-10,000	18	88,326	$78,965	$0.89	$6.50	*$4.55*	*$1.95*	$490,845
Total	192	16,498,556	$22,414,501	$1.36	$12.03	*$8.42*	*$3.61*	$176,101,189

In summary, the 192 MS4 Phase I permittees analyzed are currently spending approximately $22.4 million annually to install and operate full capture systems[65]. To comply with Track 1 of the proposed Trash Amendments, an estimated additional cost of $176 million or an additional $10.67 ($12.03 – $1.36) per capita on the year that full compliance is achieved. The total capital costs are estimated at $8.42 per capita or $139 million. Once the full capture systems are installed (capital costs), the annual operations and maintenance costs are estimated at $3.2 per capita or $52.8 million. Assuming permittees install 10% of the structural controls each year, the incremental capital, operation and maintenance costs in Year 10 (highest cost year) would be $65 million for all affected permittees ($3.95 per capita).

[65] The NRDC data does not break down the costs into capital and operation and maintenance.

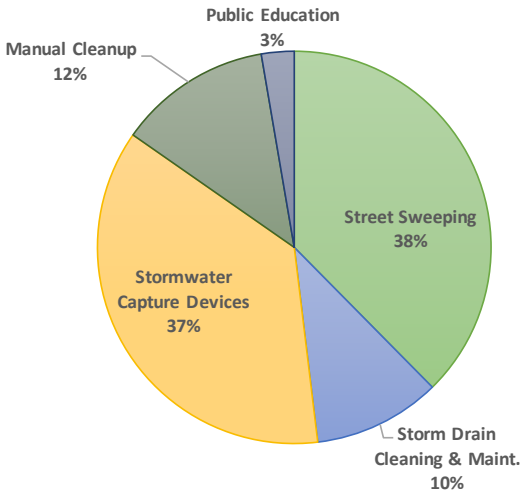
ii. Track 2: Combination of Full Capture Systems, Other Treatment Controls, Institutional Controls, Multi-Benefit Projects

A 2012 study[66] conducted by the California Coastal Commission and the Algalita Marine Research Institute and partially funded by the State Water Board concluded that:

"There is no one method for completely controlling trash in stormwater. Institutional controls may provide the best long-term solution, especially those focused on prevention. However, depending on the magnitude of the problem, institutional controls may be inadequate. Focusing on enforcement of litter laws is considered by many to provide the most "bang for the buck". However, most urban municipalities will have to do more to physically capture and control trash in urban waterways or to prevent it from reaching the waterway."

Previous studies have demonstrated that mixed institutional controls and full capture systems provide a high level of performance/compliance. For example, the City of Los Angeles has implemented a comprehensive trash prevention program involving both structural and institutional measures. The Los Angeles' program has included the installation of full capture and partial capture systems in catch basins, as well as ongoing efforts to implement institutional measures such as public outreach, street sweeping and catch basin cleaning.

Figure 2. Percentage of Expenditures by Trash Control Category in the Los Angeles Region (Source: NRDC Study



The final Trash Amendments specify that Track 2 must be implemented to achieve the equivalent level of performance to the exclusive use of full capture systems (Track 1) in the priority land uses.

On November 6, 2012, a study[67] prepared for the City of Los Angeles by Black & Veatch, assessed the effectiveness of institutional measures for trash TMDL compliance. The study conducted in Los Angeles show that institutional measures can be effective in medium and low trash-generating areas but may not achieve the same level of compliance in high trash-generating areas. The results show a 12.5% trash reduction in 2012 from the 2007 baseline in medium and low trash generating areas.

The question that remains is what ideal mixture of institutional controls, other treatment controls, multi-benefit projects and full capture systems permitted dischargers might choose to comply with the final Trash Amendments at a minimum cost.

[66] Gordon, Miriam, and Ruth Zamist. "Municipal Best Management Practices for Controlling Trash and Debris in Stormwater and Urban Runoff." n.d. California Coastal Commission; Algalita Marine Research Foundation. 31 Jul 2012 <http://plasticdebris.org/Trash_BMPs_for_Munis.pdf>.

[67] Black & Veatch. 2012. Quantification Study of Institutional Measures for Trash TMDL Compliance.

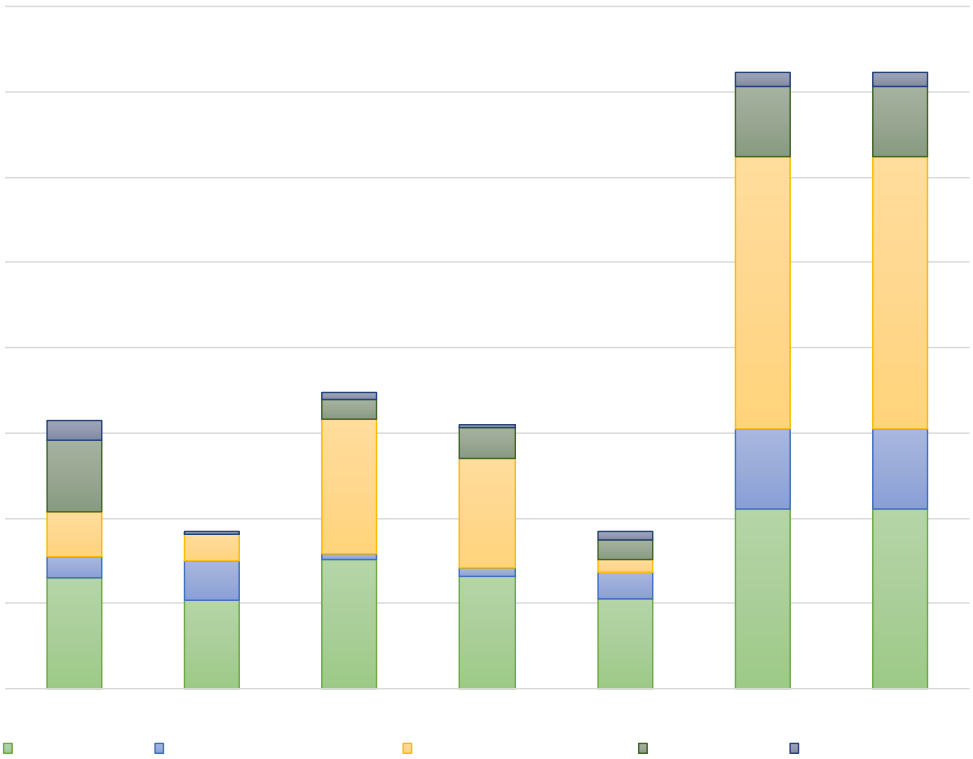
Based on the data provided in the NRDC Study, permittees in the Los Angeles Region are currently[68] spending approximately 37% of trash control expenditures in implementing full capture systems (Figure 2). This percentage varies significantly depending on the size of the permittee's jurisdiction, population density, and area of priority land uses. Larger sized permittees dedicate 17% of trash control expenditures to full capture systems, and smaller sized permittees dedicate 46% of trash control expenditures to full capture systems (Table 14 and Figure 3).

Table 14. Current Expenditures in Trash Control by Category in the Los Angeles Region

Source: NRDC Study 2013

[68] Current expenditures in Los Angeles Region are not necessarily the total amount of expenditures needed to comply with the final Trash Amendments since the communities in Los Angeles Region were not scheduled to be in full compliance with their TMDLs as of the date that NRDC collected the data. This information is only illustrative to estimate the adequate distribution of full capture and institutional control expenditures.

Figure 3. Current Trash Controls Per Capita by Permittee Size in the Los Angeles Region



Source: NRDC Study 2013

The data shows that permittees in Los Angeles Region are already implementing full capture systems in combination with institutional controls.

In comparison, the data collected for MS4 Phase I permittees outside the Los Angeles Region have a substantially different cost structure of trash control related to the use of institutional controls, regardless of the size of the permittee's jurisdiction.

Permittees outside the Los Angeles Region dedicate 13% of their trash-control resources to full capture systems. This percentage varies significantly depending on size (population density and land use area). For example, larger sized communities dedicate 11% to 14% of trash control resources to full capture systems, and smaller sized communities dedicate a larger percentage (up to 30%) to full capture systems (Figure 4 and Table 15).

Figure 4. Percentage of Expenditures by Trash Control Category Outside the Los Angeles Region (Source: NRDC Study 2013)

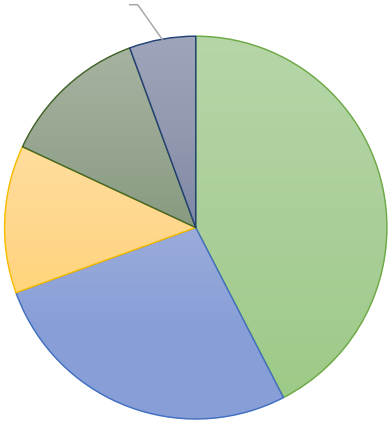
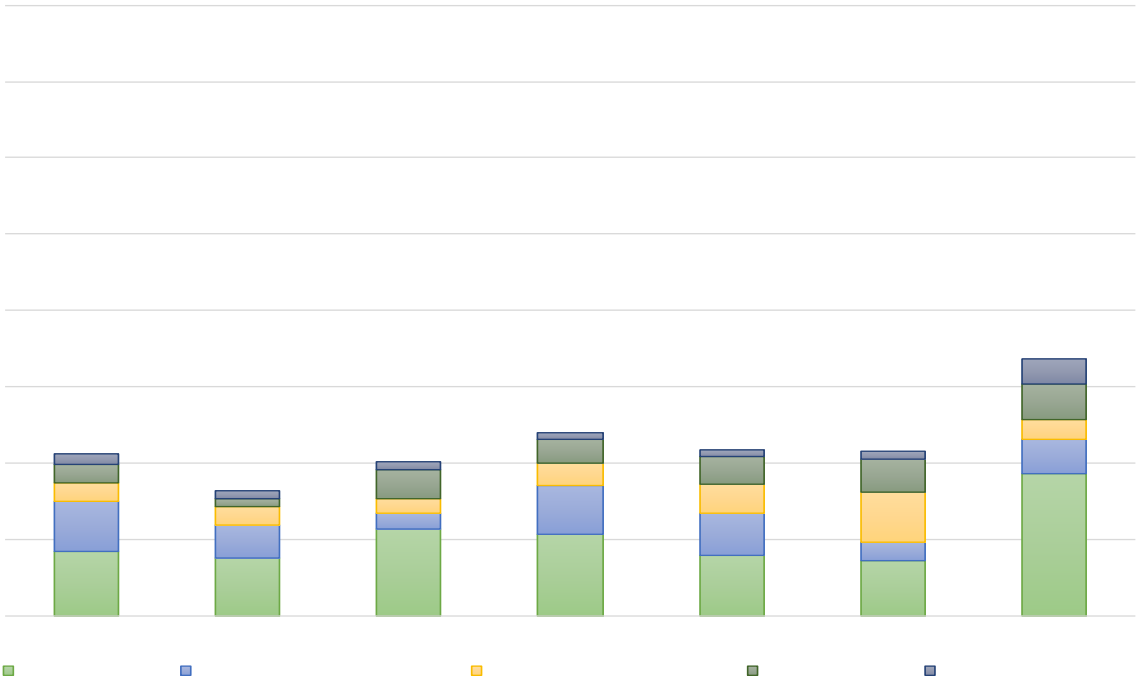


Table 15. Current Annual Per Capita Expenditures in Trash Control by Category Outside the Los Angeles Region

Source: NRDC Study 2013

This information is represented in Figure 5.

Figure 5. Current Trash Controls Per Capita by MS4 Phase I Permittee Size Outside the Los Angeles Region



Source: NRDC Study 2013

We determined the baseline costs for current use of institutional controls using cost factors obtained using data from the NRDC Study. The cost factors were applied to the population within each population size group. Table 16 summarizes the current estimated expenditures for MS4 Phase I permittees.

Table 16. Estimated Current Total Annual Expenditures in Trash Control by Category in MS4 Phase I Permittees Outside the Los Angeles Region

No studies identified the mix of institutional control measures and full capture systems that would be used by any given community to comply with Track 2, as the most effective means of controlling trash are highly dependent on the particular site conditions, types of trash, and the available resources for maintenance and operation.

This economic analysis therefore considers several compliance options using the data from the NRDC Study. We has applied the current mixture of institutional controls and full capture systems from communities implementing trash and debris TMDLs in the Los Angeles Region, and compared this information with the information obtained from MS4 Phase I permittees located outside the Los Angeles Region. We then calculated the difference in the level of expenditures for each community group based on population size. The differences were used to estimate the total incremental cost for MS4 Phase I permittees located outside the Los Angeles Region (Table 17).

The data collected on institutional control expenditures show that the average expenditures by Los Angeles Water Board MS4 Phase I permittees are greater than non-Los Angeles Water Board MS4 Phase I permittees, not just for full capture systems but also for expenditures on several types of institutional controls (Table 17).

Table 17. Institutional Control Expenditures Per Capita in the Los Angeles Region and by Other Phase I MS4 Permittees

The data in Table 17 suggests that for the more that is spent on full capture systems means that less needs to be spent on institutional controls, such as storm drain cleaning, maintenance and public education.

In some cases, the estimated per capita costs in categories such as full capture systems, manual cleanup and public education, for permittees outside of the Los Angeles Region is already greater than for permittees implementing trash and debris TMDLs. For those cases, the current level of expenditures was applied and no incremental costs would be necessary to comply with the final Trash Amendments.

Table 18 presents the estimated annual incremental cost if all MS4 Phase I permittees select Track 2. The total annual cost is estimated to be approximately $67 million ($4.09 per capita) in the year when full compliance is achieved. Therefore on average, the cost of compliance with Track 2 would be lower than complying with Track 1 (i.e., only using full capture systems).

Table 18. Estimated Incremental Costs of Compliance with Track 2 for MS4 Phase I Permittees Outside the Los Angeles Region

Estimated Increase in Total Trash Controls Cost by Population Community Size Group	>500,000	100,000-500,000	75,000-100,000	50,000-75000	25,000-50,000	10,000-25,000	0-10,000	Total
Stormwater Capture Devices	$4,234,713	$2,922,356	$10,611,908	$10,816,046	$0	$7,758,356	$1,302,809	**$37,646,188**
Street Sweeping	$6,784,597	$11,137,892	$2,996,938	$2,747,793	$2,249,827	$4,245,815	$116,590	**$30,279,451**
Storm Drain Cleaning & Maint.	($5,988,636)	$169,341	($1,235,224)	($5,864,914)	($2,073,334)	$2,077,887	$204,033	**($12,710,847)**
Manual Cleanup	$8,434,348	$0	$0	$531,240	$0	$1,151,151	$157,220	**$10,273,959**
Public Education	$1,634,774	$0	$0	$0	$145,730	$211,806	$0	**$1,992,310**
Total Incremental Cost	**$15,099,795**	**$14,229,588**	**$12,373,622**	**$8,230,165**	**$322,223**	**$15,445,015**	**$1,780,652**	**$67,481,061**

Other Compliance Costs

In addition to compliance tracks, the final Trash Amendments includes monitoring, evaluation and reporting requirements. These would potentially increase the cost of compliance with the final Trash Amendments. This economic analysis does not include an estimate of those potential costs. These costs are expected to be negligible relative to capital and operation and maintenance costs.

c. Compliance Schedules

The final Trash Amendments propose a time schedule for permittees to comply ten years from the effective date of the first implementing permit.[69] One potential compliance schedule is 10% completion of controls per year. We have estimated the average annual cost to comply with Track 1 and Track 2 once the permittees have achieved full implementation. Capital costs were distributed evenly in order to achieve full compliance within ten years (10% each year).

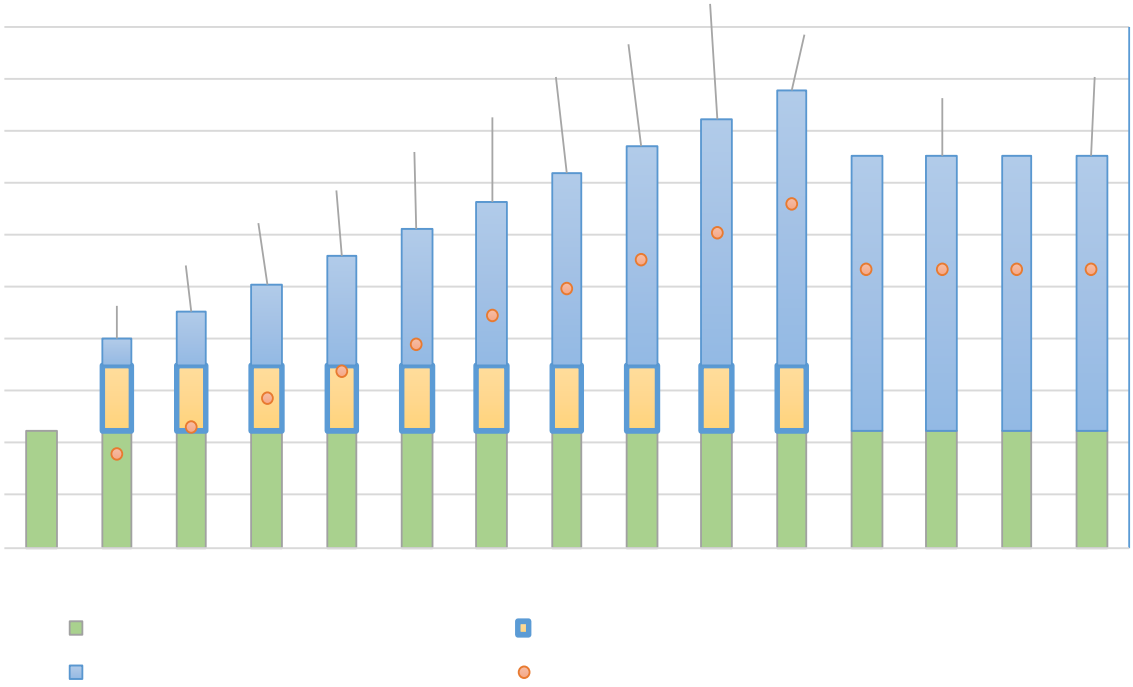
To estimate the annual incremental cost of compliance, the following cost factors and assumptions are used:

- Compliance starts in January 2015.
- The installation of a full capture system is $800 per unit.

[69] See fn. 42, *ante*.

- The annual cost of operations and maintenance for a full capture system is $342 per unit install.
- The total cost to install, operate and maintain a full capture system in Year 1 is $1,142.
- Full capture systems were installed in 10% increments over ten years.
- Maintenance cost for each year includes the cost of operating and maintaining each full capture system. For example, the operations and maintenance cost in Year 2 is the sum of the 10% full capture systems installed in Year 1 plus the 10% installed in Year 2.

Figure 6. Compliance Schedule with Track 1 for MS4 Phase I Permittees Estimated Total Costs 2014-2024



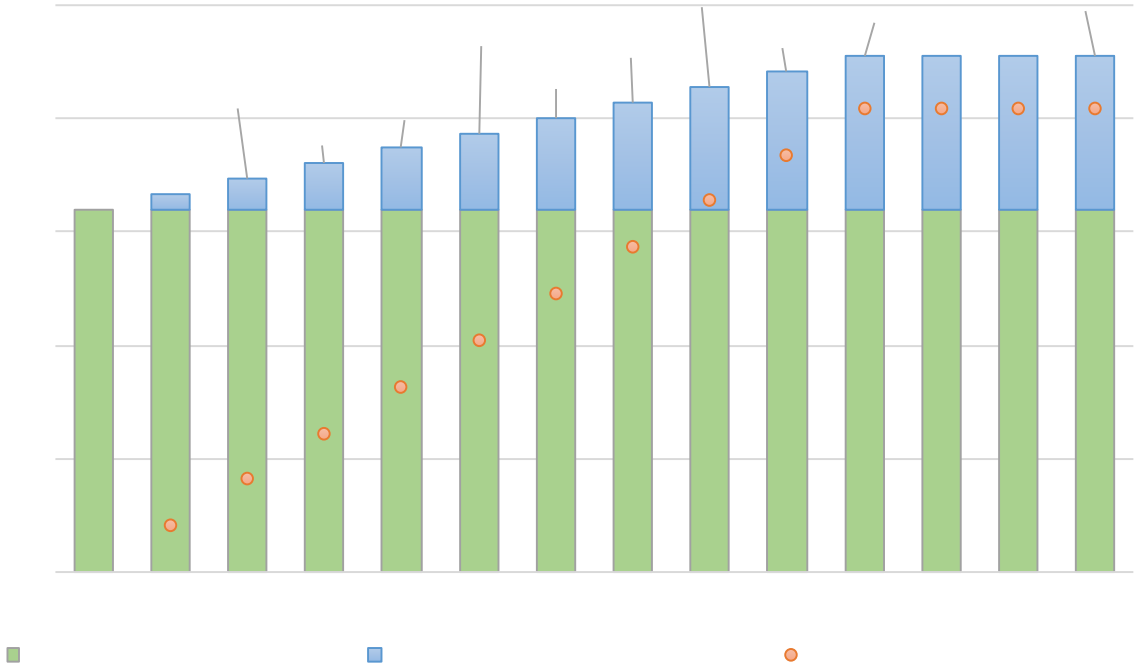
Assuming communities install 10% of the structural controls each year, the capital, operation and maintenance costs in Year 10 (highest cost year) would be $65 million for all Phase 1 affected permittees ($3.95 per capita). The total cost of installing (capital costs) full capture systems in MS4 Phase I permittees is estimated at $8.42 per capita or approximately $123 million. Spread out over ten years equally is approximately $12.3 million per year. Operations and maintenance of the installed full capture systems increases based on the accumulated installed units (capital costs). As a result, operations and maintenance cost per capita fluctuates from $0.32 in Year 1 to $3.2 in Year 10.

Compliance Schedule with Track 2

The incremental cost in the year of full compliance with the final Trash Amendments is approximately $67.5 million or $4 per capita[70] (Figure 7).

[70] After Year 10 the incremental cost is assumed to remain constant at $67.48 million per year.

Figure 7. Compliance Schedule with Track 2 for MS4 Phase I Permittees



d. Limitations and Uncertainties

Current cost of trash controls implemented through MS4 permits in California ranged from $3 per person a year for municipalities with a population of 500,000 or more to up to $60 per year for small municipalities. The selection of the method of compliance with the final Trash Amendments will highly depend on the site specific conditions of every permittee, such as:

- Compliance alternatives
- Costs of controls
- Types of trash
- Site characteristics
- Compliance schedules
- Current compliance rates (for establishing the baseline)
- Other economic factors, technology, inflation, risks, regulatory framework

5. MS4 PHASE II PERMITTEES: COST PER CAPITA METHOD

a. MS4 Phase II Statistics

Data for MS4 Phase II permittees was obtained using CIWQS and grouped by population size. Of the 156 MS4 Phase II listed permittees, eight were removed due to incomplete information necessary for the analysis[71]. 148 MS4 Phase II permittees were identified for the analysis (Table 19).

Table 19. MS4 Phase II Permittees by Regional Water Board

Number of MS4 Phase II	Regional Board												
Population Size	1	2	3	4	5F	5R	5S	6A	6B	7	8	9	Grand Total
>500,000													
100,000-500,000			1				1						2
75,000-100,000			2		2	1	2						7
50,000-75,000		4	4		1	1	6		3				19
25,000-50,000	2	4	11		5		9			3			34
10,000-25,000	6	2	12		5	1	14	1		2			43
0-10,000	4	15	8		3		11	1	1				43
Grand Total	**12**	**25**	**38**		**16**	**3**	**43**	**2**	**4**	**5**			**148**

There are no permittees listed in CIWQS under Phase II in the jurisdiction of the Los Angeles Water Board, Santa Ana Water Board, and San Diego Water Board[72]. Table 20 shows the population living in municipalities regulated under the MS4 Phase II permit.

[71] Additionally, the City of Avalon and other non-traditional Phase II permittees in the Los Angeles Region are new enrollees to MS4 Phase II permit and lack data on CIWQS. Thus, the new enrollees were not included in the analysis.

[72] There are ten MS4 Phase II permittees in Los Angeles Region, eleven MS4 Phase II permittees in the Santa Ana Region and nine MS4 Phase II permittees in the San Diego Region that are tracked in the Storm Water Multiple Application and Report Tracking System (SMARTS) database but were not included in the CIWQS database at the time of the economic analysis.

Table 20. Population for Municipalities Regulated Under MS4 Phase II Permits

Number of MS4 Phase I Municipalities by Population Size	Regional Water Board 1	2	3	4	5	6	7	8	9	Grand Total
>500,000										
100,000-500,000			144,000		112,581					256,581
75,000-100,000			190,053		410,070					600,123
50,000-75,000		254,276	219,526		492,190	194,000				1,159,992
25,000-75,000	66,832	145,456	361,578		558,983		126,005			1,258,854
10,000-25,000	96,229	22,785	201,976		304,542	13,000	35,334			673,866
0-10,000	31,371	100,176	49,676		95,346	11,600				288,169
Grand Total	**194,432**	**522,693**	**1,166,809**		**1,973,712**	**218,600**	**161,339**			**4,237,585**

In summary, 148 municipalities regulated under Phase II of the MS4 program with a total population of 4,237,585, representing 11.5% of California population (2010 Census) are considered in this analysis.

Using the information provided in the referenced studies, a baseline of current costs was created based on municipality type and size. The NRDC Study was relied upon for the data obtained from a direct survey of 221 California municipalities. The summary of the current average annual cost per capita by category of trash control is presented in Table 6. This methodology as previously described for MS4 Phase I permittees was replicated for the MS4 Phase II permittees.

b. Potential Compliance Options

1. Track 1: Full Capture Systems

An analysis of the increased annual average cost for the 148 MS4 Phase II permittees shows that the total potential incremental cost for all Phase II MS4s is $33 million (Table 21).

Table 21. Incremental Cost of Compliance for MS4 Phase II Communities Using Full Capture Systems by Municipality Size

MS4 Phase II Municipality Size	MS4 Phase II	Total Population (A)	Current Cost (baseline)	Current Cost Per Capita (baseline B)	Estimated Annual Cost Per Capita (After Full Implementation in Year 10) (C+D)	*Estimated Total Capital Costs Per Capita (C)*	*Estimated Annual O&M Per Capita (in Year 10) (D)*	Total Estimated Incremental Cost Of Compliance (C+D-B) X A
>500,000								
100,000-500,000	2	256,581	$321,137	$1.25	$12.82	*$8.96*	*$3.84*	$2,967,648
75,000-100,000	7	600,123	$533,630	$0.89	$10.50	*$7.35*	*$3.15*	$5,766,952
50,000-75,000	19	1,159,992	$1,462,858	$1.26	$11.03	*$7.70*	*$3.30*	$11,327,048
25,000-75,000	34	1,258,854	$2,084,477	$1.66	$8.70	*$6.09*	*$2.61*	$8,868,698
10,000-25,000	43	673,866	$2,156,399	$3.20	$7.72	*$5.39*	*$2.31*	$3,047,851
0-10,000	43	288,169	$300,253	$1.04	$6.45	*$4.55*	*$1.95*	$1,558,787
Total	**148**	**4,237,585**	**$6,858,754**	**$1.62**	**$9.53**	***$6.67***	***$2.86***	**$33,536,983**

In summary, the 148 MS4 Phase II communities analyzed are currently spending $6.8 million per year to install and operate full capture systems. To comply with Track 1 in one year is estimated to be an additional cost of $33.5 million or an additional $7.91 (difference between $9.53 and $1.62) per capita in the year that full compliance is achieved. The incremental total capital costs are estimated at $5.54[73] per capita or $23.4 million. Once full capture systems are installed (capital costs), the annual operation and maintenance costs are estimated at $2.37[74] per capita or $10 million. Assuming permittees install 10% of the structural controls each year, the capital, operation and maintenance costs in Year 10 (highest cost year) would be $12 million ($2.93 per capita) (Figure 9).

2. Track 2: Combination of Full Capture Systems, Other Treatment Controls, Institutional Controls, Multi-Benefit Projects

Track 2 of the final Trash Amendments focuses on permittees installing, operating, and maintaining any combination of full capture systems, other treatment controls, institutional controls, and/or multi-benefit projects. The combinations of trash controls must achieve the same performance results as Track 1.

MS4 Phase II permittees are already spending resources in full capture systems and institutional controls. Table 22 shows the average annual cost per capita for each type of trash control.

[73] Costs are estimated based on a full capture system at $800 per unit (capital costs) and $342 annual cost of operations and maintenance per unit. Therefore, capital costs are estimated to be 70% of the costs if all full capture systems are installed in one year and operations and maintenance cost are estimated to be 30% of the total costs. The capital costs incremental cost is calculated by multiplying $7.91 (the difference between $9.53 and $1.62) by 70% (i.e., $7.91 X 0.7 = $5.54).

[74] The operations and maintenance incremental cost is calculated by multiplying $7.91 (the difference between $9.53 and $1.62) by 30% (i.e., $7.91 X 0.3 = $2.37).

Table 22. Current Average Annual Expenditures Per Capita by Trash Control Category by Population Size Group (MS4 Phase II Permittees)

Source: NRDC Study 2013

The actual cost of trash controls by category is presented in Table 23 and Figure 8. The total estimated population regulated under a MS4 Phase II permit is 4,310,345.

Table 23. Current Expenditures in Annual Trash Control Category by Population Size Group (MS4 Phase II Permittees)

Source: NRDC Study 2013

Figure 8. Current Annual Trash Control Per Capita for MS4 Phase II Communities

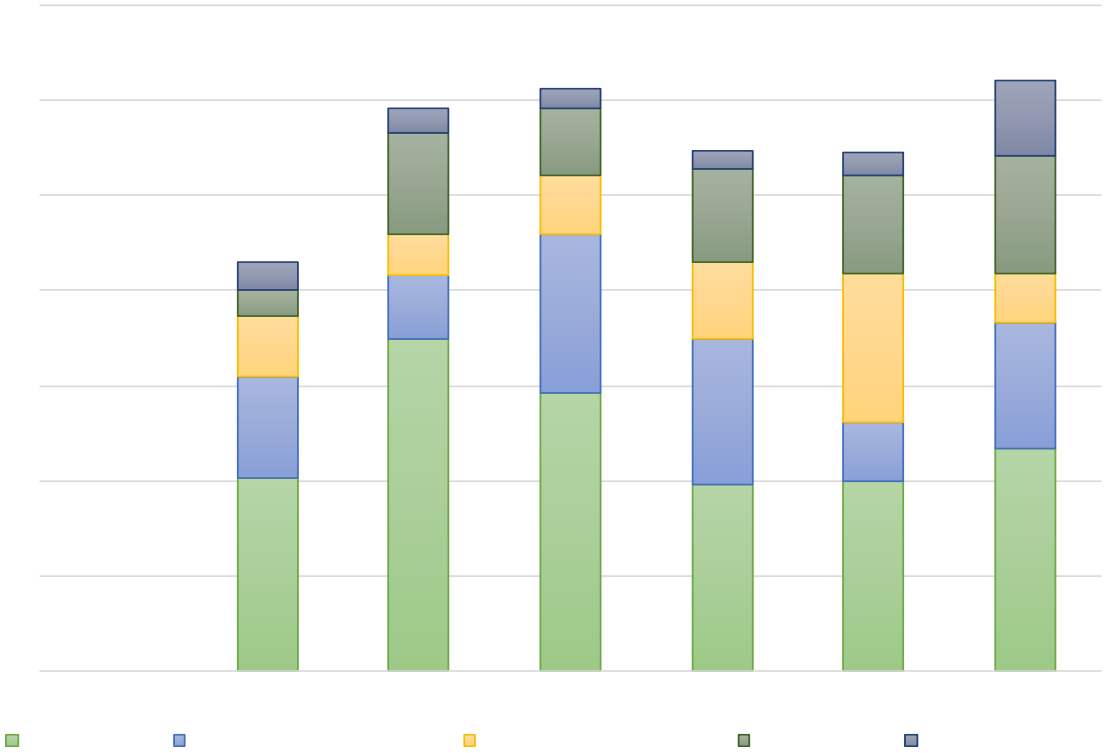


Table 24 highlights the main differences of annual trash control expenditures per capita between the permittees inside and outside the Los Angeles Region.

Table 24. Average Annual Trash Control Expenditures Per Capita in the Los Angeles Region and MS4 Phase II Communities

Table 25 summarizes the estimated annual incremental cost of trash controls choosing a combination of institutional controls and full capture systems. MS4 Phase II permittees would

spend an additional $32 million a year once full implementation is achieved[75], an additional $7.77[76] per capita per year if compliance is completed in one year.

Table 25. Estimated Annual Incremental Costs of Compliance with Track 2 for MS4 Phase II Permittees Outside the Los Angeles Water Region

Estimated Increase in Total Trash Controls Cost by Population Community Size Group	>500,000	100,000-500,000	75,000-100,000	50,000-75000	25,000-50,000	10,000-25,000	0-10,000	Total
Stormwater Capture Devices		$ 81,695	$4,378,006	$6,033,384	$0	$8,869,393	$4,349,491	**$23,711,968**
Street Sweeping		$293,400	$395,824	$835,602	$1,748,006	$4,540,763	$1,715,246	**$9,528,842**
Storm Drain Cleaning & Maint.		$34,799	($672,068)	($3,286,340)	($1,975,808)	$2,337,105	$574,046	**($2,988,266)**
Manual Cleanup		$0	$0	$462,910	$0	$1,397,998	$469,425	**$2,330,333**
Public Education		$0	$0	$0	$83,287	$255,888	$0	**$339,175**
Total Incremental Cost		**$409,895**	**$4,101,762**	**$4,045,556**	**($144,515)**	**$17,401,148**	**$7,108,208**	**$32,922,053**

c. Compliance Schedules

Compliance schedules for MS4 Phase II permittees is ten years of the effective date of the first implementing permit[77]. The analysis uses the same methodology as previously described for MS4 Phase I permittees.

Compliance Schedule with Track 1

Total incremental cost in the year of full compliance with the final Trash Amendments is estimated to be $12.3 million or $2.93 per capita. After Year 10, the incremental cost of operating and maintaining the full capture systems the cost may be $10 million per year[78] ($2.37 per capita) (Figure 9).

[75] This estimated annual incremental cost is assuming that all necessary expenditures are conducted in one single year and the operations and maintenance associated with those specific expenditures. See compliance schedule for an analysis of incremental cost of compliance over a 10 year period.

[76] $7.77 is the result of dividing the total annual cost presented in Table ($32,922,053) by the population of the 148 communities selected (4,237,585) (i.e., $32,922,053 / 4,237,585 = $7.77).

[77] See fn. 42, *ante*.

[78] Operations and maintenance costs are estimated at $342 per year for every full capture system installed. Therefore for every $800 of full capture system installed, $342 (or 42.75% of capital costs) would be spent annually in operations and maintenance. After 10 years of installation of full capture systems, MS4 Phase II communities would have spent $23,463,510 on full capture systems. To maintain and operate $23,463,510 full capture systems, the permittees would need to spend $10 million annually (i.e., $23,463,510 X 0.4275 = $10,030,650).

Figure 9. Compliance Schedule with Track I for MS4 Phase II Permittees with Estimated Total Costs

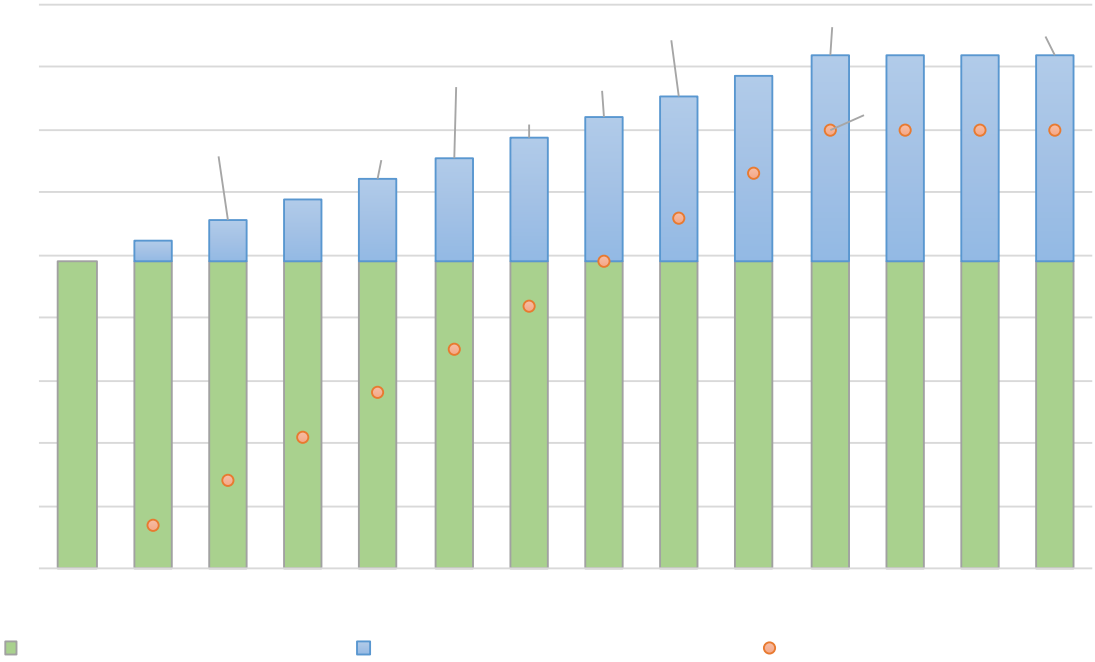
Assuming installation of 10% of the structural controls each year, the capital, operation and maintenance incremental costs in Year 10 (highest cost year) would be $12.3 million for affected MS4 Phase II permittees ($2.93 per capita). The total cost of installing (capital costs) full capture systems in MS4 Phase II permittees is estimated at $5.54 per capita or approximately $23.4 million. This total amount spread out in ten years equally is approximately $2.3 million per year. Operations and maintenance of the installed full capture systems increases based on the accumulated installed units (capital costs). As a result, operations and maintenance cost per capita fluctuates from $0.24 in Year 1 to $2.37 in Year 10.

Compliance Schedule with Track 2

The incremental cost in the year of full compliance with the final Trash Amendments is $32.9 million or $7.77[79] per capita (Figure 10).

[79] $7.77 is the result of dividing the total annual cost presented in Table ($32,922,053) by the population of the 148 communities selected (4,237,585) (i.e., $32,922,053 / 4,237,585 = $7.77).

Figure 10. Compliance Schedule with Track 2 for MS4 Phase II Permittees



6. MS4 PHASE I AND PHASE II PERMITTEES: LAND COVERAGE METHOD

a. Costs Based on Land Coverage

Trash generation rates vary by land use. Sections 4 and 5 were used methodology to estimate compliance costs for Track 1 and Track 2. This section uses a second method of cost analysis to estimate the compliance cost of a full capture system based on land coverage. The number of storm drains within a linear road mile is based on land coverage. Since counties do not have a uniform classification of land cover codes or divisions, the data was collated from USGS Multi-Resolution Land Characteristics Consortium Land Cover Data 2006. The data can be accessed at: http://www.mrlc.gov/nlcd2006.php. The categories identified were the following:

- Land Use (LU) 22 or "Developed, Low Intensity". This is defined as developed low intensity includes areas with a mixture of constructed materials and vegetation. Impervious surfaces account for 20-49 percent of total cover. These areas most commonly include single-family housing units.
- Land Use (LU) 23 or "Developed, Medium Intensity". This is defined as developed medium intensity includes areas with a mixture of constructed materials and vegetation. Impervious surfaces account for 50-79 percent of the total cover. These areas most commonly include single-family housing units.
- Land Use (LU) 24 or "Developed, High Intensity". This is defined as developed high intensity includes highly developed areas where people reside or work in high numbers. Examples include apartment complexes, row houses and commercial/industrial. Impervious surfaces account for 80-100 percent total cover.

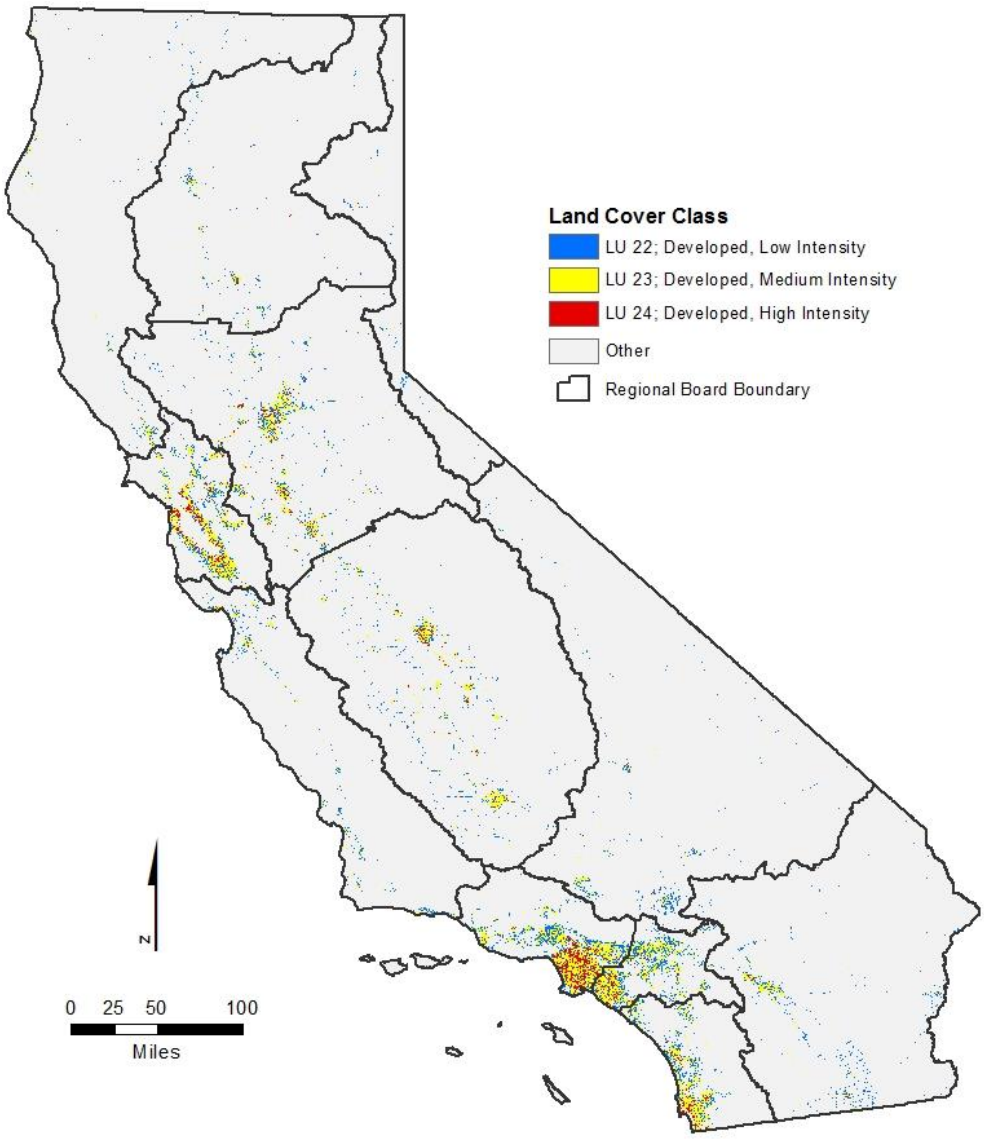
Land coverage was utilized to as a proxy to preliminarily identify priority land uses subject to the final Trash Amendments. The analysis assumes that priority land uses, as defined in the final Trash Amendments, correlate with land cover information for LU 24. Table 26 shows the land cover in acres by regional water board, and Figure 11 shows a map of developed areas by regional water board.

Table 26. Land Coverage by Regional Water Board.

Regional Water Board	Developed, High Intensity (acres) LU24	Developed, Medium Intensity (acres) LU23	Developed, Low Intensity (acres) LU22	Total (acres)
1	3,363.72	28,436.50	53,925.15	85,725.37
2	79,241.00	283,766.94	189,907.27	552,915.21
3	7,365.93	65,757.88	96,791.50	169,915.32
4	116,476.55	369,140.92	234,763.83	720,381.30
5	88,199.95	394,570.64	422,365.75	905,136.34
6	5,519.61	38,368.20	124,361.10	168,248.92
7	6,822.85	56,434.21	119,589.18	182,846.23
8	42,020.59	256,479.11	216,122.48	514,622.18
9	41,759.49	196,458.79	153,307.11	391,525.39
Total (acres)	390,769.69	1,689,413.19	1,611,133.37	3,691,316.26

Source: USGS Multi-Resolution Land Characteristics Consortium Land Cover Data 2006

Figure 11. Developed Land Cover Classes by Regional Water Board.



Compliance with Track 1 for MS4 permittees requires installing, operating and maintaining full capture systems for all storm drains that capture runoff from one or more of the priority land uses in their jurisdictions. Costs Considerations conducted for developing the TMDLs in the Los Angeles Region estimated that, in high intensity developed areas, an average of approximately one catch basin per acre is needed. Therefore, one full capture system per acre was used for the compliance cost estimates.

There are 390,769 acres classified as "Developed, High Intensity" in California. Los Angeles Water Board MS4 permittees are already implementing trash and debris TMDLs (116,476 acres) were subtracted from the total. The areas in City of San Francisco (10,830 acres of high density), and Sacramento (1,160 acres) served by combined sewer systems were subtracted from the total. Trash generated on areas served by combined sewer systems would be captured and removed at the regional wastewater treatment plant instead of being discharged through a conventional storm drain system. Therefore, the total high intensity land potential subject to the final Trash Amendments is 262,302.3 acres. The population within this high intensity land cover is 20.7 million.

The average cost of installing a catch basin insert was estimated to be $800 and the annual operation and maintenance was $324. We estimated one catch basin per acre and one full capture system is needed per catch basin. Similar to the compliance schedule discussion in Sections 5 and 6, full capture systems were assumed to be installed at a rate of about 10% per year, with full build out in Year 10.

As described in previous sections, MS4 Phase I and Phase II permittees are spending $29 million a year or $1.41 per resident per year in operating and maintaining full capture systems[80]. Table 27 and Figure 12 shows the estimated total cost of compliance per year assuming a compliance period of ten years and that 10% of full capture systems are installed each year.

During the first ten years of the implementation of the final Trash Amendments, permittees may incur an incremental average cost of $41 million a year ($2 per capita) to install, operate and maintain full capture systems in high density areas. The total incremental annual cost of operating and maintain all full capture systems installed after Year 10 is $60 million or an average cost per resident per year of $2.91. Table 27 shows the total estimated costs, the incremental cost and the cost per capita for each year starting in 2015 and ending in 2026.

b. Limitations and Uncertainties

The estimates based on land coverage are based on the following assumptions:

1. Land Coverage is a surrogate for land use designation. Priority land uses are correlated to land coverage.

   Using land coverage to estimate the total cost of compliance focuses on the actual priority land uses that would be impacted. This may reduce the error that the estimates using per capita would have on large communities with large populations and low developed density. At the same time, it may overestimate the costs by including all high intensity land uses that are not part of an MS4. The final Trash Amendments define priority land uses based on the different types of uses. By using land coverage instead of land use the analysis may be underestimating the area subject to compliance with the final Trash Amendments.

2. The average cost of a full capture system is $800 and the annual operations and maintenance is $342.
   A broad range of compliance options are available to the permittees subject to the final Trash Amendments. The selection of the full capture system depends on many site specific factors and conditions. Capital cost per unit ranges from $300 per catch basin inserts for installation (capital costs) and $330 annual maintenance to $80,000 per vortex separator system for installation (capital costs) and $30,000 annual maintenance. Different methods may cover different areas, for example a drop inlet may only cover one acre, whereas a vortex separator system may cover many acres, therefore a normalized cost per acre was estimated at $800 in capital cost and $342 in annual operations and maintenance.

3. The analysis is highly sensitive to this assumption and more site specific estimates would be necessary to develop a more accurate estimate.

   The number of full capture systems per acre in priority land uses is one full capture system per acre. There is no one size fits all assumption for storm drain inlet placing. High intensity blocks vary greatly in size depending on what city they are in and the local conditions (rainfall, slope, density, impervious surfaces, etc.). Rough estimates range from one catch

[80] See Table 13 and Table for a description of the baseline of current costs. ($22.4 million for MS4 Phase I permittees and $6.8 for MS4 Phase II permittees)

basin in a three-acre urban area in the City of Los Angeles[81] (0.33 per acre) and up. For this analysis, one catch basin per acre was assumed. The analysis is highly sensitive to this assumption and more site specific estimates would be necessary to develop a more accurate estimate.

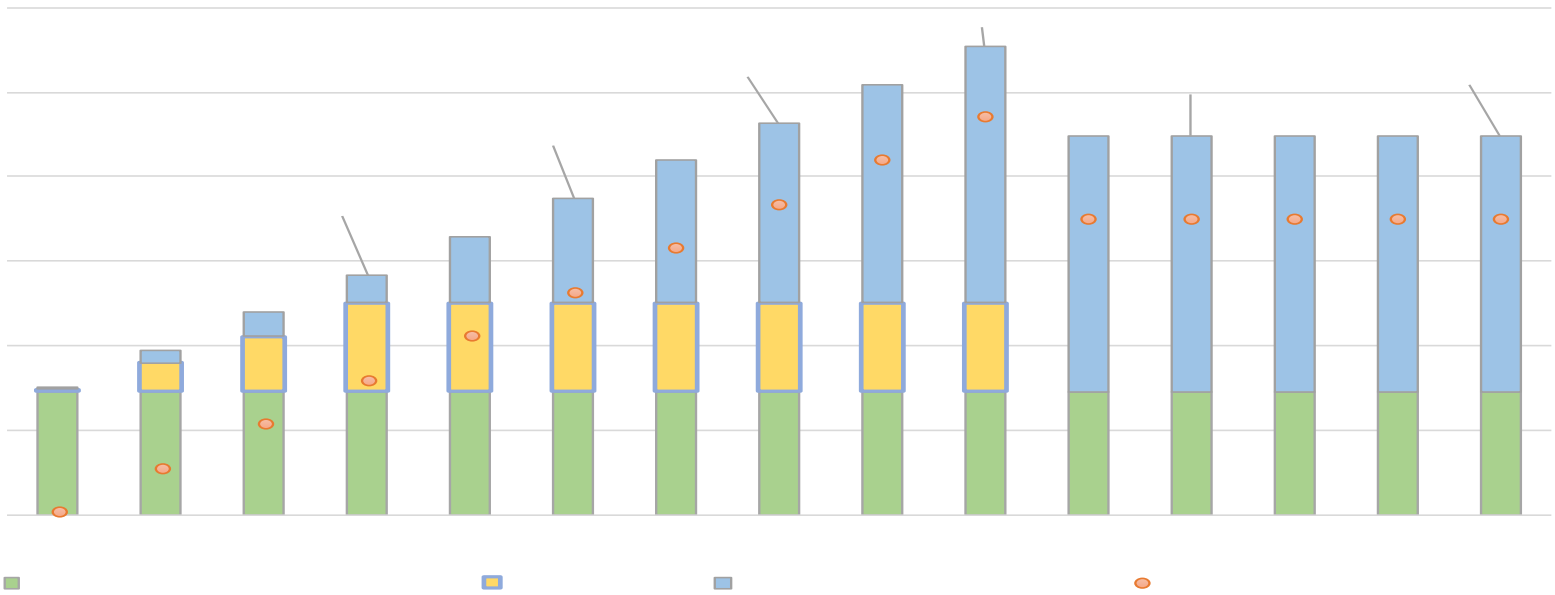
4. The land coverage analysis does not take into consideration institutional controls or other approved methods of compliance.
   Compliance with the final Trash Amendments can be achieved with the installation of structural controls or a combination of structural controls and other methods including institutional controls. The land coverage analysis does not include an estimate of potential cost for a combination of institutional and structural controls per acre of priority land use. This approach would probably estimate the more reliable results. Further analysis would be necessary to estimate total costs of Track 2.

[81] City of Los Angeles Stormwater Management Division. 2002. High Trash-Generation Areas and Control Measures. http://www.lastormwater.org/wp-content/files_mf/trash_gen_study.pdf

Table 27. Cost of Compliance Schedule Based on High Intensity Land Cover

Cost Categories	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Capital Costs	$20,984,160	$20,984,160	$20,984,160	$20,984,160	$20,984,160	$20,984,160	$20,984,160	$20,984,160	$20,984,160	$20,984,160	$0	$0
Operations and Maintenance	$8,970,728	$17,941,457	$26,912,185	$35,882,914	$44,853,642	$53,824,370	$62,795,099	$71,765,827	$80,736,556	$89,707,284	$89,707,284	$89,707,284
Total Cost	$29,954,888	$38,925,617	$47,896,345	$56,867,074	$65,837,802	$74,808,530	$83,779,259	$92,749,987	$101,720,716	$110,691,444	$89,707,284	$89,707,284
Cost Per Capita	*$1.44*	*$1.88*	*$2.31*	*$2.74*	*$3.18*	*$3.61*	*$4.04*	*$4.47*	*$4.91*	*$5.34*	*$4.33*	*$4.33*
Baseline Cost Full Capture Systems	*$29,273,255*	*$29,273,255*	*$29,273,255*	*$29,273,255*	*$29,273,255*	*$29,273,255*	*$29,273,255*	*$29,273,255*	*$29,273,255*	*$29,273,255*	*$29,273,255*	*$29,273,255*
Incremental Cost	**$681,633**	**$9,652,361**	**$18,623,090**	**$27,593,818**	**$36,564,547**	**$45,535,275**	**$54,506,003**	**$63,476,732**	**$72,447,460**	**$81,418,189**	**$60,434,029**	**$60,434,029**
Incremental Cost Per Capita	*$0.03*	*$0.47*	*$0.90*	*$1.33*	*$1.76*	*$2.20*	*$2.63*	*$3.06*	*$3.49*	*$3.93*	*$2.91*	*$2.91*

Figure 12 Compliance Schedule for Track 1 for MS4 Phase I and Phase II Permittees Based on High Intensity Land Coverage



7. POTENTIAL COSTS FOR INDUSTRIAL AND CONSTRUCTION PERMITTEES

There are 9,251 industrial facilities regulated under the Storm Water Industrial Program[82]. The estimated compliance costs (Track 1) with the final Trash Amendments for the industrial facilities are $33.9[83] million or $3,671[84] per facility.

The number of full capture systems required to comply with Track 1 is directly proportional to the number of catch basins and storm drains in each industrial site. Information regarding the number of storm drains in each industrial site is not available in the SMARTS database[85].

Given the small size of many industrial permittees, we assumed that smaller facilities would choose to comply with the final Trash Amendments implementing institutional controls rather than full capture systems. It is likely that only larger facilities would choose to install full capture systems. We identified two groups based on facility size. Out of the 9,251 industrial sites, 2,501 facilities with a size larger than 10 acres were assumed to comply by installing full capture systems and 6,750 facilities with a size of less than 10 acres, or without size information, would comply by implementing institutional controls such as training and manual cleanup.

In our calculations, the following assumptions[86] were made and used for the cost factors.

- Facilities larger than 10 acres would comply with Track 1.
- An average of 10 catch basins per facility for facilities greater than 10 acres.
- The cost of installation of each full capture system is estimated to be $800 and the annual operation and maintenance to be $342.
- Facilities smaller than 10 acres would implement institutional controls.
- Cost of institutional controls includes a $500 initial training and an annual cost of $300 in other measures.
- Industrial facilities are not implementing any trash control methods to comply with the final Trash Amendments, therefore all costs are incremental.

a. Track 1: Full Capture Systems

The estimated cost of compliance for industrial dischargers larger than 10 acres selecting Track 1 (2,501 facilities) would be approximately $28.5 million in a single year[87] and $8.5 million

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[82] CGP permittees are already required to comply with a prohibition to discharge debris and trash from construction sites. State Board Action 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ. Prohibition III. D. page 21. Available at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo2009_0009_dwq.pdf. Debris is defined (footnote 4) as "Litter, rubble, discarded refuse, and remains of destroyed inorganic anthropogenic waste." Trash control costs are therefore not expected to increase for CGP permittees as a result of the final Trash Amendments.

[83] The total cost of $33.9 million is the sum of the cost for large industrial facilities calculated in Table (i.e., $28.5 million) and Table (i.e., $5.4 million).

[84] This is the result of dividing the total cost of $33.9 million by the 9,251 industrial facilities.

[85] SMARTS is the main database used to manage the Storm Water program. Available at: Stormwater Multi-Application, Reporting, and Tracking System (SMARTS)

[86] Assumptions are necessary because of the limitations in the data available regarding the activities conducted at the industrial facilities, the number of workers in each facility, etc.

[87] No compliance schedule is estimated in this section for IGP permittees. Therefore all expenditures are estimated as if they were incurred in a single year.

annually following initial implementation (Table 28). The average operation and maintenance annual cost per facility is estimated to be $3,420 and the one time average installation cost of full capture systems per facility is estimated to be $8,000.

Table 28. Estimated Cost of Compliance for Industrial Facilities Larger than 10 Acres

Size of Industrial Site	Number of Facilities	Number of Catch Basins @ 10 per Facility	Installation @ $800	Operation @ $342	Total Cost
>100 Acres	923	9,230	$7,384,000	$3,156,660	$10,540,660
10-100 acres	1,578	15,780	$12,624,000	$5,396,760	$18,020,760
Total	**2,501**	**25,010**	$20,008,000	$8,553,420	**$28,561,420**

b. Track 2: Combination of Full Capture Systems, Other Treatment Controls, Institutional Controls, Multi-Benefit Projects

The estimated cost of compliance for industrial permittees smaller than 10 acres selecting Track 2 (6,750 facilities) would be approximately $5.4 million in a single year and $2 million annually following initial implementation (Table 29).

Table 29. Estimated Cost of Compliance for Industrial Facilities Smaller than 10 Acres

Size of Industrial Site	Number of Facilities	Training @ $500	Operation @ $300	Total Cost
<10 acres	3,571	$1,785,500	$1,071,300	$2,856,800
No Size Data	3,179	$1,589,500	$953,700	$2,543,200
Total	**6,750**	$3,375,000	$2,025,000	**$5,400,000**

c. Compliance Schedule

Industrial permittees subject to the final Trash Amendments must demonstrate full compliance with the deadlines of the first implementing NPDES permit (whether such permits are modified, re-issued, or newly adopted). The deadlines cannot exceed the terms of the first implementing permit. With uncertain compliance timelines for these permittees, it is difficult to estimate and predict the schedule of the cost of complying with the final Trash Amendments, which is why this analysis assumes a permittees' full compliance being achieved in a single year, rather than amortized over several years.

8. POTENTIAL COSTS FOR CALTRANS

Caltrans' Division of Maintenance expenditures on "litter removal" are $80 million[88] million per year[89]. According to Caltrans, there are approximately 50,000 (approximately 15,000 centerline miles) in California[90]. Therefore, the current cost of litter removal is, on average, $1,600 per lane mile per year.

a. Compliance with the Final Trash Amendments

Caltrans may comply with the final Trash Amendments by installing, operating and maintaining any combination of full capture systems, other treatment controls, institutional controls and/or multi benefit projects for all storm drains that captures runoff from its significant trash generating areas.

Caltrans already implements a variety of institutional controls, including a statewide public outreach and education program (e.g., "Don't Trash California"). Caltrans also operates the Adopt-a-Highway program to clean up trash from its roadways. For this reason, and because of the many site-specific factors Caltrans will need to consider that are not available, we cannot identify with precision specific trash control that Caltrans may use. To determine the economic impact to Caltrans, we considered one possible approach that assumes no increase of institutional controls and some incremental level of structural controls to reduce trash loads to waters.

To estimate the location and relative extent of Caltrans' significant trash generating areas, we used a GIS analysis to determine the centerline miles of the state highway system. Areas already covered by existing trash and debris TMDLs and the areas of San Francisco and served by combined sewer systems[91] were excluded. Next, we identified urban boundaries using city, town and census defined places from the U .S. Census Bureau TIGER/LineR Shapefiles[92]. Figure 13 provides a map of the resulting 5,990 urban centerline miles. We then assumed that 20% of the urban centerline miles would serve as a proxy for significant trash generating areas that that would require additional structural controls to comply with the final Trash Amendments. Using this method, 1,198 centerline miles were identified that may need to be addressed using structural control.

For unit costs, we assumed the same installation ($800) and annual operation and maintenance ($342) costs as those used in Section 7. We estimated that there are approximately 18 catch basins per mile in rural areas and 36 catch basins per mile in urban areas. Because significant trash generating areas are more likely to be in urban areas, we used the higher estimate to calculate the number of catch basins needing full capture devices. Under these assumptions, estimated incremental capital costs for Caltrans would be approximately $35 million and incremental annual operation would be approximately $15 million (Table 30).

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[88] Litter removal costs are provided by Caltrans Maintenance Program. Available at: http://www.dot.ca.gov/docs/LitterAbatementPlan.pdf

[89] See fn. 32, *ante*.

[90] California State Transportation Agency. 2012. 2012 California Public Road Data, Table 1. Accessed May 2014. Available at: http://www.dot.ca.gov/hq/tsip/hpms/datalibrary.php

[91] Areas with a combined sewer system are not explicitly carved out by the final Trash Amendments, but because all storm water in these areas is captured and treated, they are not considered significant trash generating areas and should not require additional trash controls. Therefore these areas were also excluded from Caltrans cost analysis.

[92] U. S. Census Bureau. 2012. 2012 TIGER Shapefiles for census tracts and census designated places. Accessed January 2014. Available at: http://www.census.gov/geo/maps-data/data/tiger-line.html

Table 30. Incremental Capital Costs and Operation and Maintenance Estimates for Caltrans

Factor	Estimates
Centerline Miles of Roadway	15,147
Centerline miles in Urban areas.	5,990
Percent of subject miles requiring structural controls	20%
Affected Miles	1,198
Drop inlets per mile	36
Total number of drop inlets	46534
Total Capital Cost (@ $800 per drop inlet)	**$34,502,400**
Annual Operation & Maintenance Cost (@ $342 per drop inlet per year)	**$14,749,776**

b. Compliance Schedule

Compliance with the water quality objective and implementing the prohibition of discharge will be demonstrated by Caltrans according to a time schedule set forth in the final Trash Amendments. The compliance schedule will be contingent on the effective date of the first implementing permit. Caltrans must demonstrate full compliance within ten years of the effective date of the first implementing permitting permit[93]. The State Water Board can set achievements of interim milestones for compliance within a specific permit. These interim milestones could be set as a percent reduction or percent installation per year or over several years. Assuming a 10% annual investment in structural controls, the annual capital cost would be approximately $3.5 million.

Reaching full compliance with the prohibition of discharge will require extensive planning by Caltrans. To assist Caltrans with planning for full compliance, the State Water Board will issue a Water Code section 13267 or 13383 order within 18 months of the effective date of the final Trash Amendments requesting an implementation plan. Requesting an implementation plan from Caltrans permittees prior to the will optimize compliance planning and implementation.

c. Limitations and Uncertainties

Due to the differences in the type, size and distribution of facilities, the construction, operation and maintenance of trash control systems on highways and roads managed by Caltrans districts will be extremely site specific, and may differ significantly from costs for municipalities. The calculations are sensitive to the assumptions used to estimate significant trash generating areas and the percentage of those areas that would require additional structural controls. For example, we based cost calculations on the assumption that significant trash generating areas will largely correspond to urban areas. However, this assumption may underestimate costs that some significant trash generating areas will occur in non-urban areas, such as rest stops. GIS

[93] See fn. 42, *ante*.

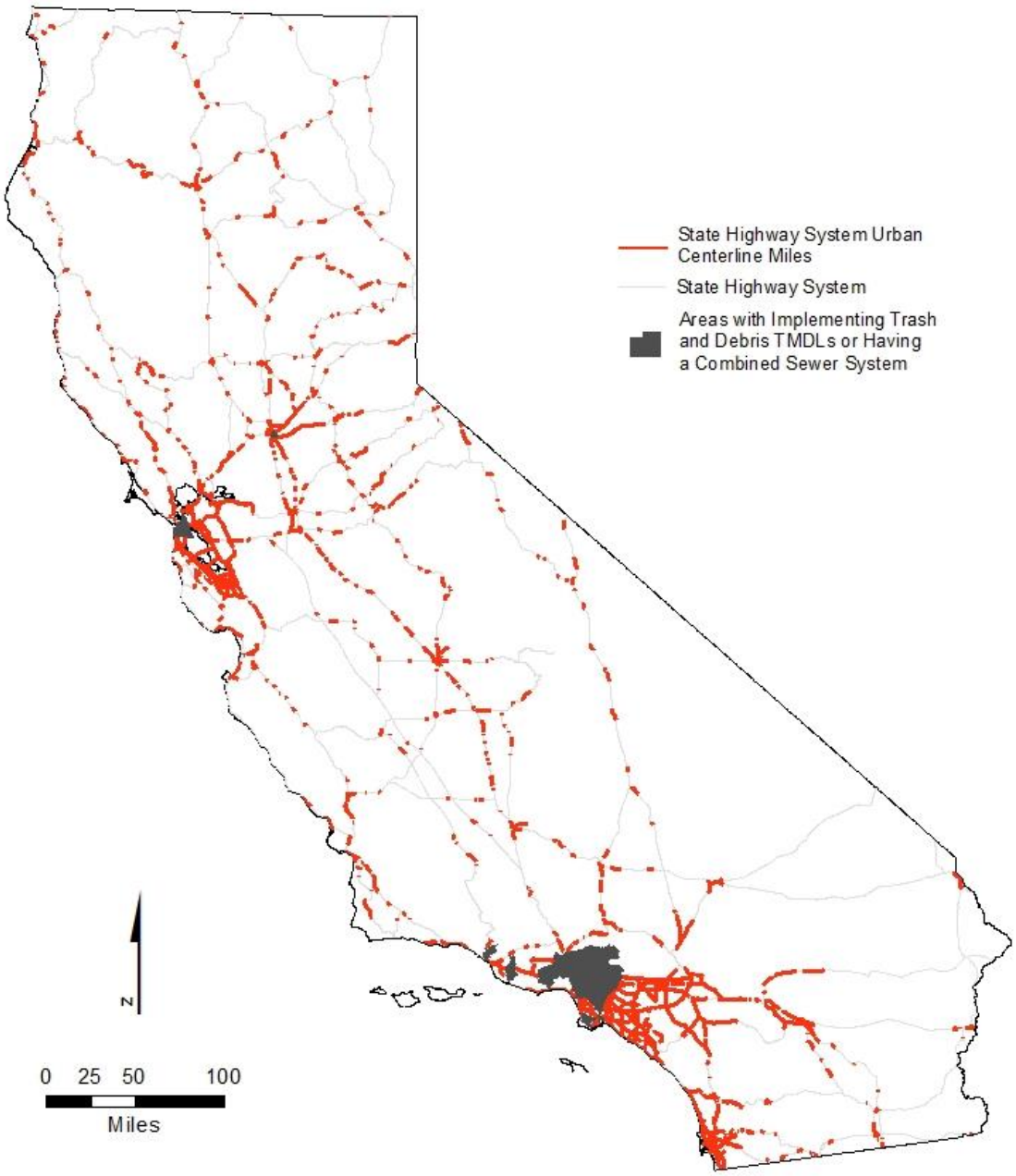
data from Caltrans indicates there are currently 88 rest stop areas in California, seven of which are already accounted for in the calculation of urban centerline miles. If these rest areas are determined to be significant trash generating areas, the capital costs are expected to increase by less than $1 million using the methodology described above. In addition, Caltrans has suggested that 40% is a more reasonable estimate of the Percent of subject miles requiring structural controls[94]. However Caltrans did not provide justification for this estimate. If the calculations in Table 30 were revised to use Caltrans assumptions, the total estimated capital cost would increase to approximately $69 million.

Finally, we anticipate that Caltrans likely will choose Gross Solids Removal Devices in many locations instead of catch basin inserts. Gross Solids Removal Devices are generally more expensive to install and maintain, but also cover larger areas. Without additional information on the specific location and site conditions where additional trash controls will be needed, we cannot determine whether on balance Gross Solids Removal Devices will be more or less expensive than catch basin inserts[95].

[94] Source: McGowen, Scott., California Department of Transportation. Letter to Diana Messina, California State Water Resources Control Board. November 7, 2014.

[95] During the comment period and subsequent correspondence and conversations with Caltrans, Caltrans provided a cost estimate of $176,000 per treated acre as the total installation cost for gross solid removal devices. However, this estimate was developed to address TMDL compliance for multiple pollutants (Source: McGowen, Scott., California Department of Transportation. Letter to Diana Messina, California State Water Resources Control Board. November 7, 2014). Caltrans may indeed choose to install Gross Solid Removal Devices to address multiple pollutants, but cheaper alternatives exist for trash and therefore the full costs associated with Gross Solids Removal Devices may not be reasonably attributed to these amendments. In fact, to the extent that Gross Solid Removal Devices are already required under the Caltrans MS4 permit, costs to implement the Trash Amendments could be substantially less than estimated above. Please see the responses to comments document for additional information.

Figure 13. State Highway System Centerlines in Urban Areas.



9. POTENTIAL COSTS FOR OTHER DISCHARGERS

The final Trash Amendments include a provision that allows the Water Boards to require dischargers that are not subject to Section 3[96] of the final Trash Amendments to implement trash controls in areas or facilities that may generate trash. Such areas or facilities may include (but are not limited to) high usage campgrounds, picnic areas, beach recreation areas, parks not subject to an MS4 permit, or marinas.

Because of the optional nature of this provision, no baseline figures are available with which to conduct an economic analysis. The absence of specific baseline figures, coupled with the variety of compliance options available, and the resulting wide range of costs related to this group of dischargers, no information is available to develop specific cost estimates for the incremental trash control costs associated with this category of dischargers at this point.

10. CONCLUSION

The presence of trash in surface waters, especially coastal and marine waters, is a serious issue in California. California communities are currently spending $428 million annually to control trash from entering water of the states, which varies between the sizes of communities. With the final Trash Amendments, the State Water Board's objective is to provide statewide consistency for the Water Boards' regulatory approach to protect aquatic life and public health beneficial uses, and reduce environmental issues associated with trash in state waters, while focusing limited resources on high trash generating areas.

To achieve this objective, a central element of the final Trash Amendments is a land-use based compliance approach to focus trash control to areas with high trash generation rates. Within this land-use based approach, a dual alternative compliance Track approach is proposed for permitted storm water dischargers (i.e., MS4 Phase I, MS4 Phase II, Caltrans, IGP, and CGP) to implement the prohibition of discharge for trash.

Under the requirements of Water Code sections 13170 and 13241, subdivision (d) that require the State Water Board to consider economics when establishing water quality objectives. This economic analysis is not a cost-benefit analysis, but a consideration of potential costs of a suite of reasonably foreseeable measures to comply with the final Trash Amendments. This economic analysis utilized two basic methods to estimate the incremental cost of compliance for permitted storm water discharge: the first method was based on cost of compliance per capita, and the second method was based on land cover.

This economic analysis estimated the incremental annual cost to comply with the requirements of the final Trash Amendments ranged from $4 to $10.67 per year per capita for MS4 Phase I NPDES permittees and from $7.77 to $7.91 per year per capita for smaller communities regulated under MS4 Phase II permits. For IGP facilities, the estimated compliance cost is $33.9 million or $3,671 per facility. To comply with the final Trash Amendments, expenditures by Caltrans are estimated to increase by $34.5 million in total capital costs and $14.7 million per year for operation and maintenance of structural controls.

[96] As proposed to the Ocean Plan Ch. III(L)(2). As proposed to the ISWEBE Plan Ch. IV(A)(3).

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APPENDIX D: FINAL AMENDMENT TO WATER QUALITY CONTROL PLAN FOR OCEAN WATERS OF CALIFORNIA TO CONTROL TRASH

Text of the final amendment to control trash proposed to be amended into Chapter II – Water Quality Objectives of the Ocean Plan

C. Physical Characteristics

5. Trash* shall not be present in ocean waters, along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance.

Text of the final amendment to control trash proposed to be amended into Chapter III – Program of Implementation of the Ocean Plan

I. Prohibition of Discharge

6. Trash*

The discharge of Trash* to surface waters of the State or the deposition of Trash* where it may be discharged into surface waters of the State is prohibited. Compliance with this prohibition of discharge shall be achieved as follows:

a. Dischargers with NPDES permits that contain specific requirements for the control of Trash* that are consistent with these Trash Provisions* shall be determined to be in compliance with this prohibition if the dischargers are in full compliance with such requirements.

b. Dischargers with non-NPDES waste discharge requirements (WDRs) or waivers of WDRs that contain specific requirements for the control of Trash* shall be determined to be in compliance with this prohibition if the dischargers are in full compliance with such requirements.

c. Dischargers with NPDES permits, WDRs, or waivers of WDRs that do not contain specific requirements for the control of Trash* are exempt from these Trash Provisions*.

d. Dischargers without NPDES permits, WDRs, or waivers of WDRs must comply with this prohibition of discharge.

e. Chapter III.I.6.b and Chapter III.L.3 notwithstanding, this prohibition of discharge applies to the discharge of preproduction plastic* by manufacturers of preproduction plastics*, transporters of preproduction

*Represents a defined term in the California Ocean Plan.

plastics*, and manufacturers that use preproduction plastics* in the manufacture of other products to surface waters of the State, or the deposition of preproduction plastic* where it may be discharged into surface waters of the State, unless the discharger is subject to a NPDES permit for discharges of storm water* associated with industrial activity.

L. Implementation Provisions for Trash*

1. Applicability

a. These Trash Provisions* shall be implemented through a prohibition of discharge (Chapter III.I.6) and through NPDES permits issued pursuant to section 402(p) of the Federal Clean Water Act, waste discharge requirements (WDRs), or waivers of WDRs (as set forth in Chapter III.L.2 and Chapter III.L.3 below).

b. These Trash Provisions* apply to all surface waters of the State, with the exception of those waters within the jurisdiction of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) for which trash Total Maximum Daily Loads (TMDLs) are in effect prior to the effective date of these Trash Provisions*[1]; provided, however, that:

(1) Upon the effective date of these Trash Provisions*, the Los Angeles Water Board shall cease its full capture system* certification process~~,~~ and provide that any new full capture systems* shall be certified by the State Water Board in accordance with these Trash Provisions*.

(2) Within one year of the effective date of these Trash Provisions*, the Los Angeles Water Board shall convene a public meeting to reconsider the scope of its trash TMDLs, with the exception of those for the Los Angeles River and Ballona Creek watersheds, to particularly consider an approach that would focus MS4* permittees' trash-control efforts on high-trash generation areas within their jurisdictions.

[1] In the Los Angeles Region, there are fifteen (15) trash TMDLs for the following watersheds and water bodies: Los Angeles River Watershed, Ballona Creek, Malibu Creek Watershed, Santa Monica Bay Nearshore and Offshore, San Gabriel River East Fork, Revolon Slough and Beardsley Wash, Ventura River Estuary, Machado Lake, Lake Elizabeth, Lake Hughes, Munz Lake, Peck Road Park Lake, Echo Park Lake, Lincoln-Park Lake and Legg Lake. Three of these were established by the U.S. EPA: Peck Road Park Lake, Echo Park Lake and Lincoln Park Lake.

2. Dischargers Permitted Pursuant to Federal Clean Water Act Section 402(p)

Permitting authorities* shall include the following requirements in NPDES permits issued pursuant to Federal Clean Water Act section 402(p):

a. MS4* permittees with regulatory authority over priority land uses* shall be required to comply with the prohibition of discharge in Chapter III.I.6.a herein by either of the following measures:

(1) Track 1: Install, operate, and maintain full capture systems* for all storm drains that captures runoff from the priority land uses* in their jurisdictions; or

(2) Track 2: Install, operate, and maintain any combination of full capture systems*, multi-benefit projects*, other treatment controls*, and/or institutional controls* within either the jurisdiction of the MS4* permittee or within the jurisdiction of the MS4* permittee and contiguous MS4* permittees. The MS4* permittee may determine the locations or land uses within its jurisdiction to implement any combination of controls. The MS4* permittee shall demonstrate that such combination achieves full capture system equivalency*. The MS4* permittee may determine which controls to implement to achieve compliance with full capture system equivalency*. It is, however, the State Water Board's expectation that the MS4* permittee will elect to install full capture systems* where such installation is not cost-prohibitive.

b. The California Department of Transportation (Department) shall be required to comply with the prohibition of discharge in Chapter III.I.6.a herein in all significant trash generating areas* by installing, operating, and maintaining any combination of full capture systems*, multi-benefit projects*, other treatment controls*, and/or institutional controls* for all storm drains that captures runoff from significant trash generating areas*. The Department shall demonstrate that such combination achieves full capture system equivalency*. In furtherance of this provision, the Department and MS4* permittees that are subject to the provisions of Chapter III.L.2.a herein shall coordinate their efforts to install, operate, and maintain full capture systems*, multi-benefit projects*, other treatment controls*, and/or institutional controls* in significant trash generating areas* and/or priority land uses*.

c. Dischargers that are subject to NPDES permits for discharges of storm water* associated with industrial activity (including construction activity) shall be required to comply with the prohibition of discharge in Chapter

*Represents a defined term in the California Ocean Plan.

III.I.6.a herein by eliminating Trash* from all storm water* and authorized non-storm water* discharges consistent with an outright prohibition of the discharge of Trash* contained within the applicable NPDES permit regulating the industrial or construction facility. If the discharger can satisfactorily demonstrate to the permitting authority* its inability to comply with the outright prohibition of the discharge of Trash* contained within the applicable NPDES permit, then the permitting authority* may require the discharger to either:

(1) Install, operate, and maintain full capture systems* for all storm drains that captures runoff from the facility or site regulated by the NPDES permit; or,

(2) Install, operate, and maintain any combination of full capture systems*, multi-benefit projects*, other treatment controls*, and/or institutional controls* for the facility or site regulated by the NPDES permit. The discharger shall demonstrate that such combination achieves full capture system equivalency*.

Termination of permit coverage for industrial and construction storm water* dischargers shall be conditioned upon the proper operation and maintenance of all controls (e.g., full capture systems*, multi-benefit projects*, other treatment controls*, and/or institutional controls*) used at their facility(ies).

d. A permitting authority* may determine that specific land uses or locations (e.g., parks, stadia, schools, campuses, or roads leading to landfills) generate substantial amounts of Trash*. In the event that the permitting authority* makes that determination, the permitting authority* may require the MS4* to comply with Chapter III.L.2.a.1 or Chapter III.L.2.a.2, as determined by the permitting authority*, with respect to such land uses or locations.

3. Other Dischargers

A permitting authority* may require dischargers, described in Chapter III.I.6.c or Chapter III.I.6.d, that are not subject to Chapter III.L.2 herein, to implement any appropriate Trash* controls in areas or facilities that may generate Trash*. Such areas or facilities may include (but are not limited to) high usage campgrounds, picnic areas, beach recreation areas, parks not subject to an MS4* permit, or marinas.

*Represents a defined term in the California Ocean Plan.

4. Time Schedule

The permitting authority* shall modify, re-issue, or newly adopt NPDES permits issued pursuant to section 402(p) of the Federal Clean Water Act that are subject to the provisions of Chapter III.L.2 herein to include requirements consistent with these Trash Provisions*. The permitting authorities* shall abide by the following time schedules:

a. NPDES Permits Regulating MS4* Permittees that have Regulatory Authority over Priority Land Uses*.[2]

(1) Within eighteen (18) months of the effective date of these Trash Provisions*, for each permittee, each permitting authority* shall either:

A. Modify, re-issue, or adopt the applicable MS4* permit to add requirements to implement these Trash Provisions*. The implementing permit shall require written notice from each MS4* permittee stating whether it has elected to comply under Chapter III.L.2.a.1 (Track 1) or Chapter III.L.2.a.2 (Track 2) and such notice shall be submitted to the permitting authority* no later than three (3) months from the effective date of the implementing permit, or for MS4s* designated after the effective date of these Trash Provisions*, three (3) months from the effective date of that designation. The implementing permit shall also require that within eighteen (18) months of the effective date of the implementing permit or new designation, MS4* permittees that have elected to comply with Track 2 shall submit an implementation plan to the permitting authority*. The implementation plan shall describe: (i) the combination of controls selected by the MS4* permittee and the rationale for

[2] The time schedule requirement in Chapter III.L.4.a.1 requiring MS4* permittees to elect Chapter III.L.2.a.1 (Track 1) or Chapter III.L.2.a.2 (Track 2) does not apply to MS4* permittees subject to the Municipal Regional Stormwater NPDES Permit (MRP) issued by the San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) or the East Contra Costa Municipal Storm Water Permit issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) because those permits already require control requirements substantially equivalent to Track 2. The time schedule requirement in Chapter III.L.4.a.1 requiring MS4* permittees to submit an implementation plan does not apply to the above permittees if the pertinent permitting authority* determines that such permittee has already submitted an implementation plan prior to the effective date of the Trash Provisions* that is equivalent to the implementation plan required by Chapter III.L.4.a.1. In the aforementioned permits, the pertinent permitting authority* may establish an earlier full compliance deadline than that specified in Chapter III.L.4.a.3.

the selection, (ii) how the combination of controls is designed to achieve full capture system equivalency*, and (iii) how full capture system equivalency* will be demonstrated. The implementation plan is subject to approval by the permitting authority*.

B. Issue an order pursuant to Water Code section 13267 or 13383 requiring the MS4* permittee to submit, within three (3) months from receipt of the order, written notice to the permitting authority* stating whether such MS4* permittee will comply with the prohibition of discharge under Chapter III.L.2.a.1 (Track 1) or Chapter III.L.2.a.2 (Track 2). For MS4s* designated after the effective date of these Trash Provisions*, the order pursuant to Water Code section 13267 or 13383 shall be issued at the time of designation. Within eighteen (18) months of the receipt of the Water Code section 13267 or 13383 order, MS4* permittees that have elected to comply with Track 2 shall submit an implementation plan to the permitting authority* that describes: (i) the combination of controls selected by the MS4* permittee and the rationale for the selection, (ii) how the combination of controls is designed to achieve full capture system equivalency*, and (iii) how full capture system equivalency* will be demonstrated. The implementation plan is subject to approval by the permitting authority*.

(2) For MS4* permittees that elect to comply with Chapter III.L.2.a.1 (Track 1), the implementing permit shall state that full compliance shall occur within ten (10) years of the effective date of the first implementing permit except as specified in Chapter III.L.4.a.5. The permit shall also require these permittees to demonstrate achievement of interim milestones such as an average of ten percent (10%) of the full capture systems* installed every year or other progress to full implementation. In no case may the final compliance date be later than fifteen (15) years from the effective date of these Trash Provisions*.

(3) For MS4* permittees that elect to comply with Chapter III.L.2.a.2 (Track 2), the implementing permit shall state that full compliance shall occur within ten (10) years of the effective date of the first implementing permit except as specified in Chapter III.L.4.a.5. The permit shall also require these permittees to demonstrate achievement of interim milestones such as average load reductions of ten percent (10%) per year or other progress to full implementation. In no case may the final compliance date be later

*Represents a defined term in the California Ocean Plan.

than fifteen (15) years from the effective date of these Trash Provisions*.

(4) The implementing permit shall state that for MS4* permittees designated after the effective date of the implementing permit, full compliance shall occur within ten (10) years of the effective date of the designation. The permit shall also require such designations to demonstrate achievement of interim milestones such as average load reductions of ten percent (10%) per year or other progress to full implementation.

(5) Where a permitting authority* makes a determination pursuant to Chapter III.L.2.d that a specific land use generates a substantial amount of Trash*, that permitting authority* has discretion to determine the time schedule for full compliance. In no case may the final compliance date be later than ten (10) years from the determination.

b. NPDES Permits Regulating the Department.

(1) Within eighteen (18) months of the effective date of these Trash Provisions*, the State Water Board shall issue an order pursuant to Water Code section 13267 or 13383 requiring the Department to submit an implementation plan to the Executive Director of the State Water Board that: (i) describes the specific locations of its significant trash generating areas*, (ii) the combination of controls selected by the Department and the rationale for the selections, and (iii) how it will demonstrate full capture system equivalency*.

(2) The Department must demonstrate full compliance with Chapter III.L.2.b herein within ten (10) years of the effective date of the first implementing NPDES permit, along with achievements of interim milestones such as average load reductions of ten percent (10%) per year. In no case may the final compliance date be later than fifteen (15) years from the effective date of these Trash Provisions*.

c. NPDES Permits Regulating the Discharges of Storm Water* Associated with Industrial Activity (Including Construction Activity). Dischargers that are subject to the provisions of Chapter III.L.2.c herein must demonstrate full compliance in accordance with the deadlines contained in the first implementing NPDES permits. Such deadlines may not exceed the terms of the first implementing permits.

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5. Monitoring and Reporting

The permitting authority* must include monitoring and reporting requirements in its implementing permits. The following monitoring and reporting provisions are the minimum requirements that must be included within the implementing permits:

a. MS4* permittees that elect to comply with Chapter III.L.2.a.1 (Track 1) shall provide a report to the applicable permitting authority* demonstrating installation, operation, maintenance, and the Geographic Information System- (GIS-) mapped location and drainage area served by its full capture systems* on an annual basis.

b. MS4* permittees that elect to comply with Chapter III.L.2.b.2 (Track 2) shall develop and implement monitoring plans that demonstrate the effectiveness of the full capture systems*, multi-benefit projects*, other treatment controls*, and/or institutional controls* and compliance with full capture system equivalency*. Monitoring reports shall be provided to the applicable permitting authority* on an annual basis, and shall include GIS-mapped locations and drainage area served for each of the full capture systems*, multi-benefit projects*, other treatment controls*, and/or institutional controls* installed or utilized by the MS4* permittee. In developing the monitoring reports the MS4* permittee should consider the following questions:

(1) What type of and how many treatment controls*, institutional controls*, and/or multi-benefit projects* have been used and in what locations?

(2) How many full capture systems* have been installed (if any), in what locations have they been installed, and what is the individual and cumulative area served by them?

(3) What is the effectiveness of the total combination of treatment controls*, institutional controls*, and multi-benefit projects* employed by the MS4* permittee?

(4) Has the amount of Trash* discharged from the MS4* decreased from the previous year? If so, by how much? If not, explain why.

(5) Has the amount of Trash* in the MS4's* receiving water(s) decreased from the previous year? If so, by how much? If not, explain why.

c. The Department, as subject to the provisions of Chapter III.L.2.b, shall develop and implement monitoring plans that demonstrate the

*Represents a defined term in the California Ocean Plan.

effectiveness of the controls, and compliance with full capture system equivalency*. Monitoring reports shall be provided to the State Water Board on an annual basis, and shall include GIS-mapped locations and drainage area served for each of the full capture systems*, multi-benefit projects*, other treatment controls*, and/or institutional controls* installed or utilized by the Department. In developing the monitoring report, the Department should consider the following questions:

(1) What type of and how many treatment controls* institutional controls*, and/or multi-benefit projects* have been used and in what locations?

(2) How many full capture systems* have been installed (if any), in what locations have they been installed, and what is the individual and cumulative area served by them?

(3) What is the effectiveness of the total combination of treatment controls*, institutional controls*, and multi-benefit projects employed by the Department?

(4) Has the amount of Trash* discharged from the Department's MS4* decreased from the previous year? If so, by how much? If not, explain why.

(5) Has the amount of Trash* in the receiving waters decreased from the previous year? If so, by how much? If not, explain why.

d. Dischargers that are subject to the provisions of Chapter III.L.2.c herein shall be required to report the measures used to comply with Chapter III.L.2.c.

Text of the final amendment to control trash proposed to be amended into Appendix I of the Ocean Plan

APPENDIX I

DEFINITION OF TERMS

Full capture system is a treatment control*, or series of treatment controls*, including but not limited to, a multi-benefit project* or a low-impact development control* that traps all particles that are 5 mm or greater, and has a design treatment capacity that is either: a) of not less than the peak flow rate, Q, resulting from a one-year, one-hour, storm in the subdrainage area, or b) appropriately sized to, and designed to carry at least the same flows as, the corresponding storm drain.

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[Rational equation is used to compute the peak flow rate: Q = C•I•A, where Q = design flow rate (cubic feet per second, cfs); C = runoff coefficient (dimensionless); I = design rainfall intensity (inches per hour, as determined per the rainfall isohyetal map specific to each region, and A = subdrainage area (acres).]

Prior to installation, full capture systems* must be certified by the Executive Director, or designee, of the State Water Board. Uncertified full capture systems* will not satisfy the requirements of these Trash Provisions*. To request certification, a permittee shall submit a certification request letter that includes all relevant supporting documentation to the State Water Board's Executive Director. The Executive Director, or designee, shall issue a written determination approving or denying the certification of the proposed full capture system* or conditions of approval, including a schedule to review and reconsider the certification. Full capture systems* certified by the Los Angeles Regional Water Board prior to the effective date of these Trash Provisions* and full capture systems* listed in Appendix I of the Bay Area-wide Trash Capture Demonstration Project, Final Project Report (May 8, 2014) will satisfy the requirements of these Trash Provisions*, unless the Executive Director, or designee, of the State Water Board determines otherwise.

Full capture system equivalency is the Trash* load that would be reduced if full capture systems* were installed, operated, and maintained for all storm drains that capture runoff from the relevant areas of land (priority land uses*, significant trash generating areas*, facilities or sites regulated by NPDES permits for discharges of storm water* associated with industrial activity, or specific land uses or areas that generate substantial amounts of Trash*, as applicable). The full capture system equivalency* is a Trash* load reduction target that the permittee quantifies by using an approach, and technically acceptable and defensible assumptions and methods for applying the approach, subject to the approval of permitting authority*. Examples of such approaches include, but are not limited to, the following:

(1) Trash Capture Rate Approach. Directly measure or otherwise determine the amount of Trash* captured by full capture systems* for representative samples of all similar types of land uses, facilities, or areas within the relevant areas of land over time to identify specific trash capture rates. Apply each specific Trash* capture rate across all similar types of land uses, facilities, or areas to determine full capture system equivalency*. Trash* capture rates may be determined either through a pilot study or literature review. Full capture systems* selected to evaluate Trash* capture rates may cover entire types of land uses, facilities, or areas, or a representative subset of types of land uses, facilities, or areas. With this approach, full capture system equivalency* is the sum of the products of each type of land use, facility, or area multiplied by Trash* capture rates for that type of land use, facility, or area.

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(2) Reference Approach. Determine the amount of Trash* in a reference receiving water in a reference watershed where full capture systems* have been installed for all storm drains that capture runoff from all relevant areas of land. The reference watershed must be comprised of similar types and extent of sources of trash* and land uses (including priority land uses* and all other land uses), facilities, or areas as the permittee's watershed. With this approach, full capture system equivalency* would be demonstrated when the amount of Trash* in the receiving water is equivalent to the amount of Trash* in the reference receiving water.

Institutional controls are non-structural best management practices (i.e., no structures are involved) that may include, but not be limited to, street sweeping, sidewalk Trash* bins, collection of the Trash*, anti-litter educational and outreach programs, producer take-back for packaging, and ordinances.

Low-impact development controls are treatment controls* that employ natural and constructed features that reduce the rate of storm water* runoff, filter out pollutants, facilitate storm water* storage onsite, infiltrate storm water* *into the ground to replenish groundwater supplies, or improve the quality of receiving groundwater and surface water. (See Water Code § 10564.)

Multi-benefit project is a treatment control* project designed to achieve any of the benefits set forth in section 10562, subdivision (d) of the Water Code. Examples include projects designed to: infiltrate, recharge or store storm water* for beneficial reuse; develop or enhance habitat and open space through storm water* and non-storm water management; and/or reduce storm water* and non-storm water runoff volume.

Municipal Separate Storm Sewer System (MS4) has the same meaning set forth in 40 Code of Federal Regulations section 122.26(b)(8).

Preproduction plastic has the same meaning set forth in section 13367(a) of the Water Code.

Priority land uses are those developed sites, facilities, or land uses (i.e., not simply zoned land uses) within the MS4* permittee's jurisdiction from which discharges of Trash* are regulated by this Ocean Plan as follows:

(1) **High-density residential**: all land uses with at least ten (10) developed dwelling units/acre.
(2) **Industrial**: land uses where the primary activities on the developed parcels involve product manufacture, storage, or distribution (e.g., manufacturing businesses, warehouses, equipment storage lots, junkyards, wholesale businesses, distribution centers, or building material sales yards).
(3) **Commercial**: land uses where the primary activities on the developed parcels involve the sale or transfer of goods or services to consumers (e.g., business or professional buildings, shops, restaurants, theaters, vehicle repair shops, etc.)

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(4) **Mixed urban**: land uses where high-density residential, industrial, and/or commercial land uses predominate collectively (i.e., are intermixed).
(5) **Public transportation stations**: facilities or sites where public transit agencies' vehicles load or unload passengers or goods (e.g., bus stations and stops).

Equivalent alternate land uses: An MS4* permittee with regulatory authority over priority land uses* may issue a request to the applicable permitting authority* that the MS4* permittee be allowed to substitute one or more land uses identified above with alternates land use within the MS4* permittee's jurisdiction that generates rates of Trash* that are equivalent to or greater than the priority land use(s)* being substituted. The land use area requested to substitute for a priority land use* need not be an acre-for-acre substitution but may involve one or more priority land uses*, or a fraction of a priority land use*, or both, provided the total trash* generated in the equivalent alternative land use is equivalent to or greater than the total Trash* generated from the priority land use(s)* for which substitution is requested. Comparative Trash* generation rates shall be established through the reporting of quantification measures such as street sweeping and catch basin cleanup records; mapping; visual trash presence surveys, such as the "Keep America Beautiful Visible Litter Survey"; or other information as required by the permitting authority*.

Significant trash generating areas means all locations or facilities within the Department's jurisdiction where Trash* accumulates in substantial amounts, such as:

(1) Highway on- and off-ramps in high density residential, commercial, and industrial land uses (as such land uses are defined under priority land uses* herein).
(2) Rest areas and park-and-rides.
(3) State highways in commercial and industrial land uses (as such land uses are defined under priority land uses* herein).
(4) Mainline highway segments to be identified by the Department through pilot studies and/or surveys.

Storm water has the same meaning set forth in 40 Code of Federal Regulations section 122.26(b)(13) and 55 Federal Register 47990, 47995 (Nov. 16, 1990).

Treatment controls are structural best management practices to either (a) remove pollutants and/or solids from storm water* runoff, wastewater, or effluent, or (b) capture, infiltrate or reuse storm water* runoff, wastewater, or effluent. Treatment controls include full capture systems* and low-impact development controls*.

Trash means all improperly discarded solid material from any production, manufacturing, or processing operation including, but not limited to, products, product packaging, or containers constructed of plastic, steel, aluminum, glass, paper, or other synthetic or natural materials.

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Trash Provisions are the water quality objective for Trash*, as well as the prohibition of discharge set forth in Chapter III.I and implementation requirements set forth in Chapter III.L herein.

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APPENDIX E: FINAL PART 1 TRASH PROVISIONS OF THE WATER QUALITY CONTROL PLAN FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES OF CALIFORNIA[97]

Text of the final Part 1 Trash Provisions proposed to Chapter III – Water Quality Objectives of the ISWEBE Plan

A Trash

TRASH shall not be present in inland surface waters, enclosed bays, estuaries, and along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance.

Draft text of the final Part 1 Trash Provisions proposed to Chapter IV – Implementation of Water Quality Objectives of the ISWEBE Plan

A Trash

1. Applicability

a. These TRASH PROVISIONS shall be implemented through a prohibition of discharge (Chapter IV.A.2) and through NPDES permits issued pursuant to section 402(p) of the Federal Clean Water Act, waste discharge requirements (WDRs), or waivers of WDRs (as set forth in Chapter IV.A.3 and Chapter IV.A.4 below).

b. These TRASH PROVISIONS apply to all surface waters of the State, with the exception of those waters within the jurisdiction of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) for which trash Total Maximum Daily Loads (TMDLs) are in effect prior to the effective date of these TRASH PROVISIONS[1]; provided, however, that:

(1) Upon the effective date of these TRASH PROVISIONS, the Los Angeles Water Board shall cease its FULL CAPTURE SYSTEM certification process and provide that any new FULL CAPTURE SYSTEMS shall be certified by the State Water Board in accordance with these TRASH PROVISIONS.

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[97] The State Water Board intends to amend the Water Quality Control Plan for Enclosed Bays and Estuaries of California to create the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan (ISWEBE Plan). The State Water Board intends that the Part 1 Trash Provisions will be incorporated into the ISWEBE Plan, once it is adopted.

[1] In the Los Angeles Region, there are fifteen (15) trash TMDLs for the following watersheds and water bodies: Los Angeles River Watershed, Ballona Creek, Malibu Creek Watershed, Santa Monica Bay Nearshore and Offshore, San Gabriel River East Fork, Revolon Slough and Beardsley Wash, Ventura River Estuary, Machado Lake, Lake Elizabeth, Lake Hughes, Munz Lake, Peck Road Park Lake, Echo Park Lake, Lincoln Park Lake and Legg Lake. Three of these were established by the USEPA: Peck Road Park Lake, Echo Park Lake and Lincoln Park Lake.

(2) Within one year of the effective date of these TRASH PROVISIONS, the Los Angeles Water Board shall convene a public meeting to reconsider the scope of its trash TMDLs, with the exception of those for the Los Angeles River and Ballona Creek watersheds, to particularly consider an approach that would focus MS4 permittees' trash-control efforts on high-trash generation areas within their jurisdictions.

2. Prohibition of Discharge

The discharge of TRASH to surface waters of the State or the deposition of TRASH where it may be discharged into surface waters of the State is prohibited. Compliance with this prohibition of discharge shall be achieved as follows:

a. Dischargers with NPDES permits that contain specific requirements for the control of TRASH that are consistent with these TRASH PROVISIONS shall be determined to be in compliance with this prohibition if the dischargers are in full compliance with such requirements.

b. Dischargers with non-NPDES WDRs or waivers of WDRs that contain specific requirements for the control of TRASH shall be determined to be in compliance with this prohibition if the dischargers are in full compliance with such requirements.

c. Dischargers with NPDES permits, WDRs, or waivers of WDRs that do not contain specific requirements for the control of TRASH are exempt from these TRASH PROVISIONS.

d. Dischargers without NPDES permits, WDRs, or waivers of WDRs must comply with this prohibition of discharge.

e. Chapter IV.A.2.b and Chapter IV.A.4 notwithstanding, this prohibition of discharge applies to the discharge of PREPRODUCTION PLASTIC by manufacturers of PREPRODUCTION PLASTICS, transporters of PREPRODUCTION PLASTICS, and manufacturers that use PREPRODUCTION PLASTICS in the manufacture of other products to surface waters of the State, or the deposition of PREPRODUCTION PLASTIC where it may be discharged into surface waters of the State, unless the discharger is subject to a NPDES permit for discharges of STORM WATER associated with industrial activity.

3. Dischargers Permitted Pursuant to Federal Clean Water Act Section 402(p)

PERMITTING AUTHORITIES shall include the following requirements in NPDES permits issued pursuant to Federal Clean Water Act section 402(p):

a. MS4 permittees with regulatory authority over PRIORITY LAND USES shall be required to comply with the prohibition of discharge in Chapter IV.A.2.a herein by either of the following measures:

(1) Track 1: Install, operate, and maintain FULL CAPTURE SYSTEMS for all storm drains that captures runoff from the PRIORITY LAND USES in their jurisdictions; or

(2) Track 2: Install, operate, and maintain any combination of FULL CAPTURE SYSTEMS, MULTI-BENEFIT PROJECTS, other TREATMENT CONTROLS, and/or INSTITUTIONAL CONTROLS within either the jurisdiction of the MS4 permittee or within the jurisdiction of the MS4 permittee and contiguous MS4 permittees. The MS4 permittee may determine the locations or land uses within its jurisdiction to implement any combination of controls. The MS4 permittee shall demonstrate that such combination achieves FULL CAPTURE SYSTEM EQUIVALENCY. The MS4 permittee may determine which controls to implement to achieve compliance with the FULL CAPTURE SYSTEM EQUIVALENCY. It is, however, the State Water Board's expectation that the MS4 permittee will elect to install FULL CAPTURE SYSTEMS where such installation is not cost-prohibitive.

b. The California Department of Transportation (Department) shall be required to comply with the prohibition of discharge in Chapter IV.A.2.a herein in all SIGNIFICANT TRASH GENERATING AREAS by installing, operating, and maintaining any combination of FULL CAPTURE SYSTEMS, MULTI-BENEFIT PROJECTS, other TREATMENT CONTROLS, and/or INSTITUTIONAL CONTROLS for all storm drains that captures runoff from SIGNIFICANT TRASH GENERATING AREAS. The Department shall demonstrate that such combination achieves FULL CAPTURE SYSTEM EQUIVALENCY. In furtherance of this provision, the Department and MS4 permittees that are subject to the provisions of Chapter IV.A.3.a herein shall coordinate their efforts to install, operate, and maintain FULL CAPTURE SYSTEMS, MULTI-BENEFIT PROJECTS, other TREATMENT CONTROLS, and/or INSTITUTIONAL CONTROLS in SIGNIFICANT TRASH GENERATING AREAS and/or PRIORITY LAND USES.

c. Dischargers that are subject to NPDES permits for discharges of STORM WATER associated with industrial activity (including construction activity) shall be required to comply with the prohibition of discharge in Chapter IV.A.2.a herein by eliminating TRASH from all STORM WATER and authorized non-STORM WATER discharges consistent with an outright prohibition of the discharge of TRASH contained within the applicable NPDES permit regulating the industrial or construction facility. If the

discharger can satisfactorily demonstrate to the PERMITTING AUTHORITY its inability to comply with the outright prohibition of the discharge of TRASH contained within the applicable NPDES permit, then the PERMITTING AUTHORITY may require the discharger to either:

(1) Install, operate, and maintain FULL CAPTURE SYSTEMS for all storm drains that captures runoff from the facility or site regulated by the NPDES permit; or,

(2) Install, operate, and maintain any combination of FULL CAPTURE SYSTEMS, MULTI-BENEFIT PROJECTS, other TREATMENT CONTROLS, and/or INSTITUTIONAL CONTROLS for the facility or site regulated by the NPDES permit. The discharger shall demonstrate that such combination achieves FULL CAPTURE SYSTEM EQUIVALENCY.

Termination of permit coverage for industrial and construction STORM WATER dischargers shall be conditioned upon the proper operation and maintenance of all controls (i.e., FULL CAPTURE SYSTEMS, other TREATMENT CONTROLS, INSTITUTIONAL CONTROLS, and/or MULTI-BENEFIT PROJECTS) used at their facility(ies).

d. A PERMITTING AUTHORITY may determine that specific land uses or locations (e.g., parks, stadia, schools, campuses, or roads leading to landfills) generate substantial amounts of TRASH. In the event that the PERMITTING AUTHORITY makes that determination, the PERMITTING AUTHORITY may require the MS4 to comply with Chapter IV.A.3.a.1 or Chapter IV.A.3.a.2, as determined by the PERMITTING AUTHORITY, with respect to such land uses or locations.

4. Other Dischargers

A PERMITTING AUTHORITY may require dischargers, described in Chapter IV.A.2.c or Chapter IV.A.2.d, that are not subject to Chapter IV.A.3 herein, to implement any appropriate TRASH controls in areas or facilities that may generate TRASH. Such areas or facilities may include (but are not limited to) high usage campgrounds, picnic areas, beach recreation areas, parks not subject to an MS4 permit, or marinas.

5. Time Schedule

The PERMITTING AUTHORITY shall modify, re-issue, or newly adopt NPDES permits issued pursuant to section 402(p) of the Federal Clean Water Act that are subject to the provisions of Chapter IV.A.3 herein to include requirements consistent with these TRASH PROVISIONS. The PERMITTING AUTHORITIES shall abide by the following time schedules:

a. **NPDES Permits Regulating MS4 Permittees that have Regulatory Authority over Priority Land Uses.**[2]

(1) Within eighteen (18) months of the effective date of these TRASH PROVISIONS, for each permittee, each PERMITTING AUTHORITY shall either:

A. Modify, re-issue, or adopt the applicable MS4 permit to add requirements to implement these TRASH PROVISIONS. The implementing permit shall require written notice from each MS4 permittee stating whether it has elected to comply under Chapter IV.A.3.a.1 (Track 1) or Chapter IV.A.3.a.2 (Track 2) and such notice shall be submitted to the PERMITTING AUTHORITY no later than three (3) months from the effective date of the implementing permit, or for MS4s designated after the effective date of these TRASH PROVISIONS, three (3) months from the effective date of that designation. The implementing permit shall also require that within eighteen (18) months of the effective date of the implementing permit or new designation, MS4 permittees that have elected to comply with Track 2 shall submit an implementation plan to the PERMITTING AUTHORITY. The implementation plan shall describe: (i) the combination of controls selected by the MS4 permittee and the rationale for the selection, (ii) how the combination of controls is designed to achieve FULL CAPTURE SYSTEM EQUIVALENCY, and (iii) how FULL CAPTURE SYSTEM EQUIVALENCY will be demonstrated. The implementation plan is subject to approval by the PERMITTING AUTHORITY.

B. Issue an order pursuant to Water Code section 13267 or 13383 requiring the MS4 permittee to submit, within three (3) months from receipt of the order, written notice to the PERMITTING AUTHORITY stating whether such MS4 permittee will comply

[2] The time schedule requirement in Chapter IV.A.5.a.1 requiring MS4* permittees to elect Chapter IV.A.3.a.1 (Track 1) or Chapter IV.A.3.a.2 (Track 2) does not apply to MS4* permittees subject to the Municipal Regional Stormwater NPDES Permit (MRP) issued by the San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) or the East Contra Costa Municipal Storm Water Permit issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) because those permits already require control requirements substantially equivalent to Track 2. The time schedule requirement in Chapter IV.A.5.a.1 requiring MS4 permittees to submit an implementation plan does not apply to the above permittees if the pertinent PERMITTING AUTHORITY determines that such permittee has already submitted an implementation plan prior to the effective date of the TRASH PROVISIONS that is equivalent to the implementation plan required by Chapter IV.A.5.a.1. In the aforementioned permits, the pertinent PERMITTING AUTHORITY may establish an earlier full compliance deadline than that specified in Chapter IV.A.5.a.3.

with the prohibition of discharge under Chapter IV.A.3.a.1 (Track 1) or Chapter IV.A.3.a.2 (Track 2). For MS4s designated after the effective date of these TRASH PROVISIONS, the order pursuant to Water Code section 13267 or 13383 shall be issued at the time of designation. Within eighteen (18) months of the receipt of the Water Code section 13267 or 13383 order, MS4 permittees that have elected to comply with Track 2 shall submit an implementation plan to the PERMITTING AUTHORITY that describes: (i) the combination of controls selected by the MS4 permittee and the rationale for the selection, (ii) how the combination of controls is designed to achieve FULL CAPTURE SYSTEM EQUIVALENCY, and (iii) how FULL CAPTURE SYSTEM EQUIVALENCY will be demonstrated. The implementation plan is subject to approval by the PERMITTING AUTHORITY.

(2) For MS4 permittees that elect to comply with Chapter IV.A.3.a.1 (Track 1), the implementing permit shall state that full compliance shall occur within ten (10) years of the effective date of the first implementing permit except as specified in Chapter IV.A.5.a.5. The permit shall also require these permittees to demonstrate achievement of interim milestones such as an average of ten percent (10%) of the full capture systems installed every year or other progress to full implementation. In no case may the final compliance date be later than fifteen (15) years from the effective date of these TRASH PROVISIONS.

(3) For MS4 permittees that elect to comply with Chapter IV.A.3.a.2 (Track 2), the implementing permit shall state that full compliance shall occur within ten (10) years of the effective date of the first implementing permit except as specified in Chapter IV.A.5.a.5. The permit shall also require these permittees to demonstrate achievement of interim milestones such as average load reductions of ten percent (10%) per year or other progress to full implementation. In no case may the final compliance date be later than fifteen (15) years from the effective date of these TRASH PROVISIONS.

(4) The implementing permit shall state that for MS4 permittees designated after the effective date of the implementing permit, full compliance shall occur within ten (10) years of the effective date of the designation. The permit shall also require such designations to demonstrate achievement of interim milestones such as average load reductions of ten percent (10%) per year or other progress to full implementation.

(5) Where a PERMITTING AUTHORITY makes a determination pursuant to Chapter IV.A.3.d that a specific land use generates a substantial amount of TRASH, that permitting authority has discretion to determine the time schedule for full compliance. In no case may the final compliance date be later than ten (10) years from the determination.

b. **NPDES Permits Regulating the Department.**

(1) Within eighteen (18) months of the effective date of these TRASH PROVISIONS, the State Water Board shall issue an order pursuant to Water Code section 13267 or 13383 requiring the Department to submit an implementation plan to the Executive Director of the State Water Board that: (i) describes the specific locations of its SIGNIFICANT TRASH GENERATING AREAS, (ii) the combination of controls selected by the Department and the rationale for the selections, and (iii) how it will demonstrate FULL CAPTURE SYSTEM EQUIVALENCY.

(2) The Department must demonstrate full compliance with Chapter IV.A.3.b herein within ten (10) years of the effective date of the first implementing NPDES permit, along with achievements of interim milestones such as average load reductions of ten percent (10%) per year. In no case may the final compliance date be later than fifteen (15) years from the effective date of these TRASH PROVISIONS.

c. **NPDES Permits Regulating the Discharges of Storm Water Associated with Industrial Activity (Including Construction Activity).**

Dischargers that are subject to the provisions of Chapter IV.A.3.c herein must demonstrate full compliance in accordance with the deadlines contained in the first implementing NPDES permits. Such deadlines may not exceed the terms of the first implementing permits.

6. Monitoring and Reporting

The PERMITTING AUTHORITY must include monitoring and reporting requirements in its implementing permits. The following monitoring and reporting provisions are the minimum requirements that must be included within the implementing permits:

a. MS4 permittees that elect to comply with Chapter IV.A.3.a.1 (Track 1) shall provide a report to the applicable PERMITTING AUTHORITY demonstrating installation, operation, maintenance, and the Geographic Information System- (GIS-) mapped location and drainage area served by its full capture systems on an annual basis.

b. MS4 permittees that elect to comply with Chapter IV.A.3.a.2 (Track 2) shall develop and implement monitoring plans that demonstrate the effectiveness of the FULL CAPTURE SYSTEMS, MULTI-BENEFIT PROJECTS, other TREATMENT CONTROLS, and/or INSTITUTIONAL CONTROLS and compliance with FULL CAPTURE SYSTEM EQUIVALENCY. Monitoring reports shall be provided to the applicable PERMITTING AUTHORITY on an annual basis, and shall include GIS-mapped locations and drainage area served for each of the FULL CAPTURE SYSTEMS, MULTI-BENEFIT PROJECTS, other TREATMENT CONTROLS, and/or INSTITUTIONAL CONTROLS installed or utilized by the MS4 permittee. In developing the monitoring reports the MS4* permittee should consider the following questions:

(1) What type of and how many TREATMENT CONTROLS, INSTITUTIONAL CONTROLS, and/or MULTI-BENEFIT PROJECTS have been used and in what locations?

(2) How many FULL CAPTURE SYSTEMS have been installed (if any), in what locations have they been installed, and what is the individual and cumulative area served by them?

(3) What is the effectiveness of the total combination of TREATMENT CONTROLS, INSTITUTIONAL CONTROLS, and MULTI-BENEFIT PROJECTS employed by the MS4 permittee?

(4) Has the amount of TRASH discharged from the MS4 decreased from the previous year? If so, by how much? If not, explain why.

(5) Has the amount of TRASH in the MS4's receiving water(s) decreased from the previous year? If so, by how much? If not, explain why.

c. The Department, as subject to the provisions of Chapter IV.A.3.b, shall develop and implement monitoring plans that demonstrate the effectiveness of the controls and compliance with FULL CAPTURE SYSTEM EQUIVALENCY. Monitoring reports shall be provided to the State Water Board on an annual basis, and shall include GIS-mapped locations and drainage area served for each of the FULL CAPTURE SYSTEMS, MULTI-BENEFIT PROJECTS, other TREATMENT CONTROLS, and/or INSTITUTIONAL CONTROLS installed or utilized by the Department. In developing the monitoring report, the Department should consider the following questions:

(1) What type of and how many TREATMENT CONTROLS, INSTITUTIONAL CONTROLS, and/or MULTI-BENEFIT PROJECTS have been used and in what locations?

(2) How many FULL CAPTURE SYSTEMS have been installed (if any), in what locations have they been installed, and what is the individual and cumulative area served by them?

(3) What is the effectiveness of the total combination of TREATMENT CONTROLS, INSTITUTIONAL CONTROLS, and MULTI-BENEFIT PROJECTS employed by the Department?

(4) Has the amount of TRASH discharged from the Department's MS4 decreased from the previous year? If so, by how much? If not, explain why.

(5) Has the amount of TRASH in the receiving waters decreased from the previous year? If so, by how much? If not, explain why.

d. Dischargers that are subject to the provisions of Chapter IV.A.3.c herein shall be required to report the measures used to comply with Chapter IV.A.3.c.

Text of the final Part 1 Trash Provisions proposed to Appendix A: Glossary of the ISWEBE Plan

FULL CAPTURE SYSTEM: A TREATMENT CONTROL, or series of TREATMENT CONTROLS, including but not limited to, a MULTI-BENEFIT PROJECT or a LOWIMPACT DEVELOPMENT CONTROL that traps all particles that are 5 mm or greater, and has a design treatment capacity that is either: a) of not less than the peak flow rate, Q, resulting from a one-year, one-hour, storm in the subdrainage area, or b) appropriately sized to, and designed to carry at least the same flows as, the corresponding storm drain.

[Rational equation is used to compute the peak flow rate: $Q = C \bullet I \bullet A$, where Q = design flow rate (cubic feet per second, cfs); C = runoff coefficient (dimensionless); I = design rainfall intensity (inches per hour, as determined per the rainfall isohyetal map specific to each region, and A = subdrainage area (acres).]

Prior to installation, FULL CAPTURE SYSTEMS must be certified by the Executive Director, or designee, of the State Water Board. Uncertified FULL CAPTURE SYSTEMS will not satisfy the requirements of these TRASH PROVISIONS. To request certification, a permittee shall submit a certification request letter that includes all relevant supporting documentation to the State Water Board's Executive Director. The Executive Director, or designee, shall issue a written determination approving or denying the certification of the proposed FULL CAPTURE SYSTEM or conditions of approval, including a schedule to review and reconsider the certification. FULL CAPTURE SYSTEMS certified by the Los Angeles Regional Water Board prior to the effective date of these TRASH PROVISIONS and FULL CAPTURE SYSTEMS listed in Appendix I of the Bay Area-wide Trash Capture Demonstration Project, Final Project Report (May 8, 2014) will satisfy the requirements of these TRASH PROVISIONS,

unless the Executive Director, or designee, of the State Water Board determines otherwise.

FULL CAPTURE SYSTEM EQUIVALENCY: The TRASH load that would be reduced if FULL CAPTURE SYSTEMS were installed, operated, and maintained for all storm drains that capture runoff from the relevant areas of land (PRIORITY LAND USES, SIGNIFICANT TRASH GENERATING AREAS, facilities or sites regulated by NPDES permits for discharges of STORM WATER associated with industrial activity, or specific land uses or areas that generate substantial amounts of TRASH, as applicable). The FULL CAPTURE SYSTEM EQUIVALENCY is a TRASH load reduction target that the permittee quantifies by using an approach, and technically acceptable and defensible assumptions and methods for applying the approach, subject to the approval of PERMITTING AUTHORITY. Examples of such approaches include, but are not limited to, the following:

(1) Trash Capture Rate Approach. Directly measure or otherwise determine the amount of TRASH captured by FULL CAPTURE SYSTEMS for representative samples of all similar types of land uses, facilities, or areas within the relevant areas of land over time to identify specific TRASH capture rates. Apply each specific TRASH capture rate across all similar types of land uses, facilities, or areas to determine FULL CAPTURE SYSTEM EQUIVALENCY. TRASH capture rates may be determined either through a pilot study or literature review. FULL CAPTURE SYSTEMS selected to evaluate TRASH capture rates may cover entire types of land uses, facilities, or areas, or a representative subset of types of land uses, facilities, or areas. With this approach, FULL CAPTURE SYSTEM EQUIVALENCY is the sum of the products of each type of land use, facility, or area multiplied by TRASH capture rates for that type of land use, facility, or area.

(2) Reference Approach. Determine the amount of TRASH in a reference receiving water in a reference watershed where FULL CAPTURE SYSTEMS have been installed for all storm drains that capture runoff from all relevant areas of land. The reference watershed must be comprised of similar types and extent of sources of TRASH and land uses (including PRIORITY LAND USES and all other land uses), facilities, or areas as the permittee's watershed. With this approach, FULL CAPTURE SYSTEM EQUIVALENCY would be demonstrated when the amount of TRASH in the receiving water is equivalent to the amount of TRASH in the reference receiving water.

INSTITUTIONAL CONTROLS: Non-structural best management practices (i.e., no structures are involved) that may include, but not be limited to, street sweeping, sidewalk TRASH bins, collection of the TRASH, anti-litter educational and outreach programs, producer take-back for packaging, and ordinances.

LOW-IMPACT DEVELOPMENT CONTROLS: TREATMENT CONTROLS that employ natural and constructed features that reduce the rate of STORM WATER runoff, filter out pollutants, facilitate STORM WATER storage onsite, infiltrate STORM WATER into

the ground to replenish groundwater supplies, or improve the quality of receiving groundwater and surface water. (See Water Code § 10564.)

MULTI-BENEFIT PROJECT: A TREATMENT CONTROL project designed to achieve any of the benefits set forth in section 10562, subdivision (d) of the Water Code. Examples include projects designed to: infiltrate, recharge or store STORM WATER for beneficial reuse; develop or enhance habitat and open space through STORM WATER and non-STORM WATER management; and/or reduce STORM WATER and non-STORM WATER runoff volume.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): Same meaning set forth in 40 Code of Federal Regulations section 122.26(b)(8).

PREPRODUCTION PLASTIC: Same meaning set forth in section 13367(a) of the Water Code.

PRIORITY LAND USES: Those developed sites, facilities, or land uses (i.e., not simply zoned land uses) within the MS4 permittee's jurisdiction from which discharges of TRASH are regulated by these TRASH PROVISIONS as follows:

(1) High-density residential: all land uses with at least ten (10) developed dwelling units/acre.
(2) Industrial: land uses where the primary activities on the developed parcels involve product manufacture, storage, or distribution (e.g., manufacturing businesses, warehouses, equipment storage lots, junkyards, wholesale businesses, distribution centers, or building material sales yards).
(3) Commercial: land uses where the primary activities on the developed parcels involve the sale or transfer of goods or services to consumers (e.g., business or professional buildings, shops, restaurants, theaters, vehicle repair shops, etc.)
(4) Mixed urban: land uses where high-density residential, industrial, and/or commercial land uses predominate collectively (i.e., are intermixed).
(5) Public transportation stations: facilities or sites where public transit agencies' vehicles load or unload passengers or goods (e.g., bus stations and stops).

Equivalent alternate land uses: An MS4 permittee with regulatory authority over PRIORITY LAND USES may issue a request to the applicable PERMITTING AUTHORITY that the MS4 permittee be allowed to substitute one or more land uses identified above with alternate land uses within the MS4 permittee's jurisdiction that generates rates of TRASH that is equivalent to or greater than the PRIORITY LAND USE(S) being substituted. The land use area requested to substitute for a PRIORITY LAND USE need not be an acre-for-acre substitution but may involve one or more PRIORITY LAND USES, or a fraction of a PRIORITY LAND USE, or both, provided the total TRASH generated in the equivalent alternative land use is equivalent to or greater than the total TRASH generated from the PRIORITY LAND USE(S) for which substitution is requested. Comparative TRASH generation rates shall be established through the reporting of quantification measures such as street sweeping and catch basin cleanup records; mapping; visual trash presence surveys, such as the "Keep America

Beautiful Visible Litter Survey"; or other information as required by the PERMITTING AUTHORITY.

PERMITTING AUTHORITY: The State Water Board or Regional Water Board, whichever issues the permit.

SIGNIFICANT TRASH GENERATING AREAS: All locations or facilities within the Department's jurisdiction where TRASH accumulates in substantial amounts, such as:

(1) Highway on- and off-ramps in high density residential, commercial, and industrial land uses (as such land uses are defined under PRIORITY LAND USES herein).
(2) Rest areas and park-and-rides.
(3) State highways in commercial and industrial land uses (as such land uses are defined under PRIORITY LAND USES herein).
(4) Mainline highway segments to be identified by the Department through pilot studies and/or surveys.

STORM WATER: Same meaning set forth in 40 Code of Federal Regulations section 122.26(b)(13) and 55 Federal Register 47990, 47995 (Nov. 16, 1990).

TREATMENT CONTROLS: Structural best management practices to either (a) remove pollutants and/or solids from STORM WATER runoff, wastewater, or effluent, or (b) capture, infiltrate or reuse STORM WATER runoff, wastewater, or effluent. TREATMENT CONTROLS include FULL CAPTURE SYSTEMS and LOW-IMPACT DEVELOPMENT CONTROLS.

TRASH: All improperly discarded solid material from any production, manufacturing, or processing operation including, but not limited to, products, product packaging, or containers constructed of plastic, steel, aluminum, glass, paper, or other synthetic or natural materials.

TRASH PROVISIONS: The water quality objective for TRASH, as well as the prohibition of discharge and implementation requirements set forth in Chapter IV.A herein.

APPENDIX F: RESPONSE TO PUBLIC COMMENTS ON THE DRAFT STAFF REPORT, INCLUDING THE DRAFT SUBSTITUTE ENVIRONMENTAL DOCUMENTATION AND DRAFT TRASH AMENDMENTS

Comment Letter	Commenter(s)	Submitted by
Comment Letters Submitted by the August 5, 2014 Comment Deadline		
1	American Chemistry Council	Tim Shestek
2	American Cleaning Institute Association of Postconsumer Plastic Recyclers Biodegradable Products Institute Building Owners and Managers Association of California California Business Properties Association California Chamber of Commerce California Manufacturing Technology Association California Restaurants Association California Retailers Association Consumer Specialty Products Association International Council of Shopping Centers Los Angeles Area Chamber of Commerce Los Angeles County Business Federation NAIOP of California, the Commercial Real Estate Development Association National Federation of Independent Business NatureWorks Pactiv SPI, the Plastics Industry Trade Association Valley Industry & Commerce Association Western Plastics Association	Cliff Moriyama

3	Association of Compost Producers	Dan Noble
4	Bay Area Stormwater Management Agencies Association	Matt Fabry James Scanlin Tom Dalziel Kevin Cullen Terri Fashing Jamison Crosby Adam Olivieri Pat Gothard Lance Barnett
5	California Building Industry Association	Richard Lyon
6	California Coastkeeper Alliance Heal the Bay 7th Generation Advisors Clean Water Action Algalita Natural Resources Defense Council The Surfrider Foundation Sierra Club California Team marine Turtle Island Restoration Network Environment California WeTap Planning and Conservation League Endangered Habitats League Coastal Environmental Rights Foundation Azul California Sportfishing Protection Alliance The Lake Merritt Institute	Sean Bothwell Kirsten James Leslie Tamminen Miriam Gordon Marieta Francis Karen Garrison Angela Howe Annie Pham Benjamin Kay Todd Steiner Nathan Weaver Evelyn Wendel Rebecca Crebbin-Coates Dan Silver Livia Borak Marce Gutierrez Bill Jennings

	The Center for Oceanic Awareness, Research, and Education WILDCOAST Friends of Harbors, Beaches, and Parks Klamath-Siskiyou Wildlife Center Russian River Watershed Protection Committee Plastic Pollution Coalition Earth Law Center CLEAN South Bay California Coastal Protection Network Californians Against Waste Center for Biological Diversity 5 Gyres Coast Action Group	Dr. Richard Bailey Christopher Chin Zach Plopper Jean Watt Joseph Vaile Brenda Adelman Dianna Cohen Linda Sheehan Trish Mulvey Susan Jordan Sue Vang Emily Jeffers Stiv Wilson Alan Levine
7	California Coastkeeper Alliance	Sean Bothwell
8	California Department of Transportation	G. Scott McGowen
9	California Restaurant Association California Retailers Association	Kara Bush Mandy Lee
10	California Stormwater Quality Association	Gerhardt Hubner
11	Calleguas Creek Watershed Stakeholders	Lucia McGovern
12	Cities of Alhambra, Bell Gardens, Burbank, Calabasas, Commerce, Downey, Glendale, La Canada Flintridge, Monrovia, Monterey Park, Paramount, Pico Rivera, Signal Hill, South Gate, South Pasadena, and Vernon	Steve Myrter
13	City of Burbank	Daniel Rynn

14	City of Camarillo	Bruce Feng
15	City of Capitola	Steven Jesberg
16	City of Chula Vista	Khosro Aminpour
17	City of Cupertino	Timm Borden
18	City of Del Mar	Mikhail Ogawa
19	City of Encinitas	Glenn Pruim
20	City of Escondido	Edward Domingue
21	City of Folsom	David Miller
22	City of Irvine	Eric Tolles
23	City of La Mesa	Brian Philbin
24	City of Lodi	F. Wally Sandelin
25	City of National City	Stephen Manganiello
26	City of Orange	John Sibley
27	City of Palo Alto	Ken Torke
28	City of Roseville	Susan Rohan
29	City of Sacramento	Sherill Huun
30	City of San Diego, Transportation & Storm Water Department	Drew Kleis

31	City of San Jose	Napp Fukuda
32	City of Santa Clarita	Heather Merenda
33	City of Santa Maria	Richard Sweet
34	City of Santa Rosa	David Guhin
35	City of Santee	Pedro Orso-Delgado
36	City of Signal Hill	Kenneth Farfsing
37	City of South Lake Tahoe	Ray Jarvis
38	City of Stockton County of San Joaquin	C. Mel Lytle Gerardo Dominguez
39	City of Sunnyvale	John Stufflebean
40	City of Walnut Creek	Heather Ballenger
41	Construction Industry Coalition on Water Quality	Mark Grey
42	Contech Engineered Solutions	Vaikko Allen II
43	County of El Dorado	Brendan Ferry
44	County of Orange and the Orange County Flood Control District	Chris Crompton
45	County of San Diego	Cid Tesoro
46	County of Santa Barbara Public Works Department	Joy Hufschmid

47	County of Yuba	Michael Lee
48	Dart Container Corporation of California	Jonathan Choi
49	Downey Brand Attorneys LLP on behalf of the Port of Stockton	Melissa Thorme
50	General Public	Dana Booth
51	General Public	Janet Cox
52	General Public	Joyce Dillard
53	Marin County Stormwater Pollution Prevention Program on behalf of its local government member agencies: Belvedere, Corte Madera, County of Marin, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, Sausalito, and Tiburon	Terri Fashing
54	Merced County	Dana Hertfelder
55	Napa County Flood Control and Water Conservation District	Philip Miller
56	Partnership for Sound Science in Environmental Policy	Craig Johns
57	Riverside County Flood Control and Water Conservation District	Jason Uhley
58	Roscoe Moss Company	Kevin McGillicuddy
59	Sacramento Stormwater Quality Partnership	Dana Booth

60	San Diego Unified Port District	Jason Giffen
61	San Francisco Bay Area Rapid Transit District	Gary Jensen
62	San Luis Obispo County Department of Public Works	Mark Hutchinson
63	Santa Clara Valley Urban Runoff Pollution Prevention Program	Adam Olivieri
64	Save the Bay	David Lewis
65	Save The Plastic Bag Coalition	Stephen Joseph
66	Solano County Department of Resource Management	Nathan Newell
67	SPI, The Plastics Industry Trade Association	Jane Adams
68	Statewide Stormwater Coalition	Susan Rohan Tricia Wotan Paul Saini David Mohlenbrok Jason Rhine Robert Ketley Greg Meyer Staci Heaton Edward Kreins John Presleigh Ken Grehm Maria Hurtado Mark Hutchinson Stephen Schwabauer

69	StopWaste	Debra Kaufman
70	Surfrider Foundation	Angela Howe
71	Surfrider Foundation Individual Members (This comment letter is a copy of the same form letter or of similar text that the SWRCB received from other individuals that totaled approx.~1041)	Sarah Spinuzzi
72	Union Pacific Railroad	Liisa Stark
73	United States Environmental Protection Agency, Region 9	John Kemmerer
74	University of California	Robert Charbonneau
75	Ventura Countywide Stormwater Quality Management Program	Gerhardt Hubner
76	Water Resources Management	Roger James
Comment Letters Submitted after the August 5, 2014 Comment Deadline		
77	California Coastal Commission	Charles Lester
78	California Department of Transportation – Letter Dated November 7, 2014 letter from G. Scott McGowen to Diana Messina	G. Scott McGowen
79	Contra Costa Clean Water Program	Beth A. Baldwin

Comment Letter	Comment	Recommended Language	Response
1 General Response	The American Chemistry Council's letter includes a number of reasons why they oppose "regulatory source controls," or specifically, product bans. These objections include generally include the following: • Regulatory source controls will result in a defacto statewide ban on bags and food containers. • Economic impact of product bans is significant and should be evaluated. • Product bans are ineffective. • Other controls should be incentivized over product bans. • The State Water Board lacks authority to implement product bans through MS4 permits. • Neither the Clean Water Act, nor related guidance documents authorize product bans. • Product bans are unconstitutional.		Regulatory source control was included in the proposed amendment as one of several treatment controls that could be utilized by MS4 permittees with regulatory control over priority land uses to comply with the prohibition of trash under Track 2. However, subsequent to the State Water Board's public workshop and the public hearing on the proposed Trash Amendments, Senate Bill (SB) 270 (2014 Stats. Ch. 850) was enacted. That new law enacts a state-wide plastic bag carry-out ban pertaining to grocery stores and pharmacies that have a specified amount of sales in dollars or retail floor space, which goes into effect July 1, 2015, and imposes the same ban on convenience stores and liquor stores a year later. (See Final Staff Report, at Section 6.17 (discussing Regulatory Source Controls and the enactment of SB 270).) Subsequent to the enactment of SB 270, opponents qualified a referendum on the law, delaying its July 1, 2015 effective date until the November 2016 elections, which would require a majority of votes for the referendum to succeed. As discussed in greater detail in the Final Staff Report (at Section 6.17) the new law will implement the product single-use plastic bag ban, which was generally the type of regulatory source control contemplated by the State Water Board and discussed with the public with regard to consideration of the time extension option. (See Final Staff Report at Section 6.15 (discussing the time extension issue).) Single use plastic bag bans are not anticipated to be enacted as ordinances in response to the Trash Amendments because (1) Senate Bill 270 has already enacted a mandatory statewide single use plastic bag ban, (2) the upcoming referendum on Senate Bill 270 won't succeed without a statewide majority vote, and (3) approximately 140 cities and counties have already adopted similar bans, which reflects a significant level of popular support for such bans. If, however, a permittee were to adopt a single use plastic bag ban or other ban as a means of complying with Track 2, it is expected that any such bans

Comment Letter	Comment	Recommended Language	Response
			would be enacted in a manner similar to those previously adopted, in that they would not result in product substitutions or any significant environmental impacts. As with previously-adopted bans, the impacts of any new bans would be evaluated by the permittee. The courts have already upheld the use of negative declarations or categorical exemptions from CEQA for single use plastic bag bans. As a result, this Final Staff Report does not provide an environmental analysis of a ban on single use plastic bags. As a result of the above-noted revisions to the Trash Amendments, many of the objections contained in the American Chemistry Council letter (as summarized in Comment 1 and all relating to product bans as a method to comply with Track 2 and the time extension) are no longer applicable to the proposed final Trash Amendments. Therefore, the State Water Board will not respond further to commenter's arguments in support of such objections.
1.1	Authorizing and incentivizing product bans or other regulatory source controls as a means to comply with the State's water quality control plan is arbitrary, capricious, and unsupported by the record because product bans are ineffective in reducing trash loads.		Regulatory source controls, including product bans, and the contemplated time extensions allowed for implementation of regulatory source controls, have been omitted from the final proposed Trash Amendments. See the General Response to Comment 1. However, the Trash Amendments are focused on effective methods to reduce the discharge of trash to receiving water bodies. Specifically, the monitoring and reporting requirements for Track 2 direct that monitoring plans demonstrate the effectiveness of controls and compliance with full capture system equivalency. (Ocean Plan Amendment III.L.4.b; Part I ISWEBE IV.A.5.b.) Full capture system equivalency is the trash load that would be reduced if Track 1 was implemented. (Ocean Plan Amendment and Part I ISWEBE, Definition, "Full capture system equivalency.") Thus, the Trash Amendments are clear and support that the treatment and institutional controls that are used by a permittee to comply with the prohibition of discharge for trash are effective at reducing trash

Comment Letter	Comment	Recommended Language	Response
			loads to receiving water bodies.
1.2	Authorizing and incentivizing municipalities to ban useful products as part of an MS4 NPDES permit would violate the Clean Water Act and is not authorized under its provisions. NPDES permit conditions must have a direct nexus to the discharge of a pollutant. By contrast, product bans are ordinances that would regulate the upstream sale or distribution of a useful product that is used for its lawful, intended purpose. Congress did not expressly authorize product bans under the MS4 provisions, and it is unreasonable to infer that Congress implicitly authorized environmental agencies to use the CWA to regulate broad swaths of the U.S. economy in the name of pollution control far upstream from any potential discharges.		Regulatory source controls, including product bans, and the contemplated time extensions allowed for implementation of regulatory source controls, have been omitted from the final proposed Trash Amendments. See the General Response to Comment 1. Additionally, the State Water Board is not authorizing municipalities to undertake any action they are not already authorized to take. Further, while Congress clearly did not expressly authorize product bans under the MS4 provisions, with Clean Water Act 402, subsection (p), Congress expressly authorized the State to require controls in permits for discharges associated with MS4 to reduce the discharge of pollutants to the maximum extent practicable, including but not limited to management practices, control techniques, and any other provisions the State determines appropriate for the control of such pollutants. The MS4 permittee has the discretion to elect whether, and what extent, it will establish full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls within its jurisdiction to comply with the prohibition of trash and the provisions of the Trash Amendments (Ocean Plan Amendment at III.L.2.a; Part I ISWEBE at IV.A.3.a).
1.3	The Proposed Amendments lack consideration of economic impacts and violate the California Environmental Quality Act. The Draft Staff Report and Proposed Amendments make clear that bans on plastic bags and polystyrene foam food containers will frequently be included in MS4 permits.		See General Response to Comment 1. “Regulatory source controls” was included in the proposed Trash Amendments as one of the several treatment controls that could be utilized by MS4 permittees with regulatory authority over priority land uses to comply with the prohibition of trash under Track 2. “Regulatory source controls” have been removed from the Trash Amendments. Similar to the prior draft, however, the proposed Final Staff

Comment Letter	Comment	Recommended Language	Response
	However, the SED does not include product bans as a reasonably foreseeable compliance option and, therefore, does not evaluate their environmental impacts or those of alternative approaches. This error is not harmless, as substitute products such as paper bags and bio-plastics have very significant environmental impacts.		Report retains "institutional controls" as a permissible method an MS4 permittee could employ to comply with Track 2. The proposed final Trash Amendments' definition for "institutional controls" includes "ordinances": Institutional controls are non-structural best management practices (i.e., no structures are involved) that may include, but not be limited to, street sweeping, sidewalk trash bins, collection of the trash, anti-litter educational and outreach programs, producer take-back for packaging, and ordinances. Pursuant to that definition, a permittee's enactment of an ordinance remains an allowable type of institutional control which may be implemented to comply with Track 2, even though the proposed final Trash Amendments removed "regulatory source controls" as a permissible method. Yet, any such ordinance likely would not involve a product ban, particularly those involving substitution of product. Contrary to ordinances or laws which prohibit distribution of plastic carry-out bags, which are typically accompanied with requirements and/or incentives to utilize reusable bags to avoid a product-substitution effect (such as SB 270), other types of product bans enacted by ordinance may not result in reduced trash generation if such product substitution would be discarded in the same manner as the banned item. Any such product ban would not reduce trash and would not be an allowable Track 2 compliance method. (See Final Staff Report at Section 5.0, 5.2.5, and 6.17; see also Final Staff Report at App. A-18 to A-20 ("Current Efforts to Address Concerns Related to Trash in California Waters").) Therefore, the proposed Final Staff Report does not provide an environmental or economic analysis of ordinances banning products because such bans are not a reasonably foreseeable method with which a permittee could comply with the trash prohibition. It is possible that an MS4 permittee's adoption of other types of ordinances (e.g., anti-litter laws or bans on

Comment Letter	Comment	Recommended Language	Response
			smoking), may still be a reasonably foreseeable method of compliance, but those types of ordinances are not expected to cause potential environmental impacts through use of replacement products or through other indirect impacts. The other types of institutional controls (e.g., street sweeping, sidewalk trash bins, collection of the trash, etc.) available for a permittee to comply with the trash prohibition under Track 2 are evaluated in Section 5.2 and in Section 6 of the proposed final Staff Report.
1.4	By attempting to use the regulatory source control option to single out plastic and polystyrene products for local bans under the regulatory source control the proposal raises several constitutional concerns. The proposal would violate the dormant Commerce Clause by placing a significant economic burden on interstate commerce without providing any local benefit at all. The proposal would also violate the Equal Protection clause because there is no rational basis for singling out plastic bags and polystyrene foam food containers for bans when those bans would be ineffective. Finally, by failing to provide any standard to distinguish between effective and ineffective regulatory source controls, the Proposed Amendments violate the Due Process Clause and are void for vagueness. The Board offers no guidance to permit writers on how to distinguish between potentially effective ordinances that could		See the General Response to Comment 1 and Responses to Comments 1.2 and 1.3. Based on the revisions and discussions noted therein, commenter's underlying arguments are not applicable to the Trash Amendments which will be considered for adoption by the Board. Even if the Trash Amendment included regulatory source control or product bans as a permissible method to comply with Track 2, however, and SB 270 was not in effect, such proposal does not raise objections pursuant to equal protection, due process, and (dormant) commerce clauses of the United States Constitution. First, to be clear, the State Water Board would not be establishing such ban by ordinance, a permittee would be enacting it pursuant its applicable authority to do so. Second, the State Water Board's Trash Amendments are authorized by federal law and state law. Any proposal that would qualify under Track 2 an MS4's enactment of a product ban would not treat similarly situated persons or entities differently but would be controlling trash and, therefore, does not raise equal protection concerns. Such a ban would have a rational purpose of controlling trash to comply under Track 2. At this time, however, and as discussed in the General Response and Response to Comment 1.3, the State Water Board does not reasonably foresee an MS4's establishment of a product ban as an ordinance that control trash under Track 2.

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	theoretically be included in a NPDES permit and those that are ineffective and should be excluded from the program.		The dormant commerce clause of the United States Constitution is implicated where a state law discriminates against interstate commerce in favor of intra-state commerce (i.e., an implied substantive restriction on permissible state regulation of interstate commerce). No violation of the dormant commerce clause exists where the state law treats out-of-state commerce the same as in-state-commerce. If a permittee were to adopt an ordinance to ban a product, that ordinance would apply whether the manufacturer was located in-state or out-of-state. Due process of law is violated where a statute, regulation, or ordinance prohibits or requires the doing of an act which is so vague that a person must guess as its meaning. The Trash Amendments neither compel nor forbid an MS4 to establish specific trash treatment controls. "Regulatory source controls" was included in the proposed Trash Amendments as one of the several treatment controls that could be utilized by MS4 permittees with regulatory authority over priority land uses to comply with the prohibition of trash under Track 2. "Regulatory source controls" have been removed from the Trash Amendments. Therefore, permit writers would not be making the determination of the effectiveness of a "regulatory source controls" for Track 2. Excluding regulatory source controls, any combination of treatment and institutional controls that are used to implement Track 2, permittees must demonstrate that the combination of the controls achieve full capture system equivalency. (See Ocean Plan Amendments III.L.2.a.2; Part I ISWEBE Plan IV.A.3.a.2; Definition of "full capture system equivalency.") Thus the combination of controls that are implemented must reduce the discharge of trash to the same load that would be reduced if full capture systems were installed, operated, and maintained for all storm drains that capture runoff from priority land uses. Full capture system equivalency must be demonstrated through the monitoring plans. (See Ocean Plan Amendments III.L.5.b; Part I ISWEBE Plan IV.A.6.b.)

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			Additionally, see Response to Comment 6.2.
2.1	The Trash Amendments are aimed to reduce trash. The Commenters fail to see how a local ordinance without any corresponding restriction on likely replacement products will lead to reduction of trash. Rewarding the adoption of local ordinance that restrict the use of a certain material type or specific type of packaging is inappropriate and legally indefensible. Full capture systems as outlined under the "Track 1" compliance option appear to offer the most effective solution in preventing all forms of trash from entering the state's waterways.		Please see General Response to Comment Letter 1 and Comment 1.2.
2.2	Local Ban ordinances can have both economic and environmental impacts that should not be overlooked by the board.		Please see General Response to Comment Letter 1 Response and Comment 1.2.
3.1	Extend the “Comment Period” for a few months and develop a series of collaborative meetings so that the compost industry working with local jurisdictions, the recycling industry, CalRecycle and the Water Board can have sufficient time to understand and provide clear and compelling input into the Trash Amendments. Since it took over a year to draft these amendments in isolation from industry, communities and other state agencies, a few more months to craft a better product seems well		The proposed Trash Amendments have been in development since 2010 and have involved extensive stakeholder input from the multi-year efforts of the Public Advisory Group and the Focused Stakeholder Meetings in the spring of 2013. Additionally, State Water Board staff considered the comments from all stakeholders at the public workshop on July 16, 2014, public hearing on August 5, 2014, and 78 comment letters. The goal is to create Trash Amendments that lead to reduction of trash in state waters and enhances creativity and collaboration between stakeholders. (See Final Staff Report Section 2.14.)

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	worth the time, to achieve a better, more acceptable result.		
3.2	Define and harmonize any of the alternative definitions related to the Trash Amendments, e.g. “trash,” “waste”, “litter”, etc.		The definition of “trash” proposed in the Trash Amendments harmonizes the definition of "waste" from the California Water Code and the definition of "litter" from the California Government Code. Please refer to Section 4.1 the proposed Final Staff Report for additional discussion.
3.3	To date the Water Board hasn’t engaged with the organics industry, nor directly with CalRecycle, on the specific crafting of these Trash Amendments. The Water Board would be well served to engage with the organics and general recycling industry directly on this issue, prior to promulgating these Trash Amendments.		The State Water Board has engaged with CalRecycle on the crafting of the Trash Amendments, and regrets that the organics industry was not part of the focused stakeholder meetings. The State Water Board is encouraged that the organics industry was able to submit a comment letter and wishes to work with the organics industry in the implementation of the Trash Amendments.
3.4	Receive input that gathers the best industry, community and state agency thinking regarding the key elements of Trash Amendment ideas on how to control trash that ends up in the water ways, emanating from residential, public, commercial, industrial and agricultural lands.		Please see response to Comment 3.1.
4.1	Consistency between Prohibition of Discharge and Water Quality Objective - In accordance with the California Water Code, the State Water Board’s proposed Water Quality Objective (WQO) for trash correctly recognizes that trash in discharges in “amounts that adversely affect beneficial uses or cause nuisance” should be		See Response to Comment 10.9. The Trash Amendments are structured to establish a narrative water quality objective for trash and a prohibition of discharge of trash. The narrative water quality objective would be implemented through the prohibition and conditional prohibition of discharge. In the case of BASMAA and its member agencies, implementation is though a conditional prohibition. The Trash Amendments specify that that permittees in full

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	regulated. However, as drafted, the State Water Board's proposed Prohibitions of Discharges for Trash do not include language corresponding to this aspect of the WQO and could be misinterpreted to apply literally to any and all trash. This is inconsistent with the Water Code's charge that State Water Quality Control Plans and implementation requirements be economically reasonable and technically feasible and has potentially significant resource demands and adverse enforcement implications for the regulated community. Recommendation - The State Water Board should provide consistency between the WQO and prohibitions by revising the trash prohibitions to include language that qualify that the trash discharges being prohibited and controlled by the specified implementation requirements, is the trash "in amounts that cause impairment of beneficial uses or conditions of nuisance in receiving waters."		compliance with the trash-specific permit terms for the control of trash will then be deemed in compliance with prohibition of discharge. (Ocean Plan Amendment at III.I.6.a; Part I ISWEBE at IV.A.2.a.) The Trash Amendments do not specify that compliance with the conditional prohibition is equivalent to compliance with effluent limitations for the water quality objective for trash. The conditional prohibition includes consideration of feasibility by focusing trash on high trash generating areas and multiple compliance tracks. (Staff Report at Sections 2.3 and 2.4.1 (pp. 13-15).)
4.2	The State Water Board should allow all Phase I Section 402(p) permittees under the jurisdiction of the San Francisco Bay Regional Water Board to effectuate compliance with the trash prohibitions and address the WQO for trash through the trash-specific reduction requirements in the MRP and its successor	Track 3: For applicable MS4* permittees under the jurisdiction of the Municipal Regional Permit (MRP) issued by the San Francisco Bay Regional Water Quality Control Board, install, operate, maintain any	The State Water Board worked with San Francisco Bay Water Board staff to craft and ensure that Track 2 language would be compatible with existing and future San Francisco Bay Municipal Regional Stormwater Permit (MRP) conditions. (See, for example, Response to Comment 4.3.) As the trash control provisions exist in the MRP, they represent a Track 2 approach that will likely be replicated by other MS4 Phase I permittees across California, specifically with the combination of treatment and institutional controls and mapping for trash

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	provisions that are already under discussion. This recommendation is consistent with recommendations presented by nongovernmental organizations and other stakeholders at the State Water Board's July 16th Trash Policy Workshop, and effectively would allow applicable Bay Area permittees to continue implementation consistent with the MRP. The State Water Board should revise the amendments to provide an alternative (Track 3) to allow for compliance to be achieved via continued implementation of the trash-specific provisions in the MRP.	combination of full capture systems*, other treatment controls*, institutional controls*, and/or multi-benefit projects* within either the jurisdiction of the MS4* permittee or within the jurisdiction of the MS4* permittee and contiguous MRP permittees in a phased and prioritized approach that focuses on high trash generation areas that contribute Trash* to storm drains in their jurisdiction as further specified in the trash-specific provisions of the MRP and implementation plans developed by the permittees thereunder. This provision shall apply to MS4* permits that are successors to the current MRP if the San Francisco Bay Regional Water Board finds in adopting the successor permit that the trash specific provisions of such successor permits are consistent with the requirements of the	generation areas. The MRP time schedule and reporting requirements, specifically the Short Term and Long Term Trash Reduction Plans, should be compatible within the framework of the Trash Amendments. As such, the State Water Board does not believe a creation of a Track 3 for MRP permittees is necessary. The proposed Trash Amendments were modified to specify that MRP permittees are exempt from electing Track 1 or Track 2 as the trash control requirements are substantially equivalent to Track 2. Additionally to reduce duplicative efforts for MRP permittees, the proposed final Trash Amendments include a provision to allow the San Francisco Bay Water Board to determine if the implementation plan a MRP permittee has submitted is equivalent to the implementation plan required by the Trash Amendments. (See, for example, Ocean Plan Amendment fn. 2; Part I ISWEBE fn. 2.) Finally, the final compliance date is being revised in recognition of the intensive efforts taken by the MRP permittees since 2009. (Ocean Plan Amendment at fn. 2; Part I ISWEBE at fn. 2.)

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		Trash* Prohibition implementation requirements set forth herein, including the time schedules set forth in Sections 4[or 5].a.(3) and (4) and Section 5 [or 6] below and appropriate monitoring and reporting provisions.	
4.3	Immediately grandfather into the certification process those devices previously “approved” by San Francisco Bay Regional Water Board staff as full capture systems that are installed or in the process of being installed in the Bay Area prior to adoption of the amendments, or immediately certify all devices “approved” by San Francisco Bay Regional Water Board staff. Additionally, revise the amendments to indicate that any treatment device that meets the stated criteria fulfills the certification requirement, regardless of whether a device has or has not been certified by the State Water Board.		The State Water Board agrees that full capture systems previously "approved" by the San Francisco Bay Water Board staff should fulfill the certification requirement of a full capture system in the Trash Amendments. It is not the intent for installed and properly operating full capture systems to be removed as a result of the Trash Amendments. Resources should be efficiently directed towards effective treatment controls to capture and remove trash. The proposed final Trash Amendments language for the definition of “full capture system” has been modified to specify that "full capture systems listed in Appendix I of the Bay Area-wide Trash Capture Demonstration Project, Final Project Report (May 8, 2014)" prior to the effective date of the Trash Amendments, will satisfy the requirement of the Trash Amendments. These full capture systems can be found at: http://www.sfestuary.org/wp-content/uploads/2014/05/AppendixI.DevicesOffered.pdf

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4.4	Revise the definition of "high trash generating areas" to allow permittees the option of identifying geographical areas within their municipality that generate problematic levels of trash, regardless of land use.		The proposed language already includes the flexibility the commenter is seeking. The Trash Amendments define priority land uses as land uses that are actually developed (i.e., not simply zoned) as high density residential, industrial, commercial, mixed urban, and public transportation stations. In addition, the definition of priority land uses already provides that a MS4 may request that its permitting authority approve an equivalent alternative land use (i.e., an alternative to a land use(s) listed above). The intent of "alternate equivalent land uses" is to allow MS4s to allocate trash-control resources to the developed areas that generate the highest sources of trash. (See Ocean Plan Amendment and Part I ISWEBE definition for "alternate equivalent land uses" within the "priority land uses" definition.) As "priority land uses" is defined, the "equivalent alternate land use" can be utilized in as an alternative to a priority land use. As "equivalent alternate land use" is part of the priority land use definition, the State Water Board does not think the suggested language is necessary.
4.5	The proposed trash amendments should better account for the benefit of true source control actions that local municipalities initiate or participate. Additionally, time extensions should be granted to municipalities for participating with other local governments in statewide initiatives to advocate for legislation and industry cooperation in the development of product redesign, packaging redesign, take-back programs, and deposit legislation.		Regulatory source controls have been omitted from the final proposed Trash Amendments. The development of source controls by the State Water Board as suggested by the commenter, which include but are not limited to the development of product redesign, packaging redesign, take-back programs, is outside the scope of these Trash Amendments. See also the General Response to Comment Letter 1 and response to Comment 1.2.

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4.6	Continue to provide flexibility in the methods used to demonstrate Track 1 or 2 performances. Permittees should be allowed to implement cost-effective methods to demonstrate performance equivalency. Remove the requirement for submittal of GIS data to the State Water Board on trash control measure implementation. Provide guidance, outside of the amendments and in collaboration with the Proposition 84 grant funded Tracking California's Trash project managed by BASMAA, on the types and formats of GIS data that should be submitted by permittees, consistent with NPDES permits. Revise the monitoring questions to remove receiving water monitoring.		The monitoring and reporting provisions in the proposed Trash Amendments are minimum requirements that must be included with the implementing permits. Similar to the Track implementation provisions, as there will be many unique implementation approaches, the monitoring and reporting approach should provide flexibility to demonstrate compliance with the prohibition of discharge for trash. However, statewide consistency in monitoring and reporting needs to be provided to permitting authorities and permittees. The balance between the need for consistency and flexibility is achieved through standardized objectives in the monitoring program. The Trash Amendments aim to establish minimum monitoring and reporting provisions, but the Water Boards may include more extensive provisions in implementing permits. MS4 permittees complying under Track 1 would provide a report to the applicable Water Board demonstrating installation, operation, and maintenance of full capture systems on an annual basis. MS4 permittees complying under Track 2 would develop and implement annual monitoring plans to demonstrate implementation and effectiveness of trash controls and compliance with full capture system equivalency. Since there are a variety of existing monitoring programs and there are new programs in development, the Trash Amendments propose a set of monitoring objectives modeled after the Standard Monitoring Procedures in Appendix III of the California Ocean Plan. These objectives include location data for installed control equipment and assessments of program effectiveness such as trash removed and condition of the receiving water. Such data is essential for effective assessment and management of control programs. Using a questions-based approach provides flexibility to the

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			permit writers to select the most relevant monitoring techniques and expectations for their respective permits. Based on the comments, the proposed final Trash Amendments have been modified to make question-based approach discretionary and removed the requirement for receiving water monitoring component. The State Water Board supports incorporating Proposition 84 Grant funded Tracking California's Trash Project as part of the technical advisory group. Staff believes this project may provide trash monitoring guidance statewide and benefit the flexibility provided in the monitoring and reporting provisions in the proposed final Trash Amendments. (Ocean Plan Amendment at III.I.5.b; Part I ISWEBE at IV.I.6.b.)
4.7	Based on the economic analysis conducted by the State Water Board, Bay Area municipalities should anticipate between $22 - $58 million will be needed to be spent each year for the next 10 years to implement the proposed amendments. BASMAA recommends that the State Water Board partner with permittees to explore the creation of a non-competitive program to fund trash control measures. One such program that could serve as an example is the Used Oil Payment Program (OPP). The California Oil Recycling Enhancement Act provides funding to assist local governments in maintaining an ongoing used oil and used oil filter collection/recycling program for their		The State Water Board appreciates this suggestion for trash control. Creating such a non-competitive program would require legislative action to establish the fee program, which involves a bill approval process. If such a program was enacted, the State Water Board would need to manage the program and acquire legal and budgetary authority to accept and spend the fund. At the present, it is outside of the scope of the Trash Amendments for the State Water Board to create such a program. With the Storm Water Strategic Initiative, the State Water Board aims to improve program efficiency and effectiveness by providing more assistance to overcoming funding barriers. The State Water Board provides financial assistance through various State and federal loan and grant programs to help local agencies, businesses, and individuals meet the costs of water pollution control. The Public Resources Code requires that the Proposition 84 Storm Water Grant Program funds are used to provide matching grants to local public agencies for the reduction and prevention of storm water contamination to rivers, lakes, and streams. Please visit the following website

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	communities. The OPP is funded by a state tax on automotive oil. Another example is the program that exists for automobile tires. A fee is paid at purchase to fund the proper disposal at the end of the tire's life.		for more information: http://waterboards.ca.gov/water_issues/program/grants_loans/prop84/index.shtml Additional financial assistance information including information on the Clean Water State Revolving Fund loans, is available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/ CalRecycle administers funding programs to assist with waste disposable, specifically reducing beverage container litter in the waste stream. Information on the Beverage Container Recycling Grants is available at: http://www.calrecycle.ca.gov/bevcontainer/grants/
5.1	Track 1 is infeasible and Track 2 uncertain for construction dischargers. This kind of uncertainty in process is concerning. The current prohibition on the discharge of trash appears to be working from the perspective of our members, and additional regulation is unhelpful and may actually increase the cost to comply because of the difficulty of proving Track 2 equivalence with Track 1.		Currently the Construction General Permit (CGP) prohibits the discharge of any debris, which includes plastic and other trash materials. The Trash Amendments propose an outright prohibition of the discharge of trash for NPDES permits for discharges of storm water associated with industry activity (including construction). The provisions for these permits in the Ocean Plan Amendment are at III.L.2.c and in the Part I ISWEBE are at IV.A.3.c. The existing provisions in the CGP would be similar to the outright prohibition for trash. It is not the intention of the State Water Board to create additional regulations on trash for CGP permittees.
5.2	We have concerns about the monitoring and reporting program (described on page 17 of the Staff Report, Section 2.7), which strongly implies a level of effort required by builders and contractors significantly above and beyond what is currently		The Trash Amendments would require the IGP and CGP dischargers to report the measures used to comply. (See Ocean Plan Amendment III.L.5.d; Part I ISWEBE IV.A.6.d.) Currently, the CGP prohibits the discharge for any debris, which includes plastic and other trash materials. The Trash Amendments establish an outright prohibition of the discharge of trash. The existing provisions in the CGP would be similar to

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	required to demonstrate compliance. Furthermore, the Draft Trash Control Amendment makes conflicting statements about the necessity of specific monitoring requirements for construction dischargers, and clarification of intent by the State Water Board is requested. Specifically, see conflicting information discussed on page 17, Section 2.7 and pages 81-82 of the Staff Report, 4.10 No. 3.		the outright prohibition for trash. State Water Board staff does not intend to create additional regulations or monitoring for trash for CGP permittees.
5.3	Lack of economic analysis of the impact of the proposed Trash Amendments for construction dischargers.		The Economic Considerations section analyzed the potential cost for both the dischargers enrolled under the Industrial Storm Water General NPDES Permit and the CGP. As described in the introduction of the Economic Considerations (page C-7), the economic analysis provides an estimate of the compliance costs and considers the incremental costs that permitted storm water dischargers may need to incur based on the implementation provisions and time schedules proposed in the Trash Amendments. Therefore, the considerations only apply to those dischargers that would see an incremental cost in addition to existing compliance costs. As explained in footnote 79 of the Economic Considerations section (page C-48), dischargers enrolled under the CGP are already required to comply with a prohibition of discharge for debris and trash from construction sites (State Board Action 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ. Prohibition III. D. page 21). Therefore, no additional or incremental costs would be necessary for construction dischargers to comply with the proposed Trash Amendments.
6.1	The Trash Amendments' SED acknowledges that a "numeric objective of 'zero trash' could be an efficient regulatory tool because the		The State Water Board acknowledges that while zero trash may be a desirable goal, it may not be feasible to achieve this numeric water quality objective. A single piece of trash found in a water body may or may not constitute a violation of a

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	measurement of compliance is clearly defined." However, the State Board goes on to claim that on "a feasible level, a single piece of trash found in a water body may or may not constitute impairment, and it may or may not be aesthetically unpleasing." We disagree with the State Board's conclusion, and recommend a zero water quality objective be re-evaluated. For purposes of consistency, we recommend the State Board revise the Amendments' water quality objective to state that waterways shall not contain trash…" Or, if the Board wishes to keep the existing sentence structure, we recommend: "no trash shall be present…"		numeric water quality objective of zero trash, and yet it may or may not be aesthetically unpleasing and may or may not be detrimental to aquatic life and wildlife beneficial uses. A narrative water quality objective, on the other hand, provides the Water Boards the ability to evaluate the amount of trash present in the waters that adversely affects or threatens beneficial uses or creates a nuisance on a site-specific basis. Furthermore, California Coastkeeper Alliance et al. was one of many who commented that the State Water Board should establish a water quality objective of zero trash and with reference to the Los Angeles River Watershed Trash TMDL as precedent for that recommendation. However, it is important to recognize that the Los Angeles River Watershed Trash TMDL did not establish or interpret a zero trash numeric water quality objective, but established a TMDL target that interpreted a narrative water quality objective. While useful within the context of establishing a TMDL numeric target, zero trash is not suitable for a water quality objective because it would effectively establish a prohibition of the discharge of trash. Finally, while the Los Angeles River Watershed Trash TMDL did establish a zero trash target, it then also provided non-zero waste-load allocations. The Los Angeles River Watershed Trash TMDL does include phased reductions with a state goal of achieving a wasteload allocation of zero in 9 years, but the Los Angeles River Watershed Trash TMDL also includes a couple of critical caveats. First, the TMDL includes as a footnote to Table 7.2.3 (Attachment A to resolution No. 2007-012) that states that the Los Angeles Water Board will review and reconsider the final waste load allocations once a reduction of 50% has been achieved. Second, an additional footnote to the same table notes that 'notwithstanding the zero trash target and the baseline waste allocation shown in Table 5, a permittee will be deemed in compliance with the Trash TMDL in areas served by a full capture system. For these reasons, The Los Angeles River Watershed Trash TMDL need not constrain the

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			Water Board's statewide development of water quality objectives, which achieves uniformity and consistency in place of the existing approximately 33 existing narrative objectives for the presence of floatable, solid, suspended materials. Refer to the Final Staff Report, Section 4.2, Issue 2, for additional information about the selection of water quality objectives. The State Water Board agrees for purposes of consistency with existing "floatable, suspended, and settleable water quality objectives" that the proposed statewide trash narrative water quality objective should be characterized as "trash shall not be present" rather than "shall not accumulate." The Trash Amendments have been modified from "trash shall not accumulate" to "trash shall not be present." (Ocean Plan Amendment at II.C.5; Part I ISWEBE at III.A.)
6.2	The State Water Board needs to provide a performance standard for Track 2 Permittees to achieve, explicit language in the Amendments requiring monitoring to be conducted for Track 2, and minimum monitoring criteria for Track 2 Permittees to follow. The Amendments require Track 2 Permittees to achieve "the same performance results as compliance under Track 1 would achieve…" To prove they are achieving the same performance results, Track 2 Permittees will be required to conduct monitoring to demonstrate they are reducing trash equivalent to that of Track 1 Permittees, but the Amendments lack specificity as to what shall be required for receiving water monitoring for Track 2. Instead, the	MS4* permittees that elect to comply with Chapter III.J.2.b.2. (Track 2) shall develop and implement monitoring plans that demonstrate the mandated ~~performance results, effectiveness of the full capture systems*, other treatment controls*, institutional controls*, and/or multi-benefit projects*, and~~ compliance with the performance standard of (xx??). Monitoring reports shall be provided to the applicable permitting authority* on	Track 2 allows permittees to utilize the full range of mechanisms to control trash to achieve the same equivalent performance to Track 1. The proposed final Trash Amendments provided clarity to this performance standard Track 2 permittees shall be required to achieve by adding and defining the term "full capture system equivalency." (See Ocean Plan Amendment and Part I ISWEBE, Definitions, "Full capture system equivalency.") Full capture system equivalency is the trash load that would be reduced if full capture systems were installed, operated, and maintained for all storm drains that capture runoff from priority land uses, significant trash generating areas, or other relevant land uses. This concept of full capture system equivalency is applicable to MS4 Phase I, MS4 Phase II, Caltrans, and Industrial General Permit (IGP) permittees. Full capture system equivalency is a trash load reduction target that the permittee quantifies by using an approach subject to the approval of the permitting authority. The proposed final Trash Amendments provide two examples of approach, a Trash Capture Rate Approach and a Reference Approach. Other approaches may be suitable and may or may

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	Amendments only provide minimum monitoring and reporting requirements. We request the State Board provide an explicit performance standard in both the Amendments and the SED to help Track 2 Permittees demonstrate compliance. Alternatively, the State Board may consider requiring Track 2 Permittees to conduct a baseline analysis of all trash discharged within priority use areas, and then demonstrate a 100 percent reduction of that baseline assessment. If this is the State Board's intent, we strongly encourage the Board to provide sufficient monitoring guidance to ensure the baseline study and the annual monitoring is conducted appropriately. We recommend the State Board revise the Trash Amendments to be explicit that Track 2 Permittees are required to conduct a baseline assessment and annual receiving water monitoring to demonstrate equivalent trash reductions as Track 1.	an annual basis, and shall include <u>a baseline monitoring report, minimum receiving water monitoring criteria as set forth in the Staff Report</u>, GIS-mapped locations and drainage area served for each of the full capture systems*, other treatment controls*, institutional controls*, and/or multi-benefit projects installed or utilized by the MS4* permittee.	not depend on establishment of a baseline trash load. Additionally, the Trash Amendments were revised to add that each NPDES permittee implementing Track 2 "shall demonstrate that such combination achieves full capture system equivalency." (Ocean Plan Amendment at III.L.2.a.2 (MS4s), III.L.2.b (Department) and III.L.2.c (Industrial); Part I ISWEBE at IV.3.a.2 (MS4s), IV.3.b (Department), and IV.3.c (Industrial).) Within the scope of the Trash Amendments, full capture system equivalency must be established prior to the implementation of trash controls. Within the implementation plan for Track 2, the permittee will need to: (1) describe the combination of controls selected and the rationale for the selection, (2) describe how the combination of controls will achieve full capture system equivalency, and (3) describe how full capture system equivalency will be demonstrated. The implementation plan is subject to the review and approval of the permitting authority. (Ocean Plan Amendment at III.L.4.a.1 (MS4s) and III.L.4.b.1 (Caltrans); Part I ISWEBE at IV.A.5.a.1 (MS4s) and IV.A.5.b.1 (Caltrans).) As trash controls are implemented, the focus of monitoring a program is to assess and monitor the progress towards achievement of the full capture system equivalency, and thus compliance with the prohibition of discharge. The Trash Amendments provide the minimum monitoring and reporting requirements that need to be incorporated into the permits. The monitoring requires the demonstration of milestone reduction, such as 10% per year, and compliance with the implementation provisions. The implementation provisions are specifically focused on 'full capture system equivalency'. The intent of monitoring is not for permittees to conduct a baseline analysis of all trash discharge. The proposed Final Trash Amendments were revised to clarify that the Track 2 monitoring plan requirement is to demonstrate "compliance with full capture equivalency" as newly defined. (Ocean Plan Amendment at III.L.5; ISWEBE Part I at IV.A.6.)

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			In addition, the proposed final Trash Amendments have been modified to make question-based approach discretionary and removed the requirement for receiving water monitoring component. The focus of the monitoring plans should "demonstrate the effectiveness of controls and compliance with full capture system equivalency". (Ocean Plan Amendment at III.L.5; Part I ISWEBE at IV.A.6.) The State Water Board believes this requirement to provide both consistency for the permitting authority to develop monitoring and flexibility to determine specific questions to effectively monitor. While receiving water monitoring is a reasonable approach for trash, the specificity of the monitoring approach will be at the discretion of the permitting authority. These questions in the monitoring section should provide sufficient framework for how to demonstrate compliance and achievement of Track 2 targets. (Ocean Plan Amendment at III.L.5; Part I ISWEBE at IV.A.6.)
6.3	If the State Board insists on a Track 2 approach to achieve a narrative water quality objective, then it is even more important that the implementing provisions are clear and unambiguous. Prioritizing full-capture devices in Track 2 will provide permittees a straightforward and clear path to compliance—leading to greater trash reductions.	Track 2: Install, operate, and maintain ~~any combination of~~ full capture systems* to the maximum extent feasible. For storm drains demonstrated to be infeasible for full capture system installation, include any combination of other treatment controls*, institutional controls*, and/or multi-benefit projects* within either the jurisdiction of the MS4* permittee or within the jurisdiction of the MS4* permittee and	The State Water Board declines the commenter's recommended language because it substantially alters the intent and flexibility of Track 2. However, the State Water Board's intent is that full capture systems would be would the primary mechanisms employed by permittees with supplemental efforts from increased institutional controls and other treatment controls from existing permit requirements. To clarify this intent, the following language has been included to Track 2: "It is, however, the State Water Board's expectation that the MS4 permittee will elect to install full capture systems were such installation is not cost-prohibitive." (Ocean Plan Amendment at III.L.2.a.2; Part I ISWEBE at IV.A.3.a.2.) Full capture systems should be considered first; if they are determined to be not practical at a location, then other controls can be used. The function of Track 1 and Track 2 and other components of the Trash Amendments are to provide permit requirements for

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		contiguous MS4s* permittees, so long as such combination achieves the same performance results as compliance under Track 1 would achieve for all storm drains that captures runoff from one or more of the priority land uses* within such jurisdiction(s).	applicable permits or orders to ensure compliance with the prohibition of discharge for trash. (Ocean Plan Amendment at III.I.6; Part I ISWEBE at IV.A.2.)
6.4	It is critical that the prohibition of discharge of preproduction plastics remain absolute and unwavering in order to address the problem of preproduction plastics in receiving waters, and in order to comply with existing state law. In Chapter III.I.6.d, the Amendments contain a prohibition of discharge for preproduction plastics, but this prohibition conflicts with Chapter III.L.2.c. These two sections must be reconciled and it must be clarified that the prohibition of pre-production plastic discharges is absolute, and cannot be undermined by any other section of the Amendments.	…Termination of permit coverage the outright prohibition under Chapter III.I.6.a. for industrial and construction storm water* dischargers shall be conditioned upon the proper operation and maintenance of all controls (e.g., full capture systems*, other treatment controls*, institutional controls*, and/or multi-benefit projects*) used at their facility(ies). Regardless of termination under Chapter III.I.6.a., all industrial storm water dischargers shall meet the outright prohibition for pre-production plastics under Chapter III.I.6.d.	The intention of the Trash Amendments is for the prohibition of discharge of preproduction plastic to be absolute. The proposed final Trash Amendments were modified (Ocean Plan Amendment at III.I.6.e; Part I ISWEBE at IV.A.2.e.) to acknowledge the that prohibition is absolute unless a permittee is subject to "Preproduction Plastic Debris Program" under Water Code section 13367(a) and the requirements in the IGP (Order No. 2014-0057-DWQ) because facilities subject to that permit are subject to special requirements for plastics which reduce or prevent the discharge of plastics, including but not limited to: Facilities covered under this General Permit that handle Plastic Materials are required to implement BMPs to eliminate discharges of plastic in storm water in addition to the other requirements of this General Permit that are applicable to all other Industrial Materials and Activities. Plastic Materials are virgin and recycled plastic resin pellets, powders, flakes, powdered additives, regrind, dust, and other similar types of preproduction plastics with the potential to discharge or migrate off-site. Any Dischargers' facility handling Plastic Materials will be referred to as Plastics Facilities in this

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			General Permit. Any Plastics Facility covered under this General Permit that manufactures, transports, stores, or consumes these materials shall submit information to the State Water Board in their PRDs, including the type and form of plastics, and which BMPs are implemented at the facility to prevent illicit discharges. Pursuant to Water Code section 13367, Plastics Facilities are subject to mandatory, minimum BMPs. (Order No. 2014-0057-DWQ, Section XVIII (p. 64); see id. at pp. 64-66) for additional and specific requirements imposed on applicable facilities/permittees.) Additionally, when a facility or site wants to terminate coverage from the IGP or CGP, a Notice of Termination must be submitted to the permitting authority. For the Notice of Termination to be approved by the permitting authority, a set of conditions need to be met by the permittee as outlined in the respective permit. For example, Section II.D.1.d of the CGP (2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ), states that one condition for a construction site to be considered complete is when "construction materials and waste have been disposed properly." The intent with the proposed Trash Amendments is to add trash controls to the list of conditions the permittee or discharger must complete in order to be terminated from coverage from under the IGP or CGP.
6.5	Permittees should address a minimum number of un-permitted non-point sources. Trash generated from non-point sources has significant impact. As a result, recent trash TMDLs adopted in Region 4 and requirements in Region 2 all include load allocations	Chapter III.I.2.d. - A permitting authority* ~~may~~ shall require a minimum amount of ~~determine that~~ specific land uses or locations (e.g., parks, stadia, schools, campuses, or roads	Although the implementation provisions for compliance with the prohibition of discharge focus on trash discharge via storm water, it is well recognized that trash is transported to surface waters via both point and non-point sources. Statewide nonpoint source discharges of trash cause less of an impact to state water than point sources; however, at the local or regional level nonpoint sources can be a substantial source of trash. These areas may include high usage campgrounds, picnic

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	for non-point sources. Thus the State Board should require Regional Boards to address a minimum number of non-point sources within its region. Instead, the Amendments give complete discretion to the permitting authority to determine specific land uses or locations that generate substantial amounts of trash. Given limited resources, it is highly unlikely that Regional Boards will require additional measures beyond the existing Amendments' requirements. Instead of placing the burden on Regional Boards to determine non-point sources that are generating a substantial amount of trash, the State Board should require municipalities to conduct a hot spot survey every permit term to identify non-point sources of trash that contribute significant volumes of trash. Each survey should rank its non-point sources from the most egregious location to the lowest. We recommend the State Board require the permitting authority conduct a similar population analysis as Region 2's MRP in order to set a minimum number of non-point source discharges to be addressed. Additionally, homeless encampments and high-use beach should be addressed explicitly.	leading to landfills) to be deemed trash hot spots and ~~determined as trash hotspots generate substantial amounts of Trash*. In the event that the permitting authority* makes that determination, the permitting authority* may~~ require the MS4* to comply with Chapter III.L.2.a. or Chapter III.L.2.b. (as the case may be) with respect to such land uses or locations. In addition to the minimum amount of trash hot spots, homeless camps and high-use beaches as defined in AB411 shall be deemed "hot spots." Chapter III.I.3. - A permitting authority* ~~may~~ shall require dischargers, that are not subject to Chapter III.L.2. herein, to implement Trash* controls in areas or facilities that may generate Trash*. Dischargers subject to Chapter III.L.2. shall conduct a trash "hot spot" survey to	areas, beach recreation areas, and marinas, which can be subject to waste discharge requirements (WDRs) or conditional waivers of WDRs. These types of areas would be assessed by the Water Boards to determine if trash controls are necessary for compliance with the proposed Trash Amendments. For such areas determined to require trash controls within a WDR or waiver of a WDR, management practices could include enforcement of litter laws, education, recycling programs, more or better placement of trash receptacles, and/or more frequent servicing of trash receptacles. (Ocean Plan Amendment at III.L.3; Part I ISWEBE at IV.A.4.) As such, the Trash Amendments do not require municipalities to survey potential hotspots or require the permits to require each municipality to address a minimum number of hotspots. The Trash Amendments additionally do not preclude a permitting authority, such as the San Francisco Bay Water Board and the MRP, from addressing other sources of trash with a hotspot approach. The Trash Amendments are more land-use focused, and in the future the State Water Board could address non-point source trash in a more focused program as suggested by the commenter.

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		determine a minimum number of non-point sources that generate trash, such areas or facilities may include (but are not limited to) high usage campgrounds, picnic areas, beach recreation areas, parks not subject to an MS4* permit, or marinas. In addition to the minimum amount of trash hot spots, homeless camps and high-use beaches as defined in AB411 shall be deemed "hot spots."	
6.6	Priority land use areas should be defined precisely, free from loopholes, and include schools. Equivalent alternative land uses should be removed as a priority land use option. High density residential should remain at 10 units per acre. Schools should be added as a priority land use.		The State Water Board agrees with the need for clarity and believes that the five defined priority land uses (i.e., high-density residential, industrial, commercial, mixed urban, and public transportation stations land uses) provide sufficient clarity. The State Water Board disagrees that the provision allowing a permittee to request to comply with Track 1 or Track 2 for equivalent alternative land uses is a "loophole" and that provision will remain in the Trash Amendments. That provision provides flexibility to permittees to focus on addressing the land uses that generate the highest amounts of trash and is subject to the permitting authority's determination that the subject alternative land use generates trash equal or greater to one or more of the defined priority land uses. (See Ocean Plan Amendment and Part I ISWEBE, definitions, "Priority land uses") The proposed final Trash Amendments maintain high density

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			residential defined at 10 dwelling units per acre. While schools do generate trash, the Trash Amendments do not add schools as a priority land use. However, a permitting authority retains discretion to require a permittee to comply with Track 1 or Track 2 if the permitting authority determines that a school generates substantial amounts of trash. (Ocean Plan Amendment at III.L.2.d; Part I ISWEBE at IV.A.3.d.) More broadly than just schools, the Trash Amendments acknowledge that trash is generated from locations or land uses outside of the priority land uses that may require trash controls in order to meet water quality objectives and be protective of the beneficial uses of the receiving water. Within an MS4's jurisdiction, the Trash Amendments provide discretion to the permitting authority to determine that specific land uses or locations within an MS4's jurisdiction, in addition to priority land uses, generate "substantial amounts of trash" and require trash controls. (Ocean Plan Amendment at III.L.2.d; Part I ISWEBE at IV.A.3.d.) The specific land uses or locations include but are not limited to city neighborhoods, parks, stadia, or particular parking lots or roads. The required trash controls would either be Track 1 or Track 2, as determined by the permitting authority. (Ocean Plan Amendment at III.L.2.d; Part I ISWEBE at IV.A.3.d.) This approach is needed because it allows a permitting authority to regulate the discharge of trash from locations within a municipality it determines generates levels of trash that cause or contribute to violations of the statewide trash water quality objective. The water quality objective for trash is: "trash shall not be present in surface waters, along shorelines or adjacent areas in amounts that adversely affect beneficial use or cause nuisance." (Ocean Plan Amendment at II.C.5; Part I ISWEBE III.A.) Substantial amounts of trash would include, for example, trash generation loads that individually or cumulatively cause or

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			contribute to a violation of the statewide trash narrative water quality objective. The permitting authority's finding of "substantial amounts of trash" would be informed by its determination that a permittee is causing or contributing to the violation of the statewide trash narrative water quality objective.
6.7	We have seen great success in trash reductions as a result of these TMDLs. However, we are concerned that, as proposed, the Amendments require Region 4 to re-open 13 of the 15 trash TMDLs and consider modifications. Specifically, the draft Amendments state that "within one year of the effective date of these Trash Provisions, the Los Angeles Water Board shall convene a public meeting to reconsider the scope of its trash TMDLs, with the exception of those for the Los Angeles River and Ballona Creek watersheds, and to particularly consider an approach that would focus MS4 Permittee's trash-control efforts on high-trash generation areas within their jurisdictions." A reopener of this scope and magnitude is inappropriate and unnecessary.	Chapter III.L.1.b.2 - ~~Within one year of the effective date of these Trash Provisions*,~~ The Los Angeles Water Board ~~shall~~ may convene a public meeting to reconsider the ability to allow TMDL responsible parties, who are determined to be at least 80% in compliance through the implementation of full capture systems, to achieve full compliance through focusing additional trash-control efforts on high-trash generation areas scope of its trash TMDLs, with the exception of those for the Los Angeles River and Ballona Creek watersheds~~, and to particularly consider an approach that would focus MS4* permittees' trash-control efforts on high-trash generation areas within their jurisdictions.~~	The Los Angeles Water Board has led the way with effective trash management strategies with the Los Angeles River Watershed Trash TMDL and the other 14 trash and debris TMDLs. Since the adoption of the trash and debris TMDLs, significant trash reduction and trash control has occurred in the Los Angeles Region. The trash control efforts by permittees in the Los Angeles Region are laudable. Those effective strategies demonstrate that trash control is both necessary and achievable statewide. The Trash Amendments do not require the Los Angeles Water Board to re-open 13 of the 15 trash TMDLs. The State Water Board evaluated the efforts of the existing trash and debris TMDLs in order to develop the proposed Trash Amendments. In the evaluation process, the State Water Board and Los Angeles Water Board staff discussed the present day status of the trash and debris TMDLs and the proposed Trash Amendments. As trash and debris TMDLs are nearing the end of compliance, a public meeting will be held to reconsider the scope of existing TMDLs to reassess the progress, feasibility, and available resources of the trash control effort—within one year of the effective date of the Trash Amendments. (Ocean Plan Amendment at III.L.1.b.2; Part I ISWEBE at IV.A.2.b.2.) A public meeting does not constitute a re-opener; additionally, at any time the Los Angeles Water Board may reopen and reevaluate its trash TMDLs independent of the Trash Amendments' provisions. A public meeting would focus on evaluating the scope of the trash and debris TMDLs in context of feasibility to achieve the wasteload allocations while

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			maintaining the end goal of achieving water quality objectives for trash to support applicable beneficial uses.
6.8	The State Board should be explicit that each permittee is required to show a ten percent reduction in trash discharges annually for the ten year compliance schedule. Interim milestones are a critical component to ensure permittees meet the ten year compliance deadline. Throughout the stakeholder process, the State Board had always considered interim milestones of ten percent for ten years to be the appropriate requirement	Chapter III.L.4.a.3. and 4. (For both Tracks) - For MS4* permittees that elect to comply with Chapter III.L.2.a.1. (Track 1), full compliance shall occur within ten (10) years of the effective date of the first implementing permit (whether such permit is re-opened, reissued or newly adopted), along with achievements of interim milestones ~~such as an average of~~ a minimum ten percent (10%) of the full capture systems* installed every year. In no case may the final compliance date be later than fifteen (15) years from the effective date of these Trash Provisions*. SED, Pg.15 - "Within the ten-year compliance periods discussed above, the Water Board ~~can~~ shall set interim compliance milestones within a specific permit. These	The State Water Board agrees that interim milestones are a critical component to ensure permittees reach the compliance schedule deadline, thus the proposed Trash Amendments specify that "the permit shall also require these permittees to demonstrate achievement of interim milestones" (Ocean Plan Amendment at III.L.5.a.2-4 (MS4s) and III.L.5.b.2 (Caltrans); Part I ISWEBE at IV.6.a.2-4 (MS4s) and IV.6.b.2 (Caltrans).) However, to provide flexibility for permittee site-specific conditions, the permitting authority is provided the discretion to set the precise quantification and timing of those interim milestones. Suggested interim milestones include average ten percent of full capture systems installed per year, average load reduction of ten percent per year, or other process towards full implementation. The State Water Board does not think the proposed language is necessary. (Ocean Plan Amendment at III.L.5.a.2-4 (MS4s) and III.L.5.b (Department); Part I ISWEBE at IV.6.a.2-4 (MS4s) and IV.6.b (Department).)

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		interim milestones ~~could be set, for example, as~~ should be a minimum ten percent reduction or ten percent installation per year."	
6.9	Require all permittees to begin meeting compliance requirements within 18 months will reduce delays in implementation. Reducing the worst-case scenario of 15 years until compliance to only 11.5 years will get California quicker results without placing a burden on permittees.	Within eighteen (18) months of the effective date of these Trash Provisions*, each permitting authority* shall ~~either~~: (i) issue an order pursuant to Water Code section 13267 or 13383 requiring each MS4* permittee that will be complying under Chapter III.L.2.a.1. (Track 1) or Chapter III.L.2.b.2. (Track 2) to submit written notice to the permitting authority* stating whether such MS4* permittee will comply with the prohibition of discharge under Track 1 or Track 2, ~~or~~ and (ii) re-open, re-issue, or adopt an implementing permit that includes requirements consistent with these Trash Provisions*, and that requires notice from each MS4* as to whether it has elected to	If the final compliance was 11.5 years from the effective date of the Trash Amendments, then California would achieve quicker results in trash reduction. However, the commenter's proposed time schedule would place undue burden on both the permitting authority and the permittees. The time schedule in the Trash Amendments was designed for two purposes. First, as NPDES storm water permits are re-issued every five years, there is time provided for the permitting authority to incorporate the Trash Provisions into the permit. Second, to assist in effective planning by the permittee and to reduce a delay in the compliance schedule, eighteen months of the effective date of the implementing permit (or new designation) is provided to allow sufficient time to the permittee to develop an implementation plan for Track 2. The implementation plans must describe, among other details, the combination of selected controls, how those controls will achieve full capture system equivalency, and how such compliance will be demonstrated. (See i.e., Ocean Plan Amendment at III.L.4.a.1.A; Part I ISWEBE at IV.A.5.a.1.A.) Including the implementation planning time within the ten-year compliance schedule would burden both the permitting authorities and the permittee. The State Water Board does not think the proposed language is necessary.

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		comply under Track 1 or Track 2.	
6.10	We support Track 2's call for source reduction as a means of controlling litter because source control ordinances in California have demonstrated that these policies can be an effective means of curbing litter, saving money, and changing consumer behavior. Plastic bag and foam bans have proliferated in recent years, as a response to a growing need for municipalities to reduce litter in order to save costs, improve the environment, and meet regulatory mandates such as TMDLs. Consequently, industry opposition has been fierce. In opposition to comments made by the American Chemistry Council, and Dart Industries during public testimony at the July 16, 2014 workshop, we believe source reduction policies are effective and should be incentivized in the Policy.		Comment noted. See also Responses to Comments 1 and 1.2. Subsequent to the State Water Board's public workshop and the public hearing on the proposed Trash Amendments, Senate Bill 270 (2014 Stats. Ch. 850) was enacted. That new law enacts a state-wide plastic bag carry-out ban pertaining to grocery stores and pharmacies that have a specified amount of sales in dollars or retail floor space, which goes into effect July 1, 2015, and imposes the same ban on convenience stores and liquor stores a year later. The new law will implement a product ban, which was generally the type of regulatory source control contemplated by the State Water Board and discussed with the public with regard to consideration of the time extension option. The enactment of Senate Bill 270 removed the need for regulatory source controls, particularly product bans that would reduce trash (bag bans), in the proposed Trash Amendments. As a result, the proposed final Trash Amendments omit "regulatory source controls" as a method to comply with Track 2 and omit any corresponding allowance of time extensions. (See Final Staff Report at pp. 20-21 and pp.98-99.) Yet, subsequent to the enactment of Senate Bill 270 and the revision of the proposed Final Trash Amendments, opponents qualified a referendum on the law, delaying its July 1, 2015 effective date until the November 2016 elections, which would require a majority of votes for the referendum to succeed. The development of any bag ban ordinance as an "institutional control" to comply with Track 2, however, is speculative at this time given the pending statewide bag ban, the qualifying referendum notwithstanding.

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6.11	Only Track 1 Permittees should receive a time-credit extension for implementing source control ordinances. The time-credit extension was suggested by the Public Advisory Group with the intent of complementing Track 1's structural BMP approach. However, the Amendments currently allow both Track 1 and 2 to receive a time-extension for passing a source-control ordinance.		Time extensions are no longer proposed under Track 1 or Track 2 of the proposed final Trash Amendments and have been removed because of the enactment of Senate Bill 270, which removed the need for regulatory source controls, particularly product bans that would reduce trash, in the proposed Trash Amendments. "Institutional controls" may be established by permittees to comply with Track 2, and such controls may include "ordinances." However, it is not reasonably foreseeable that a product ban ordinance would qualify as reducing trash and any such ordinance is speculative and not a reasonably foreseeable method of compliance, the pending referendum on SB 270 notwithstanding. See also the General Response to Comment Letter 1 and Responses to Comments 1.2 and 6.10.
6.12	While we support Section 5's source-control incentive, we believe minimum standards need to be established in order to ensure true source control is being implemented. We do not take a time extension lightly—trash reductions need to begin immediately. But source control is such a critical component of controlling trash that we believe the one to three year credit is affordable. However, the credit is only worthwhile if real source control is being implemented. As described above, a recycling program is not source control and is not effective. By its very definition source control is stopping something at its source and offering an alternative product. Recycling does not stop a source of	Source reduction for trash includes methods that eliminate trash generation at the source. These include bans on trash-generating products, such as single use plastic bags or the addition of plastic microbeads in personal care products, which lead to elimination of a product that becomes trash. In addition, non-ban regulatory approaches might include mandatory discounts on re-usable alternatives to single use products, such as a	See Response to Comment 6.11. "Regulatory source controls" have been omitted from an allowable method of compliance under Track 2 and the definition has been removed. See also the General Response to Comment Letter 1 and Response to Comment 1.2.

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	pollution; it only offers to refurbish that source of pollution at a later time. There needs to be minimum standards for the permitting authority to apply before a time credit is received. Therefore, we request the State Board add minimum standards into the SED regarding what constitutes an appropriate regulatory source control.	discount provided to customers that bring re-usable cups or containers for take-out food. Other options can include mandatory fees on trash generating items, such as cigarettes or take-out food and beverage containers, where the fee is intended to encourage either a reduction in the use of a single use disposable product that is likely to become litter, or is intended to provide funding to support cleanup programs.	
6.13	Particles less than 5mm in size were 16 times more abundant than those greater than 5mm, and weighed three times more than the larger particles. Recent research conducted in the Great Lakes by SUNY Fredonia and 5 Gyres also documents astounding levels of micro-plastics—43,000 microplastic particles per square kilometer. As a result of the increasing documentation of the impacts of microplastic pollution on the marine environment and human sources of food, California should address and stop the discharges of plastic debris less than 5mm. We request the State Board consider addressing		Comment noted with the acknowledgment that it does not directly relate to the Trash Amendments but to a potential different State Water Board project in the future. Additionally, the Trash Amendments address micro-debris in two main ways. First by capturing and stopping the transport of trash before entering the storm drain systems, minimizing the amount of breakdown that occurs. Second, the Trash Amendments propose a prohibition of discharge for preproduction plastics to waters of the state. Together these approaches will reduce the amount of micro-debris in the surface waters of California.

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	microplastic pollution during its Storm Water Strategy Initiative through interagency collaboration on source control.		
7.1	The Trash Amendments' SED acknowledges that a "numeric objective of 'zero trash' could be an efficient regulatory tool because the measurement of compliance is clearly defined." However, the State Board goes on to claim that on "a feasible level, a single piece of trash found in a water body may or may not constitute impairment, and it may or may not be aesthetically unpleasing." We disagree with the State Board's conclusion, and recommend a zero water quality objective be re-evaluated. For purposes of consistency, we recommend the State Board revise the Amendments' water quality objective to state that waterways shall not contain trash…" Or, if the Board wishes to keep the existing sentence structure, we recommend: "no trash shall be present…"	Trash* shall not ~~accumulate~~ be present in ocean waters, along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance.	Please see response to Comment 6.1.
7.2	The State Water Board needs to provide a performance standard for Track 2 Permittees to achieve, explicit language in the Amendments requiring monitoring to be conducted for Track 2, and minimum monitoring criteria for Track 2 Permittees to follow. The Amendments require Track 2 Permittees to achieve "the	MS4* permittees that elect to comply with Chapter III.J.2.b.2. (Track 2) shall develop and implement monitoring plans that demonstrate the mandated ~~performance results, effectiveness of~~	Please see response to Comment 6.2.

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	same performance results as compliance under Track 1 would achieve…" To prove they are achieving the same performance results, Track 2 Permittees will be required to conduct monitoring to demonstrate they are reducing trash equivalent to that of Track 1 Permittees, but the Amendments lack specificity as to what shall be required for receiving water monitoring for Track 2. Instead, the Amendments only provide minimum monitoring and reporting requirements. We request the State Board provide an explicit performance standard in both the Amendments and the SED to help Track 2 Permittees demonstrate compliance. Alternatively, the State Board may consider requiring Track 2 Permittees to conduct a baseline analysis of all trash discharged within priority use areas, and then demonstrate a 100 percent reduction of that baseline assessment. If this is the State Board's intent, we strongly encourage the Board to provide sufficient monitoring guidance to ensure the baseline study and the annual monitoring is conducted appropriately. We recommend the State Board revise the Trash Amendments to be explicit that Track 2 Permittees are required to conduct a baseline assessment and annual receiving water	~~the full capture systems*, other treatment controls*, institutional controls*, and/or multi-benefit projects*, and~~ compliance with the performance standard of (xx??). Monitoring reports shall be provided to the applicable permitting authority* on an annual basis, and shall include a baseline monitoring report, minimum receiving water monitoring criteria as set forth in the Staff Report, GIS-mapped locations and drainage area served for each of the full capture systems*, other treatment controls*, institutional controls*, and/or multi-benefit projects installed or utilized by the MS4* permittee.	

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	monitoring to demonstrate equivalent trash reductions as Track 1.		
7.3	We understand that Region 2's implementation of the MRP has been underwhelming, and agree that improvements need to be made. However, we don't agree that the Amendments will improve the status in the Bay Area. Implementation concerns with the MRP are just as likely under the Amendments new provisions. The problem is not with the MRP's provisions, but rather the lack of enforcement for poor implementation. The stringency of the effluent limits in the MRP in lieu of enforcement would be the worst kind of backsliding possible. Hold Region 2 MRP Permittees responsible for their permit requirements to reduce trash discharges by 40 percent by 2014 and to reduce discharges to 100 percent by 2022.	These Trash Provisions* apply to all surface waters of the State, with the exception of those waters within the jurisdictions of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) and the San Francisco Regional Water Quality Control Board for which trash Total Maximum Daily Loads (TMDLs) or existing permit terms addressing 303(d) impaired waterways are in effect prior to the effective date of these Trash Provisions.	The implementation provisions in the proposed Trash Amendments are not expected to result in backsliding. Backsliding generally refers to reductions in treatment levels required by NPDES permits. The Clean Water Act and U.S. EPA's regulations limit the circumstances under which modified or reissued permits may set less stringent effluent limitations than required by previous permits. (CWA § 402(0)(3)(A)-(E); 40 CFR § 122.44(l); see also 40 CFR § 122.62 (applicable circumstances for permit modification or revocation).) The "anti-backsliding" provisions generally prohibit relaxation of effluent limitations previously established on the basis of best professional judgment, unless circumstances exists that make one of the exceptions to the general rule. The Trash Amendments' application to MRP and East Contra Costa Municipal Storm Water permittees does not allow less stringent effluent limitations. Additionally, permittees subject to the MRP and the East Contra Costa Municipal Storm Water Permit are expected to achieve the noted milestones by 2022 and 2023, respectively. To this end, the Trash Amendments specify that pertinent permitting authority for the aforementioned permits may set an earlier full compliance schedule than the ten years specified for Track 2. The trash control provisions in the MRP and the East Contra Costa Municipal Storm Water Permit are substantially equivalent to Track 2, and language was added to the proposed final Trash Amendments to clarify the required application of the Trash Amendments in the San Francisco Bay Region and Central Valley Region. (See Ocean Plan Amendment at Footnote 2; Part I ISWEBE at Footnote 2.) Trash is a high priority pollutant for the State Water Board, and the proposed Trash Amendments should lead to increased implementation progress for MRP and East Contra Costa Municipal Storm Water Permit permittees. The State Water Board does not think the proposed language is necessary.
7.4	It is critical that the prohibition of	…Termination of permit	Please see Response to Comment 6.4.

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	discharge of preproduction plastics remain absolute and unwavering in order to address the problem of preproduction plastics in receiving waters, and in order to comply with existing state law. In Chapter III.I.6.d, the Amendments contain a prohibition of discharge for preproduction plastics, but this prohibition conflicts with Chapter III.L.2.c. These two sections must be reconciled and it must be clarified that the prohibition of pre-production plastic discharges is absolute, and cannot be undermined by any other section of the Amendments.	coverage the outright prohibition under Chapter III.I.6.a. for industrial and construction storm water* dischargers shall be conditioned upon the proper operation and maintenance of all controls (e.g., full capture systems*, other treatment controls*, institutional controls*, and/or multi-benefit projects*) used at their facility(ies). Regardless of termination under Chapter III.I.6.a., all industrial storm water dischargers shall meet the outright prohibition for pre-production plastics under Chapter III.I.6.d.	

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7.5	Permittees should address a minimum number of un-permitted non-point sources. Trash generated from non-point sources has significant impact. As a result, recent trash TMDLs adopted in Region 4 and requirements in Region 2 all include load allocations for non-point sources. Thus the State Board should require Regional Boards to address a minimum number of non-point sources within its region. Instead, the Amendments give complete discretion to the permitting authority to determine specific land uses or locations that generate substantial amounts of trash. Given limited resources, it is highly unlikely that Regional Boards will require additional measures beyond the existing Amendments' requirements. Instead of placing the burden on Regional Boards to determine non-point sources that are generating a substantial amount of trash, the State Board should require municipalities to conduct a hot spot survey every permit term to identify non-point sources of trash that contribute significant volumes of trash. Each survey should rank its non-point sources from the most egregious location to the lowest. We recommend the State Board require the permitting authority conduct a similar population analysis as Region 2's MRP in order to set a minimum	Chapter III.I.2.d. - A permitting authority* ~~may~~ shall require a minimum amount of ~~determine that~~ specific land uses or locations (e.g., parks, stadia, schools, campuses, fast food restaurants, or roads leading to landfills) to be deemed trash hot spots and ~~determined as trash hotspots generate substantial amounts of Trash*. In the event that the permitting authority* makes that determination, the permitting authority* may~~ require the MS4* to comply with Chapter III.L.2.a. or Chapter III.L.2.b. (as the case may be) with respect to such land uses or locations. In addition to the minimum amount of trash hot spots, homeless camps and high-use beaches as defined in AB411 shall be deemed "hot spots." Chapter III.I.3. - A permitting authority* ~~may~~ shall require dischargers, that are not subject to Chapter	Please see response to Comment 6.5.

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	number of non-point source discharges to be addressed. In addition to a minimum amount of non-point sources to be addressed, a permitting authority should be explicitly required to issue WDRs to address homeless encampments and high-use beaches.	III.L.2. herein, to implement Trash* controls in areas or facilities that may generate Trash*. Dischargers subject to Chapter III.L.2. shall conduct a trash "hot spot" survey to determine a minimum number of non-point sources that generate trash, such areas or facilities may include (but are not limited to) high usage campgrounds, picnic areas, beach recreation areas, fast food restaurants, parks not subject to an MS4* permit, or marinas. In addition to the minimum amount of trash hot spots, homeless camps and high-use beaches as defined in AB411 shall be deemed "hot spots."	
7.6	We have seen great success in trash reductions as a result of these TMDLs. However, we are concerned that, as proposed, the Amendments require Region 4 to re-open 13 of the 15 trash TMDLs and consider modifications. Specifically, the draft Amendments state that	Chapter III.L.1.b.2 - ~~Within one year of the effective date of these Trash Provisions*,~~ The Los Angeles Water Board ~~shall~~ may convene a public meeting to reconsider	Please see Response to Comment 6.7.

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	"within one year of the effective date of these Trash Provisions, the Los Angeles Water Board shall convene a public meeting to reconsider the scope of its trash TMDLs, with the exception of those for the Los Angeles River and Ballona Creek watersheds, and to particularly consider an approach that would focus MS4 Permittee's trash-control efforts on high-trash generation areas within their jurisdictions." A reopener of this scope and magnitude is inappropriate and unnecessary.	the ability to allow TMDL responsible parties, who are determined to be at least 80% in compliance through the implementation of full capture systems, to achieve full compliance through focusing additional trash-control efforts on high-trash generation areas ~~scope of its trash TMDLs~~, with the exception of those for the Los Angeles River and Ballona Creek watersheds~~, and to particularly consider an approach that would focus MS4* permittees' trash-control efforts on high-trash generation areas within their jurisdictions~~.	
7.7	Track 2 permittees should be required to install full-capture devices to the maximum extent feasible.		Please see Response to Comment 6.3.
7.8	Track 2 should have a 5 year compliance schedule.	For MS4* permittees that elect to comply with Chapter III.L.2.a.2. (Track 2), full compliance shall occur within five ~~ten~~ (10~~5~~) years of the effective date of the first	Please see Response to Comment 6.9. For statewide consistency and in recognizing the need for site-specific flexibility, a ten year compliance schedule was developed for both Track 1 and Track 2. As permits are updated every five years, a ten year compliance schedule allows for adaptive management of the implementation plan to control trash. A ten year compliance schedule provides sufficient time for trash control with either Track 1 or Track 2 to

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		implementing permit (whether such permit is re-opened, re-issued or newly adopted), along with achievements of interim milestones such as average load reductions of ten percent (120%) per year. In no case may the final compliance date be later than ten ~~fifteen~~ (10~~5~~) years from the effective date of these Trash Provisions*.	be successful. Reduced time for compliance with Track 2 may result in less effective programs for trash control. For these reasons, both Track 1 and Track 2 should have a ten year compliance schedule. However, the time schedule in the proposed final Trash Amendments was modified to include provisions within new development with and MS4 and permittees designated after the effective date of the Trash Amendments. For MS4 Phase I and Phase II permittees that are newly designated as part of an existing MS4, it may not be feasible to expect compliance within ten years from the effective date of the first implementing permit (e.g., where designation occurs nine years after the first implementing permit). To address this, the proposed final Trash Amendments have been clarified so that for MS4 Phase I and Phase II permittees that are designated after the effective date of the Trash Amendments, full compliance must be demonstrated within ten years of the effective date of the designation. The State Water Board does not think the proposed language is necessary. (Ocean Plan Amendment at III.L.4.a.5; Part I ISWEBE at IV.A.5.a.5.)
7.9	The State Board should be explicit that each permittee is required to show a ten percent reduction in trash discharges annually for the ten year compliance schedule. Interim milestones are a critical component to ensure permittees meet the ten year compliance deadline. Throughout the stakeholder process, the State Board had always considered interim milestones of ten percent for ten years to be the appropriate requirement	Chapter III.L.4.a.3.and 4. (For both Tracks) - For MS4* permittees that elect to comply with Chapter III.L.2.a.1. (Track 1), full compliance shall occur within ten (10) years of the effective date of the first implementing permit (whether such permit is re-opened, reissued or newly adopted), along with achievements of interim milestones ~~such as an average of~~ a	Please see Response to Comment 6.8.

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		minimum ten percent (10%) of the full capture systems* installed every year. In no case may the final compliance date be later than fifteen (15) years from the effective date of these Trash Provisions*. SED, Pg.15 - "Within the ten-year compliance periods discussed above, the Water Board ~~can~~ shall set interim compliance milestones within a specific permit. These interim milestones ~~could be set, for example, as~~ should be a minimum ten percent reduction or ten percent installation per year."	
7.10	All permittees should be given equal compliance schedules regardless of permit's renewal dates. The amendment should require all permittees to begin meeting compliance requirements within 18 months. Reducing the worst-case scenario of 15 years until compliance to only 11.5 years will get California quicker results without placing a burden on permittees.	Within eighteen (18) months of the effective date of these Trash Provisions*, each permitting authority* shall ~~either~~: (i) issue an order pursuant to Water Code section 13267 or 13383 requiring each MS4* permittee that will be complying under Chapter III.L.2.a.1. (Track 1) or Chapter III.L.2.b.2. (Track 2) to submit written notice to	Please see Response to Comment 6.9.See Trash Amendments (Ocean Plan Amendment at III.L.4.a; Part I ISWEBE at IV.A.5.a.)

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		the permitting authority* stating whether such MS4* permittee will comply with the prohibition of discharge under Track 1 or Track 2, ~~or~~ and (ii) re-open, re-issue, or adopt an implementing permit that includes requirements consistent with these Trash Provisions*, and that requires notice from each MS4* as to whether it has elected to comply under Track 1 or Track 2.	
7.11	As a Public Advisory Group Member, CCKA was largely responsible Chapter III.L.5., which provides time extensions to permittees who adopt a source control ordinance in their local community. We also support Track 2's call for source reduction as a means of controlling litter. California existing source control ordinances have established that such ordinances can be an effective means of curbing litter, saving money, and changing consumer behavior. As a response to California policy as well as a growing need for municipalities to reduce litter in order to save costs, improve the environment, and meet regulatory mandates such as TMDLs, in recent years, plastic bag		Please see Response to Comment 6.10.

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	bans and foam bans in particular have proliferated. In opposition to comments made by the American Chemistry Council, and Dart Industries during public testimony at the July 16, 2014 workshop, we believe source reduction policies are effective and should be incentivized in the Policy.		
7.12	Only Track 1 Permittees should receive a time-credit extension for implementing source control ordinances. The time-credit extension was suggested with the intent of complementing Track 1's structural BMP approach. However, the Amendments currently allow both Track 1 and 2 to receive a time-extension for passing a source-control ordinance.		Please see Response to Comment 6.11.
8.1	Caltrans is concerned with the implementation of full capture devices as recommended by the State Water Board staff. Our major concern is that these devices may not be compatible with the structural controls required for subsequent TMDL compliance identified within Attachment IV of the Caltrans NPDES Permit (Order 2012-0011-DWQ). We are also concerned about the implementation schedule. Recommendation: Full capture devices should not be limited to those listed in the trash amendment. If treatment controls are feasible,		The Trash Amendments provide that Caltrans may implement any combination of full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls to ensure that the full capture system equivalency is achieved. (Ocean Plan Amendment at III.L.2.b; Part I ISWEBE at IV.A.3.b.) The proposed Trash Amendments would require the State Water Board to modify the NPDES permit for Caltrans to incorporate the prohibition of discharge and implementation requirements of the proposed Trash Amendments within the permit. Until Caltrans' permit is amended, the proposed Trash Amendments would not apply. Until that event, Caltrans follows the conditions of Attachment IV of the Caltrans NPDES Permit (Order No. 2012-0011-DWQ). The proposed Trash Amendments take into consideration that strict use of full capture systems is infeasible for Caltrans. Treatment controls that are utilized by Caltrans to address trash and debris TMDL

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	Caltrans will implement devices that will address TMDLs and trash compliance (e.g., Media Filters, Infiltration basins, Detention devices, and other devices that may capture trash and treat for other pollutants). This amendment will require resources beyond current retrofit requirements identified within Caltrans NPDES Permit (Order 2012-0011-DWQ). Therefore, Caltrans recommends that the State Water Board revisit the compliance schedule and extend the proposed ten-year compliance deadline to be consistent with the 20-year TMDL compliance milestone. This would enable Caltrans to apply public funds more efficiently, installing devices that would be effective in treating multiple pollutants causing impairment to the water body.		compliance would be deemed acceptable for compliance towards the prohibition of discharge in the Trash Amendments. As trash is a priority pollutant across California, a ten-year compliance schedule will be maintained for both Caltrans and Phase I and Phase II MS4 permits.
8.2	Caltrans has established goals and metrics for demonstrating progress in meeting TMDL requirements in Attachment IV of our Permit. One purpose of Attachment IV was to standardize how Caltrans complies with NPDES requirements statewide, including standardizing monitoring and reporting requirements. Recommendation: Caltrans recommends that the amendment include a provision to allow Caltrans to report progress toward meeting the requirements of the amendment consistent with Attachment IV of our		The proposed Trash Amendments would require the State Water Board to modify the NPDES permit for Caltrans to incorporate the prohibition of discharge and implementation requirements of the proposed Trash Amendments within the permit. (See Ocean Plan Amendment III.L.2.b; Part I ISWEBE IV.A.3.b.) Until that event, Caltrans follows the conditions of Caltrans NPDES Permit (Order No. 2012-0011-DWQ). The monitoring and reporting requirements of the Attachment IV of the Caltrans NPDES Permit (Order No. 2012-0011-DWQ) and the proposed Trash Amendments should not be inconsistent.

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	Permit.		
8.3	There is a need to allow public education and other non-structural controls, and not focus solely on structural full capture devices. Over the past decade, Caltrans has invested in litter campaigns, such as “Keep California Beautiful,” “Litter Day,” the “California Highway Patrol Litter Campaign,” “Don’t Trash California,” and many other studies and outreach programs, including partnerships with local communities. In addition, Caltrans implements adopt-a-highway and other trash reduction programs that have a significant impact on reducing trash in the state. Recommendation: Caltrans recommends that the State Water Board incorporate such language within Track 2 compliance to allow Caltrans to continue its non-structural trash reduction programs statewide (including public education, Adopt-A-Highway, institutional controls, and other trash reduction practices) instead of solely requiring retrofit with full capture devices.		See Response to Comment 8.1. The State Water Board agrees that public education campaigns, specifically "Keep California Beautiful" and "Don't Trash California," are successful trash reduction programs that Caltrans employs to reduce trash on highways across the state. The Trash Amendments’ implementation plan specific for Caltrans recognizes that a combination of treatment and institutional controls (such as Caltrans education campaigns) are currently employed and continue to be utilized by Caltrans to control trash. The proposed Trash Amendments’ language allows for a combination of full capture systems, other treatment controls, multi-benefit projects, and institutional controls. Institutional controls encompass the wide range of non-structural trash reduction programs and controls available to Caltrans to control trash. (See the defined term for “institutional controls” in the definitions section of the Trash Amendments.)
8.4	Caltrans is concerned that the majority of the high trash generating areas identified within the trash amendment have already been incorporated within Attachment IV (TMDL) watersheds. Caltrans is concerned that the amendment		The Trash Amendments do not modify trash control practices within high priority TMDL areas as described within Attachment IV of Caltrans NPDES Permit (Order No. 2012-0011-DWQ), which only exists in the Los Angeles Region. The Trash Amendments will establish a set of implementing trash controls in high trash generating areas outside of existing TMDLs. These requirements would be incorporated for implementation

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	includes another layer of prioritization that will not be consistent with Attachment IV of our Permit and may not result in environmental benefit. Recommendation: Caltrans recommends that the State Board place a provision in the trash amendment that allows Caltrans to implement trash control practices within high priority TMDL areas as described and to be consistent with Attachment IV of our NPDES Permit.		in the next Caltrans NPDES Permit. (See Ocean Plan Amendment III.L.2.b; Part I ISWEBE IV.A.3.b.)
8.5	Caltrans has concerns with how the State Water Board intends to manage the certification of full capture systems. There are several types of BMP devices capable of removing trash; therefore, the State Water Board should expand its list of approved full capture devices. Caltrans is also concerned with the emphasis of vortex separators, as this is not consistent with concerns of standing water and vector concerns. Recommendation: Caltrans requests that the State Water Board revise the language to state that any type of BMP capable of removing trash as required by the stated criteria in the Trash Amendments will serve as an acceptable full capture device. Caltrans also requests that the State Water Board provide a revised, expanded list of approved full capture devices including the		To provide statewide consistency and ensure that limited resources are allocated to full capture systems that properly capture trash, the State Water Board will utilize a similar process to the full capture system certification process as the Los Angeles Water Board. The proposed final Trash Amendments specify that full capture systems (see definitions section in the Trash Amendments) certified by the Los Angeles Water Board or listed in Appendix I of the Bay Area-wide Trash Capture Demonstration Project, Final Project Report (May 8, 2014) are deemed to be in compliance with the proposed final Trash Amendments. Previously, the Los Angeles Water Board certified two of Caltrans' Gross Solids Removal Devices, Linear Radial – Configuration 1 (LR1 I-10) and Inclined Screen – Configuration 1 (IS1 SR-170), to comply with the Ballona Creek and Los Angeles River Trash TMDLs. As Caltrans complies with trash TMDL requirements in Attachment IV of the Caltrans NPDES Permit (Order No. 2012-0011-DWQ), the full capture systems that are installed must be further certified by the State Water Board and deemed available for use to comply with the prohibition of discharge for trash.

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	addition of media filters, infiltration devices, detention devices, and other devices proven effective for trash capture.		
8.6	Caltrans is concerned with the use of the term “public transportation areas” throughout the Trash Amendments. Public transportation areas could refer to the Caltrans roadways statewide, in addition to priority land uses. Recommendation: Caltrans requests that the State Water Board revise this statement to clarify the meaning of “public transportation areas” in relation to “priority land uses.”		The Trash Amendments do not use the term “public transportation areas”. The Trash Amendments specify “public transportation stations” under “priority land uses”. “Public transportation stations” do not include Caltrans roadways statewide. Facilities or sites are where public transit agencies' vehicles load or unload passengers or goods. (See Ocean Plan Amendment and Part I ISWEBE definition for “public transportation stations” under definition for “priority land uses.”) An example would be a bus station, bus stop, or train stop. This is not in conflict with Caltrans roadways as “public transportation stations” are defined through “priority land uses”, which are only applicable to Phase I or Phase II MS4 permittees. Implementation provisions for Caltrans are focused to “significant trash generating areas”. (See Ocean Plan Amendment and Part I ISWEBE definition for “significant trash generating areas.”)
8.7	Caltrans provides mobility in a safe manner to the traveling public. What can be installed for litter control is not always feasible (e.g., inlet screens, etc.) due to concerns for safety to the traveling public (including hydroplaning, flooding, etc.) and safety to the Maintenance staff, traffic delays, etc. Recommendation: Caltrans requests that the State Water Board recognize that structural BMP retrofits may not be feasible in all areas, such as on freeways through high-density residential, commercial, and industrial areas due to potential		The State Water Board agrees that structural BMP retrofits may not be feasible in all areas since Caltrans is a linear system. As proposed, the Trash Amendments provide the flexibility to install, operate, and maintain any combination of full captures, other treatment controls, multi-benefit projects, and institutional controls. This would additionally provide flexibility to address potential safety concerns with trash controls. Additionally, please see Response to Comment 8.3.

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	safety concerns. The amendment should incorporate flexibility to address potential safety concerns and alternative trash controls, such as those identified within comment 3 above, should be recognized as a substitute to full capture retrofit. 8.		
8.8	This statement does not take into consideration that Caltrans has invested in capital resources for installation of trash control devices to address the trash TMDL compliance in the Los Angeles Region. Addressing the trash amendment will cost Caltrans significantly more than $1,040 per lane-mile when considering the whole life costs of trash control expenditures. Recommendation: Delete either the inaccurate statement or add a caveat that Caltrans has invested a significant amount of resources on litter removal and the whole life costs of litter removal as experienced in the Los Angeles Region has been much more than $1,040 per lane-mile.		At the time the Staff Report was developed, the State Water Board did not have cost data related to the capital resources that Caltrans has invested in the Los Angeles region. The proposed Trash Amendment is only applicable to areas not covered under an already existing trash or debris TMDL in the Los Angeles Region. Staff assumed that costs for Caltrans would be similar to the compliance costs of other MS4 dischargers. New information of cost expenditures was provided by Caltrans on November 7, 2014. Please see responses to Comment Letter 78. (Final Staff Report Appendix C, pp. C-2-4, C-15, C-18-19, and C-50-54.)
8.9	Caltrans disagrees with the estimation of the annual cost. The Trash Amendment cost will be significantly more for the following reasons: 1) An $800 drop inlet screen is infeasible for highway application due to safety concerns (e.g., flooding, hydroplaning causing accidents to the traveling public and		Please see Response to Comment 8.8. The Staff Report (Appendix C, section 8, pp. C-50-53.) evaluated all information pertaining to costs that was accessible to the State Water Board regarding the cost of compliance for Caltrans discharges for inclusion into the Economic Considerations section of the Staff Report. Cost assumptions for similar MS4 Phase I and II permittees were

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	inability for Caltrans Maintenance staff to maintain the inlet safely). 2) The high priority areas noted in the trash amendment of high-density residential, commercial, industrial, on/off ramps will likely be more than 20 percent of the urban areas. Recommendation: Either delete or correct the table. The incremental capital, operation and maintenance costs for Caltrans are significantly underestimated. Additional annual costs include operation and maintenance costs, capital outlay support, traffic controls, environmental documentation, etc. Caltrans looks forward to working with the Board to refine the cost estimates.		used in the analysis. New information of cost expenditures was provided by Caltrans on November 7, 2014. Please see responses to Comment 78. (Final Staff Report Appendix C, pp. C-2-4, C-15, C-18-19, and C-50-54.)
8.10	Caltrans would like to minimize the use of limited resources spent on reporting. Recommendation: Caltrans reporting for the trash amendment should be incorporated with the Caltrans TMDL Status Reporting efforts and simply limited to listing the areas where trash reduction has been achieved. No BMP performance, trash reduction calculations should be needed.		Trash is a prevalent pollutant in California. The Caltrans managed roadways are a generator of trash, so the implemented trash controls should be monitored to demonstrate effectiveness of controls and compliance with full capture system equivalency. However, the Trash Amendments would not preclude Caltrans from incorporating trash control plans and reporting into existing reporting efforts.
9.1	We would ask that State Board to consider amending the trash amendments to completely eliminate "regulatory source controls" from Track 2 and consider a more comprehensive approach that		Regulatory source controls have been omitted from the final proposed Trash Amendments. Please see also the General Response to Comment Letter 1 and response to Comment 1.3. Commenter's concerns relate to regulatory source controls and time extensions which have been removed from the proposed Final Trash Amendments. (Ocean Plan Amendment at

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	captures all types of trash in the waterways. With some modifications, Track 2 could be an effective means Of trash control. Specifically, Track 2 should explicitly prohibit MS4 permittees to rely on measures that the data shows are ineffective to reduce trash in the receiving waters; should require a certification Process for non---structural, institutional control elements; and Require additional monitoring to show that MS4 permittees using Track 2 are reducing trash in the receiving waters.		removed III.L.5; Part I ISWEBE at removed IV.A.6) Based on the revisions and discussions in the referenced responses, commenter's underlying arguments are not applicable to the Trash Amendments which will be considered for adoption by the Board and they will not be responded to in detail. The proposed final Trash Amendments were modified to incorporate the term 'full capture system equivalency', which is the trash load that would be reduced by Track 1. (See Ocean Plan and Part I ISWEBE, Definitions, "Full capture system equivalency.") To achieve full capture system equivalency, effective controls must be implemented. The monitoring requirements for Track 2 were modified to focus on the demonstrating the effectiveness of controls and compliance with full capture system equivalency. (See Ocean Plan at III.L.5.b-c and Part I ISWEBE at IV.L6.b-c.") These components of the Trash Amendments should minimize the commenter's concerns on ineffective controls. Additionally, the State Water Board will only be certifying full capture systems to ensure utilized full capture system met the design criteria and not non-structural controls. (See Ocean Plan Amendment and Part I ISWEBE, Definitions, "Full capture system.")
10.1	High generating land uses may vary by community across the state. There may be instances, especially in Phase II communities but also rural areas within a Phase I footprint, where some portion of the priority land use area may not in fact be a high trash-generating area. Rather than installing devices or institutional controls in areas where the return on the investment will be low, we recommend that the Trash Amendments allow for flexibility by establishing a process through which	The draft Trash Amendments say that "an MS4 may request that its permitting authority approve an equivalent alternative land use (…) if that MS4 has land use(s) within its jurisdiction that generate trash at rates that are equivalent to or greater than one or more of the priority land uses listed". This gives permittees	Trash is a priority pollutant across California. The State Water Board agrees that the Trash Amendments should provide flexibility for permittees to determine the most effective and efficient methods and controls to control trash discharges from the areas that have trash generation rates. Therefore, the Trash Amendments focus on a dual alternative "compliance track" approach to provide the flexibility to permittees to determine the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation. The priority land uses are based on lessons learned and extensive data collected from permittees with existing trash controls, either a Trash TMDL or permit conditions. The priority land uses include five categories of land uses that generate

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	permittees could petition their Regional Water Board to review the areas in question and give the public agency the authority to exempt such areas if they are found not to be high trash-generating. The exemption could include a 'sunset date' or a requirement to revisit priority areas at some frequency in the event the trash situation in those areas worsens. The exemption process could include visual assessments of the priority areas as a first step in determining where and what controls to put in place.	the option of adding land uses, but does not allow the exclusion of low generating sub-regions of an otherwise high trash land use. We suggest the addition of language to indicate "an MS4 may request its permitting authority to approve an exemption from treatment controls if that MS4 has areas within its jurisdiction that generate trash at rates that are significantly lower than estimated for the priority land use listed."	high amounts of trash. The State Water Board recognizes that other land uses may generate higher rates of trash. To allow for these occurrences the Trash Amendments include a provision for a MS4 permittee to focus on "equivalent alternate land uses" under both Track 1 and Track 2. (See Ocean Plan Amendment and Part I ISWEBE, Definitions Section, for "priority land uses.") Quantification measures such as street sweeping, mapping, and visual trash presence surveys can be used to prioritize these land uses for Track 1 or Track 2 controls. However, the State Water Board disagrees with providing an exemption of priority land uses that are shown to have low rates of trash generations. The permittee may apply the focus of trash controls to an equivalent alternate land uses. A priority land use that generates low trash amounts can be exchanged for another land us that generate equivalent or higher amounts of trash. (Ocean Plan Amendment and Part I ISWEBE definition of "equivalent alternate land uses.") The State Water Board understands that each priority land use across the state will generate trash at different amounts due to site specific conditions; however, the permittee would need to demonstrate effectiveness of existing controls and that existing controls are sufficient to meet the prohibition of discharge for trash.
10.2	Many MS4 permittees around the state have been working extensively with the Regional Water Boards to develop and implement watershed management programs, often based on watershed specific prioritization of pollutant and water quality conditions. These comprehensive watershed planning processes consider trash, as well as many other pollutants of concern (POCs). As drafted, the Proposed Trash Amendments would supersede and undermine existing watershed		Storm water plays an important role in the management of California's water resources. As the natural landscape and hydrology are modified to support California's growing population, there is an increased impact on water quality and supply. Storm water is a resource and must be treated accordingly. The main objective of treating storm water as a resource is to protect and restore watershed processes that are critical to watershed health. The State Water Board recognizes and supports extensive work that many MS4 Phase I and Phase II permittees are doing across the state to develop and implement watershed specific prioritization of pollutants and water quality conditions. The State of California, along with the State Water Board, recognizes that trash is a high priority pollutant that impairs the beneficial uses for aquatic life and

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	planning efforts, effectively determining that trash is the highest priority and taking resources away from the established watershed based priorities. The Proposed Trash Amendments need to recognize the value of current management programs and not divert resources away from ongoing successful efforts to control trash in our waterways. CASQA urges the State Water Board to allow MS4 programs with existing watershed-based management plans or POCs-focused water quality implementation plans to address trash in the prioritization context of those existing plans.		public health, causes an aesthetic nuisance, and reduces the economic value of California's recreation areas. Trash is a pervasive pollutant and one of the most easily recognized pollutants. Most importantly, trash is a controllable pollutant in storm water. The Trash Amendments do not supersede existing requirements and planning efforts. State Water Board believes the framework of the Trash Amendments allows trash control to be a compatible priority with existing watershed-based management plans and pollutant of concerns.
10.3	CASQA supports the approach to not requiring monitoring or performance demonstration for Track 1. In reality most permittees that select Track 2, will implement a combination of full capture devices and other control measures. The Trash Amendments should make it clear that permittees who select Track 2 do not need to monitor or demonstrate performance in those portions of their jurisdictions served by full capture devices. CASQA objects to the requirement for MS4 permittees to conduct receiving water monitoring. As noted, other sources contribute trash to receiving waters and imposing this requirement on MS4 permittees will		Please see Response to Comment 4.6 and 73.1.

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	not provide a definitive indication of the effectiveness of stormwater trash control programs. While MS4 permittees may want to conduct receiving water monitoring to demonstrate performance, it should not be mandated.		
10.4	It is essential that the program be developed in conjunction with a funding mechanism. Municipal stormwater agencies do not generate the trash and should not bear the full responsibility for funding and implementing the corrective measures. The State Water Board needs to assist with the development of funding sources for permittees to comply with the Trash Amendments. CASQA does not dispute the water quality benefits of controlling trash. However, the costs presented in the Staff Report and Economic Analysis exceed most communities' ability to fund. Grant funds have assisted many communities to install full capture devices. This type of competitive grant funding while valuable, takes a significant effort to win and manage. Grants, such as the Proposition 84, do not address the ongoing costs of managing and maintaining treatment devices. Proposition 218 currently precludes MS4 permittees from raising their fees for Stormwater management (where fees even exist). Even with the recent changes to Proposition		The State Water Board provides financial assistance through various State and federal loan and grant programs to help local agencies, businesses, and individuals meet the costs of water pollution control. The Public Resources Code requires that the Proposition 84 Storm Water Grant Program funds are used to provide matching grants to local public agencies for the reduction and prevention of storm water contamination to rivers, lakes, and streams. Please visit the following website for more information: http://waterboards.ca.gov/water_issues/program/grants_loans/prop84/index.shtml Additional financial assistance information including information on the Clean Water State Revolving Fund loans, is available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/ CalRecycle administers funding programs to assist with waste disposable, specifically reducing beverage container litter in the waste stream. Information on the Beverage Container Recycling Grants is available at: http://www.calrecycle.ca.gov/bevcontainer/grants/ In addition, the Trash Amendments specify coordination of effort between Caltrans and MS4 in overlapping significant trash generating and/or priority land uses. Coordination with Caltrans will increase the avenues for funding.

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	218, the typical full capture devices are catch basin inserts and would not be considered eligible for the water supply exception resulting from AB 2403. CASQA recommends that the State Water Board partner with MS4 permittees to explore the creation of a non-competitive program to fund trash control measures. One such program that could serve as an example is the Used Oil Payment Program (OPP). CASQA strongly encourages the State Water Board to explore mechanisms to create economic incentives for producers of products determined to be the primary components of trash in the MS4 and water bodies.		Modifications to Proposition 218 are outside of the scope of these Trash Amendments. With the Storm Water Strategic Initiative, the State Water Board aims to improve program efficiency and effectiveness by providing more assistance to overcoming funding barriers. For a response to establishing a program similar to the Used Oil Payment Program, please see response to Comment 4.7.
10.5	CASQA recommends that the State Water Board create a list of certified devices prior to the adoption of the Proposed Trash Amendments or revise the language to indicate that any full capture device that meets the stated criteria fulfills the certification requirement. This latter approach has the further advantage of allowing the suite of allowable devices to be dynamic as permittees learn which devices prove more (or less) effective and allows manufacturers to modify their designs and introduce or remove devices from their product line. CASQA recommends that automatic certification be extended to any full		The certification process is to ensure that the general design of a full capture system is effective at capturing trash 5 mm or greater during the one-year one-hour storm event. The certification process will ensure resources are directed towards effective treatment controls to capture and remove trash. A list of certified devices such as what the commenter suggests is already incorporated by reference (e.g. systems certified by the Los Angeles Water Board). In addition to the certified full capture systems by the Los Angeles Water Board, the proposed final Trash Amendments have been modified to grandfather full capture systems listed in Appendix I of the Bay Area-wide Trash Capture Demonstration Project, Final Project Report (May 8, 2014). (Ocean Plan Amendment and Part I ISWEBE, Definition Section, “Full capture systems.”) These full capture systems can be found at: http://www.sfestuary.org/wp-content/uploads/2014/05/AppendixI.DevicesOffered.pdf.

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	trash capture device approved by a Regional Water Board to comply with existing NPDES permits. This certification can be extended for the life of the installed device.		The State Water Board is unaware of any other certifications issued by the State or Regional Water Boards. Blanket approval of any and all full capture systems included in a permit without additional review would not meet the State Water Board's goal of ensuring effective trash capture.
10.6	CASQA recommends that the State Water Board require that other regulated entities implement the Proposed Trash Amendments through a regulatory process external to the MS4 permits. The State Water Board should include provisions to require implementation of the Proposed Trash Amendments, not only through inclusion in MS4 permits, but through other NPDES Permits, WDRs, and Waiver Provisions.		Statewide the transport of trash through storm water systems to receiving waters is a substantial source of trash. The Trash Amendments specify provisions for NPDES permits issued pursuant to Federal Clean Water section 402(p). Statewide, nonpoint source discharges of trash cause less of an impact to state water than do point sources. However, at the local or regional level, nonpoint sources can be a substantial source of trash. "Dischargers without NPDES permits, WDRs, or waivers of WDRs must comply with [the] prohibition of discharge." (Ocean Plan Amendment at III.I.6.d; Part I ISWEBE at IV.A.2.d.) The Trash Amendments provide that a permitting authority may require such dischargers to implement any appropriate trash controls in areas or facilities that generate trash, which include, but are not limited to, high usage campgrounds, picnic areas, beach recreation areas, parks not subject to an MS4 permit, or marinas. (Ocean Plan Amendment at III.L.3; Part I ISWEBE at IV.A.4.)
10.7	CASQA recommends the State Water Board consider providing off ramps from the requirements for MS4 permittees that do not have trash impaired waters where the permittee can demonstrate they do not have a trash or litter problem. The Proposed Trash Amendments can recognize that many surface waters in the state are not impaired for trash and provide an option that if the MS4 permittees can demonstrate		See Response to Comment 10.1. Trash is a priority pollutant across California. The assertion about the lack of impaired waters skews the manner in which impairments are identified in California. Specifically, many water bodies have no data on which to base any impairment decision. Thus the lack of a determination of impairment may not be used as evidence of water quality not exceeding objectives.

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	any of the following the Amendments should not apply to that MS4. 1) The MS4 does not have any of the high trash generating land uses within its jurisdiction; or 2) The MS4 is currently meeting the discharge prohibition of no discharge of trash to surface waters of the State, or the deposition of trash where it may be discharged into surface waters of the State; or 3) The MS4's receiving waters meet the water quality objective of trash in amounts less than that adversely affecting beneficial uses or causing nuisance.		The Trash Amendments focus on a dual alternative "compliance track" approach to provide the flexibility to permittees to determine the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation. The priority land uses are based on lessons learned and extensive data collected from permittees with existing trash controls, either as trash TMDLs or permit conditions. Specifically if an MS4 does not have any priority land uses within its jurisdiction, then the MS4 permittee would not have either Track 1 or Track 2 trash control provision in the implementing permit. Treatment or institutional controls implemented to comply with existing permit conditions for the discharge of trash are a likely reason for low trash generation. The State Water Board understands that each priority land use across the state will generate trash at different amounts due to site specific conditions; however, the permittee would need to demonstrate to the permitting authority the effectiveness of existing controls and that existing controls are sufficient to meet the prohibition's compliance requirements. The State Water Board does not consider existing controls to be off ramps, but instead a clear demonstration that a permittee already has a trash control program to achieve the conditional prohibition of discharge of trash (e.g. the permittee has already achieved compliance with Track 2). Overall, the focus of the Trash Amendments is to control and reduce the amount of trash in California's surface waters. For a response to an MS4's receiving waters meeting the water quality objective for trash, please see Response to Comment 4.1.

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10.8	CASQA therefore requests the Proposed Trash Amendments be modified to either (1) provide Regional Water Boards the discretion to add additional time for implementation or (2) limit the timeframe in which Regional Water Boards can add additional priority land uses to the initial establishment of the permittee's program.		The Trash Amendments provide a time schedule of ten years from the effective date of the first implementing permit for MS4 Phase I and Phase II permittees to be in compliance with the prohibition of discharge. (Ocean Plan Amendment at III.L.5.a.2-3; Part I ISWEBE at IV.A.6.a.2-3.) The framework for the Trash Amendments focuses on trash control for priority land uses. (Final Staff Report at Sections 2.1-2.4.) In addition to the identified priority land uses, the Trash Amendments provide provisions for a permitting authority to determine that additional specific land uses or locations generate substantial amount trash to warrant additional trash controls by the permittee. Those locations may include parks, stadia, schools, and roads leading to landfills. (Ocean Plan Amendment at III.L.2.d; Part I ISWEBE at IV.A.3.d.) The State Water Board agrees that the draft Trash Amendments previously lacked clarity on the time schedule for such specific land uses or locations. To clarify the time schedule of additional specific land uses or locations, language was added to the proposed Trash Amendments specifying that the permitting authority has the discretion to determine a time schedule that shall occur as soon as practical for the determined location and shall be no later than ten years from the determination. (Ocean Plan Amendment at III.L.5.a.5; Part I ISWEBE at IV.A.6.a.5.)
10.9	The Proposed Trash Amendments propose narrative water quality objectives for the Inland Surface Waters, Enclosed Bays and Estuary Plan and the Ocean Plan, and proposes a prohibition of trash discharge in those Plans. The MS4 permittees would be considered in full compliance with the prohibition of trash discharge so long as the permittees were fully implementing		Please see response to Comment 4.1. Implementing Track 1 and Track 2 means that the permittees are in compliance with the prohibition. (Ocean Plan Amendment at III.I.6.a; Part I ISWEBE at IV.A.2.a.) The State Water Board is not proposing to add language to specify the MS4 permittees are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2.

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	Track 1 or Track 2 (Chapter IV.B.2.a and Chapter III.I.6.a, of the ISWEBE Plan and Ocean Plan, respectively). However, the Proposed Trash Amendments do not indicate that meeting the discharge prohibition requirements would also mean the permittees are in compliance with receiving water limitations (i.e., meeting the water quality objectives). CASQA recommends adding language to the Proposed Trash Amendments indicating the MS4 permittees are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2.		It may be appropriate for the permitting authority / water board to issue a permit that provides that a permittee is in compliance with a receiving water limitation based on compliance with the trash water quality objective so long as the permittee is in compliance with the trash-specific permit terms in the MS4 permit. Any such determination, however, would be limited to effluent limitations in locations within priority land uses because the permitting authority retains discretion to determine that specific land uses outside of the priority land uses generate substantial amounts of trash and require trash controls in such areas. (Ocean Plan Amendment at III.L.2.d; Part I ISWEBE at IV.A.3.d.)
10.10	It appears that the Proposed Trash Amendments will serve as an alternative to a TMDL, thereby preventing the need to develop trash TMDLs in the future. CASQA recommends the State Water Board add language to clarify the intent of the Proposed Trash Amendments with respect to the development of future TMDLs. It seems that implementation of the Proposed Trash Amendments represents a single regulatory action addressing MS4 permittee requirements thereby removing the need to develop wasteload allocations via a TMDL for MS4 permittees. CASQA recommends that language be included in the Proposed Trash Amendments stating that if the		The State Water Board expects the Trash Amendments will constitute adequate pollution control measures to meet water quality standards and serve as an alternative to a TMDL for water bodies listed as impaired for trash. Following adoption of the proposed Trash Amendments, a water body listed as impaired for trash on the 303(d) list (Category 5) could be moved to Category 4b, where the trash control requirements obviate the need for a TMDL. For the same reason, subsequent to adoption of the trash amendments, the State Water Board anticipates that any water segments added to the Integrated Report for the first time for trash impairment will be placed in Category 4b. Additionally, the U.S. EPA has expressed support with the anticipated approach to place waters impaired for trash in Category 4b as. See, for example, the U.S. EPA's Comment Letter 73 (Attachment thereto, page 3).

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	requirements in the Proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully implemented.		
10.11	The State Water Board should provide consistency between the water quality objectives and prohibitions by revising the trash prohibitions to include language that qualify that the trash discharges being prohibited and controlled by the specified implementation requirements, is the trash "in amounts that cause impairment of beneficial uses or conditions of nuisance in receiving waters."		Please see Responses to Comments 4.1 and 10.9.
10.12	CASQA requests that when the revised draft of the Trash Amendments is released for public review that the entire document, not just the changed text, be open for further comment to allow stakeholders to consider the whole of the revised proposal.		The public process for the development of the Trash Amendments has afforded extensive opportunity for stakeholder input: On June 26, 2007, October 7 and 14, 2010, the State Water Board held a public meetings and sought public input regarding a statewide regulatory effort to control trash in waters of the state, and solicited comments on the scope and content of the environmental information to be considered in the development of the project. The State Water Board convened a Public Advisory Group composed of ten stakeholders representing municipalities, California Department of Transportation, industry, and environmental groups. The Public Advisory Group met on July 26, 2011, August 30, 2011, October 12 and 13, 2011, May 22, 2012, August 13, 2012, and March 6, 2013 to provide comments on, and feedback to, the development of the proposed Trash Amendments and Draft Staff Report. In March, April, and May 2013, State Water Board held fourteen focused stakeholder meetings to provide an overview of the development of the proposed Trash

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			Amendments and to receive feedback on key issues prior to the development and distribution of the proposed Trash Amendments and the Draft Staff Report. On June 10, 2014, the State Water Board provided notice to members of the public and public agencies of the opportunity to submit written comments on the proposed Trash Amendments and the Draft Staff Report; the written comment period; and the dates for the public workshop and public hearing to receive oral comments and evidence regarding the proposed Trash Amendments. During the written public comment period, the State Water Board conducted a public workshop on July 16, 2014, and a public hearing on August 5, 2014, to solicit public comment and testimony regarding the proposed Trash Amendments and Draft Staff Report. The State Water Board is providing written responses to the written comment letters timely submitted and those late letters accepted for consideration. The regulations applicable to the State Water Board's certified exempt regulatory programs to comply with the California Environmental Quality Act provide the exclusive procedural requirements for the State Water Board's adoption of the proposed Trash Amendments. (23 Cal. Code Regs. §§ 3720-3780.) Additional public comment on the revised or added text contained in the proposed final Trash Amendments and SED is not required. Additional comment is required "only if recirculation would be required for an environmental impact report pursuant to California Code of Regulations, title 14, section 15088.5, in which case the board may limit any additional public comment to the significant new information contained in the recirculated Draft SED." (23 Cal. Code Regs. § 3779, subd. (e).) The recommended changes in the proposed final Trash Amendments and proposed Final Staff Report did not add "significant new information" and are responsive to prior extensive stakeholder input. As such the State Water Board is not providing a written comment period for the revisions made which constitute the proposed final

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			Trash Amendments and proposed Final Staff Report, and written comments will not be considered. The public may provide oral comments to the revisions contained in the proposed final documents at the meeting at which the State Water Board will consider adopting the proposed final Trash Amendments and approving the SED.
11.1	Add language to the proposed Trash Amendments indicating the permittees are in compliance with the receiving water limitation (water quality objective) so long as they are fully implementing Track 1 or Track 2.		Please see Responses to Comments 4.1 and 10.9.
11.2	The Los Angeles Regional Water Quality Control Board should be allowed to include permit provisions consistent with the Proposed Trash Amendments in areas where TMDLs exist if they desire without needing to reconsider the applicable TMDL(s).		The Los Angeles Water Board currently has the authority to reopen and consider existing trash TMDLs. The Trash Amendments provide direction to the Los Angeles Water Board to hold a public meeting to reconsider the scope of the TMDLs. The State Water Board does not intend to supersede the existing trash TMDLs with the adoption of the Trash Amendments, which expressly state that the trash control provisions contain therein do not apply to the waters within the jurisdiction of the Los Angeles Water Board for which trash TMDLs are in effect prior to the effective date of the Trash Amendments. (Ocean Plan Amendment at III.I.1.b; Part I ISWEBE at IV.A.1.b; see also Staff Report, Section 4.3.)
11.3	The Trash Amendments should recognize and allow for established prioritization schemes to be utilized in lieu of the proposed scheme if they have already been approved by the Regional Water Board or required in a permit without the need to provide additional documentation. The permittees are required to provide documentation as to the	e. If a regulated MS4 has a Regional Water Board approved or permit required prioritization scheme that differs from the priority land uses outlined in the amendment. the approved prioritization	The Water Boards are highly supportive of stakeholder-based watershed planning efforts that manage of storm water as a resource. The State Water Board is prioritizing trash control as a priority across California. The State Water Board believes the framework of the Trash Amendments allows prioritization of trash control to be compatible with existing watershed plans priorities. Specifically, the Trash Amendments encourage the use of multi-benefit projects that treat multiple pollutants, including trash, while infiltrating storm water runoff. In addition to the Trash Amendments, the State Water Board will continue

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	equivalency of the alternate land uses. It would be more efficient to allow the permittees to address the previously identified and Regional Board approved land uses without having to go through an additional and duplicative documentation procedure. Additionally, while the Proposed Trash Amendments provide flexibility for the permitting authorities to designate additional priority areas, it does not appear to allow for responsible agencies to lower the priority in certain areas. Local knowledge, supported by data, should be able to suffice as justification for jurisdictions to designate appropriate drainage areas as "non-priority" regardless of land use. The language should also provide flexibility to assign priorities based on metrics other than just land use if those metrics better address high trash generating areas.	scheme can be utilized in lieu of the priority land uses to comply with the Trash Amendments. Additionally, a regulated MS4 may determine that areas within priority land uses do not generate trash that accumulates in state waters (or in areas adjacent to state waters) in amounts that would either adversely affect beneficial uses, or cause nuisance. In the event that the regulated MS4 identifies such areas and is able to provide data supporting the finding, the permitting authority may waive the requirement for the MS4 to comply with Chapter IV.B.3.a CIII.L.2.a) with respect to the identified locations. The regulated MS4 shall submit documentation of the continued condition with annual reports as required under Chapter IV.B.7 (III.L.6).	to support multi-benefit projects and other sustainable alternative that infiltrate and treat storm water runoff through the Storm Water Strategic Initiative. Additionally, please see Response to Comment 4.4 for a discussion on "equivalent alternate land uses" to focus trash control to areas outside of "priority land uses" that generate higher amounts of trash. The State Water Board does not think the proposed language is necessary. (See Ocean Plan Amendment and Part I ISWEBE definition for "alternate equivalent land uses" within the "priority land uses" definition.)

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11.4	The Proposed Trash Amendments appear to require implementation of Track 1 or Track 2 for any storm drain that captures any runoff from a priority land use [Chapter IV.B.3.a.(l)/IV.B.3.a.(2) and Chapter III.L.2.a.(l)/Chapter III.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively] . This would trigger compliance requirements for a storm drain even if only a very small portion of a priority land use drains to the storm drain.	Recommendation: The Stakeholders recommend adding language to Chapter IV.B.3.a.(l)/IV.B.3.a.(2) and Chapter III.L.2.a.(l)/Chapter III.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively stating that permittees must address catchment areas where the priority land uses are greater than 25% of the total catchment area. Track 1: Install, operate and maintain full capture systems in their jurisdictions for all storm drains that captures runoff in catchment areas where ~~from one or more of the~~ priority land uses comprise >25% of the land area in the catchment in their jurisdictions; or Track 2: Install, operate, and maintain any combination of full capture systems, other treatment controls, institutional controls, and/or multi-benefit projects within either the jurisdiction of the MS4 permittee or within the	MS4 Phase I and Phase II permittees with regulatory authority over priority land uses will be required to comply with the prohibition of discharge by with Track 1 or Track 2. Track 1, which sets the performance standard, specifies that implementing trash controls in "all storm drains that capture runoff from one or more of the priority land uses in their jurisdiction." "In their jurisdiction" means that trash controls, specifically inserting treatment controls, are focused on locations within the right-of-way and publically owned land. The Trash Amendments specify that the primary activities need to be on industrial, commercial, and mixed urban on developed parcels as defined in the Trash Amendments. (Ocean Plan Amendment and Part I ISWEBE at definitions of “industrial”, “commercial”, and “mixed-urban”). Trash is a priority pollutant and all discharges, regardless of size are considered significant. The Trash Amendments are already focusing efforts on trash control by requiring controls on only priority land uses. Further reduction of areas requiring control to only portions of priority land use areas would not be consistent with the goal of the Trash Amendments. The State Water Board does not think the proposed language is necessary. See Staff Report sections, 2.4.1, 4.5, and 4.6.

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		jurisdiction of the MS4 permittee and contiguous MS4s permittees, so long as such combination achieves the same performance results as compliance under Track 1 would achieve for all storm drains that captures runoff in catchment areas where ~~from oa.e or more of the~~ priority land uses comprise >25% of the land area within the catchment ~~within such jurisdiction(s)~~.	
11.5	The Proposed Trash Amendments provide flexibility to permitting authorities to revise the priority land uses as well as define new trash sources. However, the Proposed Trash Amendments do not require the permitting authorities to provide significant justification of the changes. Allowing the permitting authorities to impose more stringent requirements without criteria to justify such requirements contradicts the establishment of consistent statewide trash requirements. A statewide plan that gives broad discretion to regional permitting authorities often results in uneven implementation of the plan.		Contrary to what is asserted in the comment, the proposed Trash Amendments do not allow permitting authorities "to revise the priority land uses" or "define new land uses." The Trash Amendments define "priority land uses" and provides that a permittee may apply to the permitting authority to implement the trash provisions in "alternative land uses." (Ocean Plan Amendment and Part I ISWEBE at the Definitions section.) The Trash Amendments acknowledge that trash may be generated from locations or land uses outside of the priority land uses and may require trash controls. The Trash Amendments provide discretion to the permitting authority to determine that such locations or land uses generate "substantial amounts of trash" and require trash controls. (Ocean Plan Amendment at III.L.2.d; Part I ISWEBE at IV.A.3.d.) The permitting authority's finding of "substantial amounts of trash" would be supported by its determination that

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	Recommendation: The Stakeholders recommend that the Proposed Trash Amendments should either eliminate the discretion or have very clear guidance on how the discretion should be used.		a permittee is causing or contributing to the violation of the statewide trash narrative water quality objective. The Trash Amendments would establish the framework for trash control across NPDES permits, WDRs, and waivers of WDRs. The Trash Amendments identify the trash control requirements which shall be incorporated into permits, WDRs, and waivers of WDRs, as applicable, due to permittee and discharger site-specific conditions. The discretion provided to permitting authorities within the Trash Amendments is fairly and adequately structured to reduce uneven implementation while providing flexibility necessary to address specific case-by-case circumstances (i.e., "substantial amounts of trash" and "alternative land uses.") As a result, the State Water Board does not support the recommendation.
11.6	Part (6) of the Priority Land Uses definition from the ISWEBE Plan and the Ocean Plan allows permittees to issue a request to the Los Angeles Regional Water Quality Control Board to comply with Chapter IV.B.3.a.I and Chapter III.J.2.a.I of the ISWEBE Plan and Ocean Plan, respectively, using alternate land uses equivalent to the defined Priority Land Uses. However, as written, the chapter references only allow the permittees to address the equivalent alternate land uses if utilizing Track 1. The references should be changed to allow the permittees to address the equivalent alternate land uses via Track 1 or Track 2. In addition, the chapter reference for the Ocean Plan is incorrect. The reference reads Chapter III.J.2.a.I, while it should		Regarding the recommendation that "[t]he references [in the Trash Amendments] should be changed to allow the permittees to address the equivalent alternate land uses via Track 1 or Track 2," the State Water Board agrees, pertinent revision has occurred in the proposed final Trash Amendments, and see Response to Comment 4.4. Regarding the recommended internal reference corrections, the State Water Board agrees and the Trash Amendments have been revised to reflect correct numbering and internal references for the Ocean Plan Amendment and Part 1 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries.

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	read Chapter III.L.2.a.l.		
11.7	The Stakeholders recommend revise the language in the Proposed Trash Amendments (Chapter IV.B.7.b and Chapter III.L.6.b of the ISWEBE Plan and Ocean Plan, respectively) to allow for more flexibility in determining Track 2 performance and to remove the requirement for receiving water trash monitoring. In addition, remove "receiving waters" from Chapter IV.B.7.b.(5) and Chapter III.L.6.b.(5) of the ISWEBE Plan and Ocean Plan, respectively to read: "Has the amount of Trash in the MS4 decreased from the previous year? If not, explain why."		Please see Response to Comment 4.6.
11.8	The Stakeholders recommend adding language to the Proposed Trash Amendments requiring a permitting authority to consider revisions to the final compliance date of the Proposed Trash Amendments if new priority land uses are added during the duration of the compliance period.		Please see Response to Comment 10.8.
11.9	As drafted, the Proposed Trash Amendments would supersede existing stakeholder-based watershed planning efforts, effectively determining, without validation, that trash is the highest priority constituent throughout the Calleguas Creek Watershed and	The Stakeholders recommend including language after Chapter IV.B.3.a of the ISWEBE Plan and Chapter III.L.2.a of the Ocean Plan that states: A MS4 Permittee may request	See Response to Comment 10.7. The Water Boards are charged with protecting the beneficial uses of state waters from pollution and nuisance that may occur as a result of waste discharges in the region. The State of California, along with the State Water Board, recognizes that trash is a high priority pollutant that impairs the beneficial uses

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	potentially requiring the refocusing of resources from stakeholder developed priorities.	that compliance requirements for trash be established through a watershed prioritization and planning process outlined in MS4 permit requirements. This prioritization process would allow for evaluation of the trash in the context of other watershed priorities and provide a mechanism for modifying or reducing the requirements for compliance in accordance with the procedures outlined in the MS4 permit and an approved watershed plan. Through this process. monitoring data could be utilized to demonstrate that trash controls are not necessary for all priority land uses.	of aquatic life and public health, causes an aesthetic nuisance, and reduces the economic value of California's recreation areas. The presence of trash in surface waters, especially coastal and marine waters, is a serious issue in California. Trash discarded on land is frequently transported through storm drains to waterways, shorelines, the seafloor, and the ocean. Statewide and local studies have documented the presence of trash in state waters and the accumulation of land-based trash in the ocean. Street and storm drain trash studies conducted in regions across California have provided insight into the composition and quantity of trash that flows from urban streets into the storm drain system and out to adjacent waters. Trash is one of the most easily recognized pollutants and is a controllable pollutant in storm water. The Water Boards are highly supportive of stakeholder-based watershed planning efforts that manage of storm water as a resource. The State Water Board is prioritizing trash as a priority pollutant across California. The State Water Board believes the framework of the Trash Amendments allows prioritization of trash control to be a compatible with existing watershed plans priorities. Specifically, the proposed Trash Amendments encourage the use of multi-benefit projects that treat multiple pollutants, including trash, while infiltrating storm water runoff. Watershed plans, such as Water Quality Improvement Plans, would allow for trash to be selected as a high priority water quality issue and provide adaptive management and monitoring of trash. The State Water Board does not support the recommendation.
11.10	The Stakeholders recommend that a more extensive list of certified devices should be prepared prior to the adoption of the Proposed Trash Amendments. The Stakeholders also recommend refining the full-capture device certification process		Please see Response to Comment 10.5. The Trash Amendments specify additional devices as explained in Response to Comment 10.5 and the State Water Board declines the recommendation to revise the Trash Amendment to specify that any full-capture device that meets

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	to streamline the certification process as much as possible by, for example, indicate that any full-capture device that meets the stated criteria fulfills the certification requirement.		the stated criteria fulfills the certification requirement.
11.11	The Stakeholders recommend including language in the Proposed Trash Amendments to clarify that existing trash controls can be considered when determining compliance with the Trash Amendments.		Please see Response to Comment 10.7. Additionally, existing controls may count as long as they reduce trash to achieve with full capture system equivalency. (See Ocean Plan Amendment and Part I ISWEBE definition of "full capture system equivalency.") See Responses to Comments 4.6 and 6.2
11.12	The Stakeholders recommend the State Board adds additional language to clarify the intent of the Proposed Trash Amendments with respect to the development of future TMDLs. The Stakeholders recommend adding language to the Proposed Trash Amendments stating that if the requirements in the Proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully met.		Please see Response to Comment 10.10. The State Water Board does not support the proposed revision to the final Trash Amendments. Listing waters as impaired and placement in Category 5 or 4b occurs through separate board consideration and action over which U.S. EPA has review and final approval authority.

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11.13	There are several incorrect section references in the ISWEBE Plan. Recommendation: For the ISWEBE Plan, all references to Chapter IV.C.3, Chapter IV.C.3.a, or Chapter IV.C.3.b should be revised to Chapter IV.B.3, Chapter IV.B.3 .a., and Chapter IV .B.3.b, respectively.	There are incorrect reference sections in Appendix E for the ISWEBE Plan. All references to Chapter IV.C.3, Chapter IV.C.3.a, or Chapter IV.C.3.b should be revised to Chapter IV.B.3, Chapter IV.B.3 .a., and Chapter IV .B.3.b, respectively.	The State Water Board agrees that the proposed draft Trash Amendments contained several incorrect internal references. Although differently than that recommended, the references have been corrected to accurately reflect the amendments as they comprise an amendment to the Ocean Plan and Part I of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries.
12.1	Numerous cities have already successfully demonstrated continual attainment of trash reduction well in excess of 80 percent from pre-TMDL levels, but have no guidance from the State or Regional Boards on what constitutes achievement of the final "zero" trash discharge. The proposed Amendments are an opportunity for the State Board to provide such guidance. We strongly request the "except for the Los Angeles River Watershed" wording be removed and (for cities with demonstrable trash reduction attainments) the Trash TMDL deadline be extended until after the Los Angeles Regional Board "reconsiders the scope of its Trash TMDL".		Please see Response to Comment 6.7.
12.2	The Amendments could be improved by allowing more flexibility on where BMPs (like catch basin screens and baskets) are installed. Trash surveys and Daily Generation Rate		Trash is a priority pollutant across California. The State Water Board agrees that the Trash Amendments should provide flexibility for permittees to determine the most effective and efficient methods and controls to control trash discharges from the areas that have trash generation rates. Therefore, the

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	studies have been conducted over the past few years and have clearly shown trash generation of land uses varies from community to community and even within different areas of the same community. High priority trash areas such as all commercial and industrial areas are too broad a definition. The goal should be to install the trash catching devices where they are really needed-irrespective of land uses. Using litter surveys (such as the Keep America Beautiful Survey) or Daily Generation Rate studies as described in the Los Angeles River Watershed Trash TMDL or the Minimum Frequency of Assessment and Collection (MFAC) should be used to identify land uses that are really generating trash. It may be beneficial to develop a standardized survey.		proposed Trash Amendments focus on a dual alternative "compliance track" approach to provide the flexibility to permittees to determine the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation. (Ocean Plan Amendment at III.L.2.a; Part I ISWEBE at IV.A.3.a.) The priority land uses are based on lessons learned and extensive data collected from permittees with existing trash controls, either a Trash TMDL or permit conditions. The priority land uses include five categories of land uses that generate high amounts of trash. (See Trash Amendments, Definitions section for “priority land uses.”) The State Water Board recognizes that other land uses may generate higher rates of trash. To allow for these occurrences, the Trash Amendments include a provision for a MS4 permittee to focus on “equivalent alternate land uses” under both Track 1 and Track 2. (See Trash Amendments, Definitions section for “alternate equivalent land uses.”) Quantification measures such as street sweeping, mapping, and visual trash presence surveys can be used to prioritize these land uses for Track 1 or Track 2 controls. The “equivalent alternate land uses” should provide the requested flexibility for trash control measures. See Trash Amendments, Definitions section for “alternate equivalent land uses.”)
12.3	The Amendments imply, but need to be made clearer that the burden for control of these plastic pellets is on the manufacturer and transporter. The cities within the Los Angeles River Watershed are already required to capture trash larger than X inch, and any smaller would result in significant screen clogging issues which would in turn would result in		The Trash Amendments state: "This prohibition of discharge applies to the discharge of preproduction plastic by manufacturers of preproduction plastics, transporters of preproduction plastics, and manufacturers that use preproduction plastics in the manufacture of other products to surface waters of the State [...] ." (Ocean Plan Amendment at III.I.6.e; Part I ISWEBE at IV.A.2.e.) The Trash Amendments clearly provide that the prohibition applies to manufacturers and transporters of preproduction plastics who discharge into surface waters. The prohibition of discharge on preproduction

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	flooding issues.		plastics provides a clear enforcement mechanism for the Water Boards if there is a discharge of preproduction plastics to waters of the state. In event there is a discharge of preproduction plastics in a municipality, the Water Boards may be notified to follow with an investigation and necessary enforcement. All facilities with the potential to discharge preproduction plastics must continue to comply with the "Preproduction Plastic Debris Program" under Water Code section 13367(a) and the requirements in the IGP (Order No. 2014-0057-DWQ) to comply with the prohibition concerning preproduction plastics.
13.1	Requiring the reopening of the LA Trash TMDL to utilize the narrative WQO in the Proposed Trash Amendments would minimize potential future impacts after the final compliance date of the LAR Trash TMDL. In addition, this would allow for the statewide consistency the Proposed Trash Amendments aim to provide while ensuring that responsible parties in the Los Angeles River watershed are held to the same standard as those in the remainder of the state.		The Los Angeles River Watershed and Ballona Creek Trash TMDLs are nearing final compliance (September 30, 2016 and September 30, 2015, respectively) and have made extensive success in trash reductions. The proposed Trash Amendments do not direct a public meeting by the Los Angeles Water Board to reconsider the scope of those two trash TMDLs. (See Ocean Plan Amendment III.L.1 and Part I ISWEBE, Definitions, "Full capture system equivalency.") Additionally, please see Response to Comment 6.7.
13.2	The City feels the responsible parties of the LA Trash TMDL should be required to implement BMPs in priority land use areas consistent with the remainder of the state. Implementing BMPs in these areas would allow the City to focus resources to address areas generating trash rather than distributing resources throughout the		Please see Responses to Comments 6.7 and 13.1.

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	City in areas that may not generate significant levels of trash. Implementing BMPs only in priority land use areas would also allow for the statewide consistency the Proposed Trash Amendments aim to provide. Further, it would allow the City to use scarce resources to meet other MS4 Permit and other TMDL obligations for constituents such as bacteria and metals.		
13.3	The City of Burbank (City) recommends adding language to the Proposed Trash Amendments indicating the permittees are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2.		Please see Responses to Comments 4.1 and 10.9.
13.4	The City of Burbank recommends the LARWQCB should be allowed to include permit provisions consistent with the Proposed Trash Amendments in areas where TMDLs exist without needing to reconsider the applicable TMDL(s).		The Trash Amendments would apply to all surface waters in the state, with the exception of those waters within the jurisdiction of the Los Angeles Water Board that have trash TMDLs in effect prior to the Trash Amendments. The fifteen trash and debris TMDLs in the Los Angeles Region have more stringent provisions than the Trash Amendments. The Trash Amendments do not apply to existing trash TMDLs in the Los Angeles Region; however, the Trash Amendments direct the Los Angeles Water Board to reconsider the scope of its trash and debris TMDLs within one year of the Trash Amendments' effective date and focus its permittees' trash control efforts on high trash generation areas rather than all areas within each permittee's jurisdiction. The reconsideration would occur for all existing trash TMDLs, except for the Los Angeles River Watershed and Ballona Creek Trash TMDLs. Additionally, the Los Angeles Water Board has the authority to reconsider the scope of the existing trash and debris TMDLs in lieu of the Trash Amendments. Please see Response to Comment 6.7.

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13.5	The Proposed Trash Amendments appear to require implementation of Track 1 or Track 2 for any storm drain that captures any runoff from a priority land use [Chapter IV.B.3.a.(1)/IV.B.3.a.(2) and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively]. This would trigger compliance requirements for a storm drain even if only a very small portion of a priority land use drains to the storm drain. Recommendation: The City recommends adding language to Chapter IV.B.3.a.(1)/IV.B.3.a.(2) and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively stating that permittees must address catchment areas where the priority land uses are greater than 25% of the total catchment area.		Please see Response to Comment 11.4.
13.6	The Proposed Trash Amendments provide flexibility to permitting authorities to revise the priority land uses as well as define new trash sources (Chapter IV.B.3.d of the ISWEBE Plan and Chapter III.L.2.d of the Ocean Plan). However, the Proposed Trash Amendments do not require the permitting authorities to provide significant justification of the changes. Allowing the permitting authorities to impose more stringent requirements without criteria to		Please see Response to Comment 11.5.

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	justify such requirements contradicts the establishment of consistent statewide trash requirements. A statewide plan that gives broad discretion to regional permitting authorities often results in uneven implementation of the plan. Recommendation: The City recommends that the Proposed Trash Amendments should either eliminate the discretion or have very clear guidance on how the discretion should be used (e.g., the permitting authority must provide sufficient data to justify the addition of land uses).		
13.7	The City recommends adding language to the Proposed Trash Amendments requiring a permitting authority to consider revisions to the final compliance date of the Proposed Trash Amendments if new priority land uses are added during the duration of the compliance period.		Please see Response to Comment 10.8.
14.1	The intent of this letter is to express our support for the comments of the Venture Countywide Stormwater Quality Program, the California Stormwater Quality Association (CASQA), and Calleguas Creek Watershed Stakeholders. In particular, based on our experience implementing requirements of the trash TMDL, we strongly support the use of the narrative water quality objective as proposed, which		The State Water Board is appreciative of the support for the narrative water quality objective and Track 2. Please see the Responses to Comment Letters 4, 11, and 75.

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	provides a clear, concise definition from which municipalities can prioritize management decisions. We also believe that providing flexibility in establishing monitoring and effectiveness evaluation programs under Track 2 will result in more effective and efficient implementation of the proposed Amendments.		
14.2	The proposed Trash Amendments provide a narrative water quality objective (WQO) in Chapter III.B and Chapter II.C of the ISWEBE Plan and Ocean Plan, respectively, and a prohibition of trash discharge in Chapter IV.B.2 and Chapter III.I.6 of the ISWEBE Plan and the Ocean Plan respectively. The permittees would be considered in full compliance with the prohibition of trash discharge so long as the permittees were fully implementing Tack 1 or Track 2 (Chapter IV.B.2.a and Chapter III.I.6.a, of the ISWEBE Plan and Ocean Plan, respectively). However, the proposed Trash Amendments do not indicate that meeting the discharge prohibition requirements would also mean the permittees are in compliance with receiving water limitations. Recommendation: The City recommends adding language to the proposed Trash amendments indicating the permittees are in compliance with the receiving water		Please see Response to Comments 4.1 and 10.9.

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	limitations so long as they are fully implementing Track 1 or Track 2.		
14.3	The proposed Trash Amendments require permitting authorities to re-open, re-issue or newly adopt NPDES permits to include requirements consistent with the proposed Trash Amendments (Chapter IV.B.5 and Chapter III.L.4 of the ISWEBE Plan and the Ocean Plan, respectively). The proposed Trash Amendments also include a requirement for the Los Angeles Regional Water Quality Control Board to convene a public meeting to reconsider the scope of the TMDLs to include provisions consistent with the proposed Trash amendments (Chapter IV.B.1.b.(2) and Chapter III.L.1.b.(2) of the ISWEBE Plan and the Ocean Plan, respectively). However, by the time the proposed trash amendments become effective and the Los Angeles Regional Water Quality Control Board modifies the TMDL(s), it will likely be too late to meaningfully impact the implementation of compliance measures for point source-responsible permittees subject to the TMDL(s). As a result, having a mechanism to streamline incorporation of permit requirements consistent with the proposed Trash amendments in lieu of TMDL requirements, if requested by the		Please see Responses to Comments 6.7 and 13.4.

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	permittees, should be included. Recommendation: The Los Angeles Regional Water Quality Control Board should be allowed to include permit provisions consistent with the proposed Trash amendments in areas where TMDLs exist if they desire without needing to reconsider the applicable TMDL(s).		
14.4	The Ventura MS4 Permit required permittees to develop a prioritization scheme for implementation of trash controls. The Trash Amendments should recognize and allow for established prioritization schemes to be utilized in lieu of the proposed scheme if they have already been approved by the Regional Water Board or required in a permit without the need to provide additional documentation. Part (6) of the Priority Land Uses definition from the ISWEBE Plan and the Ocean Plan allows permittees to issue a request to the Los Angeles Regional Water Quality Control Board to Comply with the Chapter IV.B.3.a.1 and the Chapter III.J.2.a.1 of the ISWEBE Plan and the Ocean Plan, respectively, using alternate land uses equivalent to the defined Priority Land Uses. However, the permittees are required to provide documentation as to the equivalent	e. If a regulated MS4 has a Regional Water Board approved or permit required prioritization scheme that differs from the priority land uses outlined in the amendment, the approved prioritization scheme can be utilized in lieu of the priority land uses to comply with the Trash Amendments. Additionally, a regulated MS4 may determine that areas within a priority land use do not generate trash that accumulates in state waters (or in areas adjacent to state waters) in amounts that would either adversely affect beneficial uses, or cause nuisance. In the	The State Water Board is pleased that the Venture MS4 Permit (No. CAS004002) requires a prioritization of catch basin designated as consistently generating highest, moderate, and low volumes of trash. The permit requires that permittees submit a map or list of catch basins with their GPS coordinates and their designation. The map or list shall contain the rational or data to support designations. As this was due July 8, 2011, Venture MS4 Permit permittees should have a detailed understanding and data to support where trash is generated at high levels. The focus of the proposed Trash Amendments is to control the discharge of trash from the areas within MS4 that generates the highest amounts of the trash. The proposed Trash Amendments focus on implementing trash controls in five “priority land use” types, namely high-density residential, industrial, commercial, mixed urban, and public transportation. (Ocean Plan Amendment and Part I ISWEBE definition for “priority land uses.”) The State Water Board understands that trash generation maybe higher in other locations than the five priority land use types. For those situations, a permittee can substitute priority land uses for alternate equivalent land uses. Approval of alternate equivalent land uses is at discretion of the permitting authority with supporting evidence. (See Ocean Plan Amendment and Part I ISWEBE definitions for “priority land uses.”) For the Ventura MS4 Permit, the Los Angeles Water Board could approve determined alternative equivalent

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	of the alternate land uses. It would be more efficient to allow the permittees to address the previously identified and approved by Regional Water Board land uses without having to go through an additional documentation procedure. Additionally, while the proposed Trash Amendments provide flexibility for the permitting authorities to designate additional priority areas, it does not appear to allow for responsible agencies to lower the priority in certain area. Local knowledge, supported by data, should be able to suffice as justification for jurisdictions to designate appropriate drainage areas as "non-priority" regardless of land use. Recommendations: Modify language in Chapter IV.B.3 (ISWEBE Plan) and Chapter III.L.2 (Ocean Plan) and by adding Chapter IV.B.3.e and Chapter III.L.2.e, respectively (see Recommended Language).	event that the regulated MS4 identifies such areas and is able to provide data supporting the finding, the permitting authority may waive the requirement for the MS4 to comply with the Chapter IV.B.3.a (III.L.2.a) with respect to the identified locations. The regulated MS4 shall submit documentation of the continued condition with annual reports are required under Chapter IV.B.7 (III.L.6).	land uses for permittees based on information that was collected and presented as required in the Ventura MS4 Permit No. CAS004002. The State Water Board does not think the proposed language is necessary. Additionally, please see Response to Comment 11.3.
14.5	Part (6) of the Priority Land Uses definition from the ISWEBE Plan allows for permittees to issue a request to the Los Angeles Regional Water Quality Control Board to comply with Chapter IV.B.3.a.1 of the ISWEBE Plan using alternate land uses equivalent to the defined Priority Land uses. However, as written, the Chapter reference for the ISWEBE Plan only allows the	Recommendations: 1) Modify the Chapter reference in Part (6) of the Priority Land Uses definition as such: ... comply under Chapter IV.B.3.a.1 and Chapter IV.B.3.a.2. 2) Modify the Chapter reference in Part (6) of the Priority Land Uses definition as	Please see Responses to Comments 4.4 and 11.13.

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	permittees to address the equivalent alternate land uses if utilizing Track 1. The reference should be changed to allow the permittees to address the equivalent alternate land uses via Track 1 or Track 2. In addition, the chapter reference is incorrect. The reference reads Chapter III.J.2.a.1, while it should read Chapter III.L.2.a.1. Recommendations: 1) Modify the Chapter reference in Part (6) of the Priority Land Uses definition as such:...comply under Chapter IV.B.3.a.1 and Chapter IV.B.3.a.2. 2) Modify the Chapter reference in Part (6) of the Priority Land Uses definition as such: ...comply under Chapter III.~~J~~L.2.a.1 and Chapter III.L.2.a.2.	such: comply under Chapter III.JL.2.a.1 and Chapter III.L.2.a.2.	
14.6	Demonstration of performance under Track 2 should not be limited to monitoring BMP performance (e.g., counting, weighing, measuring volume) as demonstrating effectiveness of trash BMPs. The monitoring is extremely difficult and expensive. Permittees should be allowed to propose the method of demonstrating performance in their plan. For instance, rigorous visual assessments have proven to be effective tools in some jurisdictions. A current effort in the Bay Area, funded by a Proposition 84 grant, may provide additional tools for permittees to incorporate into their		Please see Response to Comment 4.6.

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	plans in the future. (The project is expected to be completed in 2017.) The City objects to the requirement for stormwater permittees to conduct receiving water monitoring. Based on our Trash TMDL implementation experience, other sources contribute trash to receiving waters and imposing this requirement on stormwater permittees will not provide an indication of effective stormwater trash control programs. While stormwater permittees may want to conduct receiving water monitoring to demonstrate performance, it should not be mandated. Recommendation: The City recommends the State Water Board revise the language in the proposed Trash Amendments (Chapter IV.B.7.b and Chapter III.L.6.b of the ISWEBE Plan and Ocean Plan, respectively) to allow for more flexibility in determining Track 2 performance and to remove the requirement for receiving water trash monitoring. Also, remove "'s receiving waters" from Chapter IV.B.7.b. (5) of the ISWEBE Plan and the Ocean Plan to read: "Has the amount of Trash in the MS4 decreased from the previous year? If not, explain why".		
14.7	The proposed Trash Amendments indicate that the State Water Board would take responsibility for the certification process for full capture		The State Water Board agrees that full capture system certification should be streamlined and consistent statewide. The purpose of the certification process is to provide consistency statewide in the systems that will be installed and

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	systems, but those full capture systems previously certified by the Los Angeles Regional Water Quality Control Board would remain certified for use by permittees as a compliance method (Chapter IV.B.1.b.(1) and Chapter III.L.1.b.(2) of the ISWEBE Plan and Ocean Plan, respectively). Full-capture devices vary widely in capital and maintenance costs. Therefore, having a better idea of the devices that will be certified is necessary for developing credible costs estimates to inform permittees whether to commit to Track 1 or Track 2. Alternatively, the language could be revised to indicate that any full-capture device that meets the stated criteria fulfills the certification requirement. Additionally, the time frame for obtaining certification is a concern. The Executive Officer approval process should have a rapid turnaround time to allow permittees to move forward with planning and installation within the time schedule granted. Recommendation: The City recommends that a more extensive list of certified devices should be prepared prior to the adoption of the proposed Trash Amendments. The City also recommends refining the full-capture device certification process to streamline the certification process as much as		assurance that valuable resources are being spent on properly functioning full capture systems that achieve the goals of the Trash Amendments. Full capture systems with a new design should be certified by the Executive Director of the State Water Board. It is not intended for each installation to be certified, but for the full capture system design to be certified. Once the certification request letter is submitted to the Executive Director of the State Water Board, the request will be addressed in a timely manner to not impact permittee planning and installation. (See Ocean Plan Amendment and Part I ISWEBE definition "full capture system.") Additionally, please see Response to Comment 10.5.

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	possible.		
14.8	The City has implemented various trash control measures within the Calleguas Creek Watershed. However, the proposed Trash Amendments do not havea provision that details how existing trash control measures would be utilized for evaluating compliance with the proposed Trash Amendments. Recommendation: The City recommends including language in the proposed Trash Amendments to clarify that existing trash controls can be considered when determining compliance with the Trash Amendments.		Please see Response to Comment 10.7.
14.9	It appears that the proposed Trash Amendments will serve as an alternative to a Total Maximum Daily load (TMDL), thereby preventing the need to develop trash TMDLs in the future. It seems that implementation of the proposed Trash Amendments represents a single regulatory action addressing MS4 permittee requirements thereby removing the need to develop wasteload allocations via a TMDL for MS4 permittees. Recommendation: The City recommends the State Board add additional language to clarify the intent of the proposed Trash Amendments with respect to the development of future TMDLs. We also recommend adding language to		Please see Response to Comment 10.10.

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	the proposed Trash Amendments stating that if the requirements in the proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully met.		
15.1	The City of Capitola supports: • The narrative water quality objective. • The option of developing and implementing regulatory source controls. • The potential for time extensions. • Use of priority land uses.		The State Water Board appreciates the support the narrative water quality objective and priority land uses. Regulatory source controls and time extensions have been omitted from the final proposed Trash Amendments. See also the General Response to Comment Letter 1 and Response to Comment 1.2.
15.2	Capitola requests the State Water Resources Control Board to provide all agencies more time to work together and develop a more flexible policy to address trash that is aligned with local planning efforts, instead of a 'one size fits all' approach.		The proposed final Trash Amendments have been crafted with intention of flexibility and statewide consistency to target trash control to locations that generate the highest amounts of trash. The duel track compliance approach provides the requested flexibility to not be a 'one-size fits all' approach. As proposed, the Trash Amendments provide for a two track compliance approach to achieve the effective removal of trash in locations that generate high trash rates. There are five priority land uses identified in the Trash Amendments include high-density residential dwellings, commercial, industrial, mix-urban, and public transportation stations. Areas such as low-density residential and suburban were not included in order to focus limited resources to areas that generate the most trash. Track 1 requires the installation of full capture systems on storm drains which capture runoff from priority land uses and that adhere to specified requirements. Track 2 permits municipalities to adjust to their available resources and provides flexibility to develop a diverse combination of treatment and institutional controls. Please see Responses to Comments 10.2, 10.7, and 11.9.

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15.3	Delay until a funding source is identified to provide for the implementation or ongoing maintenance of the structural controls required to capture trash. Limited local resources shifted from local priority efforts to address trash is a disconnect between local and statewide planning efforts.		Please see Response to Comment 10.4.
15.4	The Proposed Trash Amendments provide a narrative water quality objective (WQO) in Chapter III.B and Chapter II.C of the ISWEBE Plan and Ocean Plan, respectively and a prohibition of trash discharge in Chapter IV.B.2 and Chapter III.I.6 of the ISWEBE Plan and Ocean Plan, respectively. The permittees would be considered in full compliance with the prohibition of trash discharge so long as the permittees were fully implementing Track 1 or Track 2 (Chapter IV.B.2.a and Chapter III.I.6.a, of the ISWEBE Plan and Ocean Plan, respectively). However, the Proposed Trash Amendments do not indicate that meeting the discharge prohibition requirements would also mean the permittees are in compliance with receiving water limitations (i.e., meeting the WQO). This could result in permittees being subject to a Trash TMDL for the receiving water, even if in compliance with permittees' MS4 Permit. Recommendation: The City		Please see Response to Comments 4.1 and 10.9.

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	of Capitola recommends adding language to the Proposed Trash Amendments indicating the permittees are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2.		
15.5	As defined in the Proposed Trash Amendments, the predefined priority areas may not be appropriate for all jurisdictions and does not consider local knowledge of receiving water conditions and previous data collection efforts. As currently drafted, the Proposed Trash Amendments assume that there is a problem in the defined priority areas, effectively forcing a costly "one size fits all" approach onto the jurisdictions. The approach should allow for more local flexibility in this prioritization. Additionally, the expected costs to implement the Proposed Amendments will be substantial and the value of these requirements are uncertain, given the current receiving water priorities developed through the stakeholder process. As drafted, the Proposed Trash Amendments would supersede existing stakeholder-based watershed planning efforts, effectively determining, without validation, that trash is the highest priority in all watershed areas and potentially requiring the refocusing of resources from stakeholder		Please see Responses to Comments 11.9 and 15.2.

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	developed priorities. Recommendation: The City of Capitola recommends including language after Chapter IV.B.3.a of the ISWEBE Plan and Chapter III.L.2.a of the Ocean Plan that states: A MS4 Permittee may request that compliance requirements for trash be established through a watershed prioritization and planning process outlined in MS4 permit requirements. This prioritization process would allow for evaluation of the trash in the context of other watershed priorities and provide a mechanism for modifying or reducing the requirements for compliance in accordance with the procedures outlined in the MS4 permit and an approved watershed plan. Through this process, monitoring data could be utilized to demonstrate that trash controls are not necessary for all priority land uses.		
15.6	The Proposed Trash Amendments appear to require implementation of Track 1 or Track 2 for any storm drain that captures any runoff from a priority land use (Chapter IV.B.3.a.(l)/IV.B.3.a.(2) and Chapter III.L.2.a.(l)/Chapter III.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively). This would trigger compliance requirements for a storm drain even if only a very small portion of a priority land use drains to	Recommendation: The City of Capitola recommends adding language to Chapter IV.B.3.a.(l)/IV.B.3.a.(2) and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively, stating that permittees must address	Please see Response to Comment 11.4.

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	the storm drain.	catchment areas where the priority land uses are greater than 25% of the total catchment area. (1) Track 1: Install, operate and maintain full capture systems in their jurisdictions for all storm drains that capture runoff in catchment areas where priority land uses comprise >25% of the land area in the catchment; or (2) Track 2: Install, operate, and maintain any combination of full capture systems, other treatment controls, institutional controls, and/or multi-benefit projects within either the jurisdiction of the MS4 permittee or within the jurisdiction of the MS4 permittee and contiguous MS4s permittees, so long as such combination achieves the same performance results as compliance under Track 1 would achieve for all storm drains that capture runoff in catchment areas where priority land uses comprise >25% of	

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		the land area within the catchment.	
15.7	The Proposed Trash Amendments, in Chapter IV.B.7.b and Chapter III.L.6.b of the ISWEBE Plan and Ocean Plan, respectively, require permittees implementing Track 2 to monitor to demonstrate mandated BMP performance results; effectiveness of the full capture systems, other structural BMPs, institutional controls, and/or multi-benefit projects; and compliance with performance standards. In addition, the permittees must monitor the amount of trash in receiving waters. Demonstration of performance under Track 2 should not be limited to monitoring as demonstrating effectiveness of trash BMPs through monitoring is extremely difficult. Permittees should be allowed to propose the method of demonstrating performance in their plan. In addition, receiving water monitoring should not be required since other sources contribute trash. While a permittee may want to conduct receiving water monitoring to demonstrate performance, it should not be mandated in case other methods are appropriate (e.g. pounds of trash removed through a control measure). Recommendation: The City of Capitola recommends the State Water Board revise the language in the Proposed Trash		Please see Response to Comment 4.6.

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	Amendments (Chapter IV.B.7.b and Chapter III.L.6.b of the ISWEBE Plan and Ocean Plan, respectively) to allow for more flexibility in determining Track 2 performance and to remove the requirement for receiving water trash monitoring.		
15.8	It appears that the Proposed Trash Amendments will serve as an alternative to a TMDL, thereby preventing the need to develop trash TMDLs in the future. If additional language were included to clarify the intent of the Proposed Trash Amendments with respect to the development of future TMDLs, then implementation of the Proposed Trash Amendments represents a single regulatory action addressing MS4 permittee requirements thereby removing the need to develop wasteload allocations via a TMDL for MS4 permittees. Recommendation: The City of Capitola recommends that language be added to clarify the intent of the Proposed Trash Amendments stating that if the requirements in the Proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully implemented.		Please see Response to Comment 10.10.
16.1	The Trash Amendment prioritizes areas solely based on land use designations. This approach		The State Water Board agrees that the Trash Amendments should provide flexibility for permittees to determine the most effective and efficient methods and controls to control trash

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	assumes that all areas within one land use category generate the same amount of trash. Local knowledge and experience shows that this is not the case, and other factors should be taken into consideration. Data available from street sweeping, storm drain cleaning, and other information should be used to prioritize high-trash volume areas in each jurisdiction. Identifying actual priority areas will result in higher efficiency and effectiveness and will achieve the goals at the shortest possible time. Recommendation: The City of Chula Vista recommends that flexibility be provided for jurisdictions to use available data to prioritize high-trash volume areas of their jurisdiction.		discharges from the areas that have trash generation rates. Therefore, the Trash Amendments focus on a dual alternative "compliance track" approach to provide the flexibility for permittees to determine the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation. The priority land uses are based on lessons learned and extensive data collected from permittees with existing trash controls, either a Trash TMDL or permit conditions. The priority land uses include five categories of land uses that generate high amounts of trash. The State Water Board recognizes that other land uses may generate higher rates of trash. To allow for these occurrences, the Trash Amendments include a provision for a MS4 permittee to focus on ”equivalent alternate land uses” under both Track 1 and Track 2. Quantification measures such as street sweeping, mapping, and visual trash presence surveys can be used to prioritize these land uses for Track 1 or Track 2 controls. (See Ocean Plan Amendment and Part I ISWEBE definition for “alternate equivalent land uses” within the “priority land use” definition.)

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16.2	High-density residential areas are categorized as priority land uses. This category includes apartment and condominium complexes. While more people per acre live in these types of residential communities than single family homes, there is generally much more strict oversight on the maintenance and management of common areas and private streets by homeowner associations and management companies. Residents are required to comply with strict community regulations and pay for the community's maintenance costs. Therefore, they are more sensitive about keeping the community clean in order to avoid higher homeowner association fees. Recommendation: The City of Chula Vista recommends that the High Density Residential category be deleted from the list of Priority Land Uses.		The State Water Board recognizes that each priority land use across the state will generate trash a varying rates due to site specific conditions. To allow for these occurrences, the proposed Trash Amendments include a provision for a MS4 permittee to focus on "equivalent alternate land uses" under Track 1. (See Ocean Plan Amendment and Part I ISWEBE definition for ""equivalent alternate land uses.") Quantification measures such as street sweeping, mapping, and visual trash presence surveys can be used to prioritize these land uses. The "equivalent alternate land uses" should provide the requested flexibility for trash control measures. Additionally, if the City of Chula Vista could demonstrate to the applicable permitting authority that existing trash controls achieve the prohibition of discharge and full capture system equivalency, then those locations could be deemed in compliance with the prohibition of discharge for trash.
16.3	Clarification is needed to enable jurisdictions to evaluate the equivalency of other treatment controls, institutional controls, and multi-benefit projects; and ensure that they will meet compliance if they choose the Track 2 option. Uncertainty about this issue will expose jurisdictions to enforcement and/or legal action. Recommendation: The City of Chula Vista recommends adding language		A central aim of the Trash Amendments is to focus trash controls to areas with high trash generation rates utilizing a dual alternative compliance track approach (i.e., Track 1 and Track 2). The two tracks allow NPDES storm water permittees to determine and implement the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation. Track 1 focuses solely on utilizing full capture systems to capture trash greater than 5 mm at the storm drain before storm water enters the receiving water. As successfully demonstrated across California, full capture systems are highly effective at capturing trash when operated

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	to clarify how jurisdictions are to evaluate equivalency with Track 1 if they decide to choose Track 2.		and maintained properly. While the State Water Board recognizes the effectiveness of full capture systems, there are site-specific conditions in a municipality that may make the installation and operation of full capture systems a less achievable option. Additionally, the State Water Board recognizes that there are a wide variety of available mechanisms to control trash such as partial capture systems, institutional controls, and multi-benefit projects. Thus, Track 2 is intended to allow permittees to utilize the full range of mechanisms to control trash in order to achieve equivalent performance Track 1. It is the State Water Board's intent that full capture systems would be selected first and installed where not cost prohibitive and supplemented with institutional controls and other treatment controls from existing permit requirements. To clarify this intent, the following language has been included in Track 2: "It is; however, the State Water Board's expectation is that the MS4 permittee will elect to install full capture systems where such installation is not cost-prohibitive." (See Ocean Plan Amendment III.L.2.a.2; Part I ISWEBE IV.A.3.a.2.) Additionally please see Response to Comments 4.6 and 6.2.
16.4	Monitoring is expensive and should not constitute a significant portion of the program total costs. While monitoring is necessary to assess the effectiveness of the program, it does not by itself result in cleaner water. A cost-effective monitoring protocol should be developed based on simple visual observations, which allows more of the limited resources to be spent on actual treatment control measures. Recommendation: The City of Chula		Please see Response to Comment 4.6.

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	Vista recommends allowing other methods of assessment in addition to a cost-effective monitoring program to determine compliance.		
16.5	Implementation of the Trash Amendment will impose significant costs on jurisdictions. The State Water Board can include provisions in the Trash Amendment to allow Regional Water Boards to provide credit to jurisdictions to offset some of their obligations toward MS4 Permit requirements and compensate for the additional costs. Recommendation: The City of Chula Vista recommends the addition of language to allow Regional Water Boards to provide credit to jurisdictions to offset some of their MS4 permit requirements and compensate for additional costs.		The economic analysis for the proposed Trash Amendments estimated the incremental annual cost to comply with the requirements of the proposed Trash Amendments ranged from $4 to $10.67 per year per capita for MS4 Phase I NPDES permittees and from $7.77 to $7.91 per year per capita for smaller communities regulated under MS4 Phase II permits (See Final Staff Report Appendix C). The State Water Board understands that permittees have other permit requirements. With the Trash Amendments, the State Water Board recognizes that trash is a priority pollutant statewide. In modifying, re-issuing, adopting new NPDES permits, the permitting authority must prioritize trash as a priority pollutant and the assessment of other permit requirements is at the discretion of the permitting authority.
17.1	As drafted, they would potentially require Bay Area municipalities to inefficiently redirect limited public resources away from activities currently aligned with trash reduction provisions in the MRP.		Please see Response to Comment 4.2.
17.2	Provide consistency with the proposed narrative Water Quality Objective by including language in the trash discharge prohibitions to specify that the trash discharges being prohibited and controlled are "in amounts that cause impairment		Please see Response to Comments 4.1 and 10.9.

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	of beneficial uses or conditions of nuisance in receiving waters."		
17.3	Provide an alternative (i.e., Track 3) to allow for compliance to be achieved via continued implementation of the trash-specific provisions in the MRP.		Please see Response to Comment 4.2.
17.4	Provide "certification" for all devices that were installed or are in the process of being installed in the Bay Area if they were previously accepted by SF Bay Regional Board staff as meeting the design criteria for full capture systems.		Please see Response to Comment 4.3.
17.5	We strongly urge the State Board to consider the recommendations proposed by BASMAA and allow SCVURPPP permittees to continue the process of reducing trash from MS4 discharges in manner that is consistent with the Bay Area framework designed to achieve water quality goals outlined in the MRP which are consistent with the proposed amendments.		Please see the Response to Comment Letter 4.
18.1	The City of Del Mar requests that a workshop be held at a Southern California location.		Several focused stakeholder meetings were held in southern California. However, the State Water Board will not be holding a public workshop in southern California.

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18.2	The City of Del Mar supports the staff recommendation in the Draft Staff Report to combine definitions from Basin Plans, California Government Code and the California Water Code to define trash. However, the City is concerned with “natural materials” such as leaf litter and pine needles being included in the trash definition. Recommendation: Language changes to definition of Trash in Appendix I, Definition of Terms, of the Ocean Plan and Appendix A, Glossary, of the Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE) Plan.	Trash means all improperly discarded solid material from any production, manufacturing, or processing operation including, but not limited to, products, product packaging, or containers constructed of plastic, steel, aluminum, glass, paper, or other synthetic ~~or natural~~ materials.	The State Water Board intends "natural materials" in the definition of trash to refer to production, manufacturing or processing operations as consistent with the California Government Code's definition of "litter." This specifically excludes natural materials, such as leaf litter and pine needles. (See Staff Report Section 4.1 Issue 1) The State Water Board does not think the proposed language is necessary.
18.3	The City of Del Mar does not support having a numeric water quality objective of zero. The City of Del Mar supports using a narrative WQO for trash as it is a more practical means of implementing a prohibition of discharge. Recommendation: The City of Del Mar supports the language in Chapter II.C.5 of the Ocean Plan and Chapter III.B of the ISWEBE Plan: “Trash shall not accumulate in ocean waters, along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance.”		The State Water Board agrees with this comment. In addition, please see Response to Comment 6.1.

Comment Letter	Comment	Recommended Language	Response
18.4	The Trash Amendments should not supersede existing stakeholder-based watershed planning efforts, effectively determining, without validation, that trash is the highest priority in all watershed areas and potentially requiring the refocusing of resources from stakeholder developed priorities. Recommendation: The City of Del Mar would support adding a requirement to Trash Amendments where jurisdictions without waters impaired for trash would still be required to conduct education and outreach efforts or if currently conducting, continue current trash control strategies. The City of Del Mar also suggest edits to the Trash Amendments, Chapter III.L.1.b of the Ocean Plan and Chapter IV.B.1.b of the ISWEBE Plan (see Recommended Language).	These Trash Provisions apply to all surface waters of the State <u>that are listed on the 303(d) list as impaired for trash</u>, with the exception of those waters within the jurisdiction of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) for which trash Total Maximum Daily Loads (TMDLs) are in effect prior to the effective date of these Trash Provisions; provided, however, that: <u>(3) Jurisdictions without listings on the 303(d) list for trash, shall conduct institutional control efforts or if currently conducting, continue trash control strategies.</u>	Trash is a pervasive pollutant impairing the beneficial uses of California surface waters. Trash in waterways, on beaches, and in the ocean poses threats to aquatic life, wildlife, public health, recreation, fishing and other economic activities. The approach of the proposed Trash Amendments is not only reactive, but also preventive in addressing trash in state waters. The intent of the Trash Amendments is to protect the beneficial uses of California's surface waters from trash, regardless of being 303(d) listed for trash. The State Water Board understands that trash enters a water body via multiple pathways, and storm water is a dominate transport pathway. Trash is a controllable priority pollutant, especially in storm water. The fifteen existing trash and debris TMDLs in the Los Angeles Region have demonstrated that full capture systems are a proven and effective best management practice to remove trash from storm water. The Trash Amendments aim to focus trash controls on areas with high trash generation rates, as specified by the priority land uses for Phase I and Phase II MS4 permittees. In addition to trash controls in priority land uses, the Trash Amendments propose to allow a permitting authority to make a determination that other specific land uses or locations to generate substantial amounts of trash and require Track 1 or Track 2 trash controls. The State Water Board does not think the proposed language is necessary.
18.5	The City of Del Mar supports limiting the application of the Trash Amendments to only those water bodies that are listed on the 303(d) list as impaired for trash. The City of Del Mar supports that the Trash Amendments apply to "high trash generating areas" when those areas include water bodies that are listed on the 303(d) list as impaired for trash. The City of Del Mar believes	Chapter III.1.b of the Ocean Plan and Chapter III.B.1.b of the ISWEBE Plan: These Trash Provisions apply to all surface waters of the State listed on <u>the 303(d) list as impaired for trash,</u> with the exception of those waters within the	Please see Response to Comments 11.4 and 18.4.

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	permittees should have flexibility in defining “high trash generating areas” in their respective jurisdiction to allow catchment systems to be placed in areas with the greatest impact. Recommendation: Edits to the Trash Amendments (see recommended language).	jurisdiction of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) for which trash Total Maximum Daily Loads (TMDLs) are in effect prior to the effective date of these Trash Provisions; provided, however, that: Chapter III.L.2.a of the Ocean Plan and Chapter IV.B.3.a of the ISWEBE Plan: (1) Track 1: Install, operate and maintain full capture systems in their jurisdictions for all storm drains that captures runoff in catchment areas where ~~from one or more of the~~ priority land uses comprise >25% of the land area in the catchment ~~in their jurisdictions~~; or (2) Track 2: Install, operate, and maintain any combination of full capture systems, other treatment controls, institutional controls, and/or multi-benefit projects within either the jurisdiction of the MS4 permittee or within the jurisdiction of the MS4	

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		permittee and contiguous MS4s permittees, so long as such combination achieves the same performance results as compliance under Track 1 would achieve for all storm drains that captures runoff in catchment areas where ~~from one or more of the~~ priority land uses comprise >25% of the land area within the catchment ~~within such jurisdiction(s)~~.	
18.6	The City of Del Mar believes that the time schedule for compliance with the Trash Amendments should apply only to those waters listed on the 303(d) list for trash. When a water body becomes impaired for trash and is listed on the 303(d) list that would trigger the time schedule for full compliance with the Trash Amendments. Recommendations: The City of Del Mar believes that a better time schedule for implementation of the Trash Amendments would be for the ten year time clock to begin after the permittee officially submits their notice of choosing Track 1 or Track 2. This would prevent the ten year time clock from starting during the time period where the City is	Chapter III.L.4.a.(3) and (4) of the Ocean Plan and Chapter IV.B.5.a.(3) and (4) of the ISWEBE Plan: • NPDES Permits Regulating MS4 Permittees that have Regulatory Authority over Priority Land Uses and that have waters listed on the 303(d) list as impaired for trash. • For MS4 permittees that elect to comply with Chapter III.L.2.a.1. (Track 1), full compliance shall occur within ten (10) years of the permittee's notice indicating which track	Please see Response to Comment 18.4. In addition, to allow for sufficient time to plan for implementing effective controls, the State Water Board is providing 18 months to develop an implementation plan prior to the beginning of the ten year compliance schedule, which coincides with the effective date of the implementing permit. (See Ocean Plan Amendment III.L.4.1 and Part I ISWEBE IV.A.5.1.) The fifteen year maximum deadline from the effective date of the Trash Amendments provides five years for the permitting authority to incorporate the Trash Provisions into an implementing permit. (See Ocean Plan Amendment III.L.4.2-3 and Part I ISWEBE IV.A.5.2-3.) The State Water Board does not think the proposed language is necessary.

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	researching and developing a trash program compliant with the Trash Amendments. The City of Del Mar also suggests edits to the Trash Amendments (see recommended language).	was chosen ~~effective date of the first implementing permit (whether such permit is re-opened, re-issued or newly adopted)~~, along with achievements of interim milestones such as an average of ten percent (10%) of the full capture systems installed every year. In no case may the final compliance date be later than fifteen (15) years from the permittee's written notice indicating which track was chosen ~~effective date of these Trash Provisions~~. • For MS4 permittees that elect to comply with Chapter III.L.2.a.2. (Track 2), full compliance shall occur within ten (10) years of the permittee's notice indicating which track was chosen ~~effective date of the first implementing permit~~ (whether such permit is re-opened, re-issued or newly adopted), along with achievements of interim milestones such as average load	

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		reductions of ten percent (10%) per year. In no case may the final compliance date be later than fifteen (15) years from the permittee's written notice indicating which track was chosen ~~effective date of these Trash Provisions~~.	
18.7	The City of Del Mar supports the option of time extensions for employing regulatory source controls.		Please see Response to Comment 4.5.
18.8	The City of Del Mar currently implements a comprehensive monitoring program and believes that monitoring requirements should be tied to WQIP monitoring to conserve implementing resources and avoid creating an additional and/or separate monitoring program. Due to the lack of waters impaired for trash, the City of Del Mar supports implementing the Trash Amendments and associated proposed monitoring requirements only if a water body becomes impaired for trash and is subsequently listed on the 303(d) list.		Please see Response to Comment 11.9. As the proposed Trash Amendments will be implemented through respective NPDES permits. Implementation provisions and monitoring and reporting requirements could be incorporated as part of Water Quality Improvement Plans, if in align with the Trash Amendments and approved by the permitting authority.

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19.1	The Proposed Trash Amendments would impose new State requirements on local agencies without identifying a funding reimbursement source. Prior to adoption of the proposed policy, the State Water Resources Control Board must first identify a reliable funding source to reimburse local jurisdictions for the cost of the new requirements, as mandated by the California Constitution.		Please see Response to Comment 10.4.
19.2	The Proposed Trash Amendments are premised upon a postulation that trash is an acute problem in all waters, and requires specific actions by all municipalities that discharge to those waters. Alternatively, the Proposed Trash Amendments should address trash in a manner similar to other pollutants in which actions would be required only after impairment has been documented or a water quality objective has been exceeded and the regulated entity has contributed to that impairment or objective exceedance.		Please see Response to Comment 18.4.

Comment Letter	Comment	Recommended Language	Response
19.3	The rigid implementation requirements expressed in the Proposed Trash Amendments do not allow flexibility for local resources to be used efficiently and to address "real world" problems. Alternatively, if a problem (as defined by a documented impairment, see comment #2 above) is identified, regulated entities should be allowed to address trash issues consistent with their local planning and implementation strategies to meet the defined narrative water quality objective. A narrative water quality objective for trash is supportive of the State Water Resources Control Board's goal of statewide consistency, and as such, should be fully developed for incorporation into the Proposed Trash Amendments.		The State Water Board agrees. Please see Response to Comment 6.1.
20.1	The Proposed Amendments do not identify a funding source for this, so presumably the City will be required to fund it out of its budget. Similar to other jurisdictions, the City is still recovering from the economic downturn and this would be a significant burden to city finances unless permanent alternative funding sources are established.		Please see Response to Comment 10.4.
20.2	The City requests that the State Board incorporate more flexible language that will keep trash as a legitimate concern but allow cities to address at an appropriate level for		Please see Response to Comment 11.3.

Comment Letter	Comment	Recommended Language	Response
	their watershed and their population. Escondido has very few locations with trash or debris concerns. Recommendation: the State Water Board include language which will allow trash assessment data to be used to modify the City's approach, regardless of priority land uses. While the City appreciates the intent of Track Two to add such flexibility to the Proposed Trash Amendments, the proposed language is not clear enough as to provide guidance for the City's situation.		
20.3	As San Diego Region municipalities embark on Water Quality Improvement Plans for all Region 9 watersheds, the City is concerned that the Proposed Trash Amendments do not acknowledge the current watershed management efforts underway, including pollutant prioritization, goal setting, and strategy development. The watershed planning process allows municipalities to focus scarce resources on solutions to address the highest water quality priorities. The Proposed Trash Amendments should be modified to recognize and integrate with such efforts, perhaps with a third compliance track.		Please see Response to Comment 11.9.
20.4	The City requests that a standard methodology for municipalities to measure trash is established in the Trash Amendments, as no such		Currently, there are several approaches to monitoring trash in California, for example the Minimum Frequency of Assessment and Collection Program, the Daily Generation Rate, and the Rapid Trash Assessment. In addition, there are potential new

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	guidance currently exists. Furthermore, the City anticipates that much of the data collection required for this effort will come from MS4 and catch basin insert cleaning and maintenance which removes a significant amount of trash & debris from the environment. The equipment used to perform this work (typically a vactor truck) removes an intermingled volume of trash, plant debris, and sediment from catch basins. It is of utmost importance that the State and Regional Water Boards recognize that it is not feasible to separate the items within catch basins for separate tracking and reporting purposes		methodologies, such as outcomes from the Proposition 84 Grant project Tracking California's Trash. Because there will be a variety implementation approaches, the monitoring and reporting requirements should offer flexibility for permittees to demonstrate compliance with the prohibition of discharge for trash. However, a level of statewide consistency in monitoring and reporting also needs to exist. The balance between the needs for consistency and flexibility is achieved through standardized objectives in the monitoring program. As a result, the Trash Amendments aim to establish minimum monitoring and reporting provisions, while providing the option for Water Boards to include more extensive provisions in their implementing permits. This approach provides flexibility to Water Board permit writers to design monitoring programs that reflect the compliance methods elected by permittees along with regional characteristics. For statewide consistency, all monitoring programs would be striving to answer similar fundamental questions. (See Final Staff Report at Sections 2.7 and 4.10, Ocean Plan Amendments III.L.5, and Part I ISWEBE IV.A.5.)
20.5	City's engineers are concerned about the full capture size limit of 5 millimeters (mm). Vegetation and debris transported in large volumes during storm events cause blockages in trash capture devices and may cause localized flooding. This consideration increases the cost of installing full trash capture devices because underground catch basins may need to be resized to accommodate potential flows.		Full capture systems have been successfully installed and operated in California for over ten years. While leaf litter does accumulate, this can be minimized with routine cleaning and maintenance. Additionally, full capture systems provide a bypass route when runoff flow extends the design capacity, in order to alleviate potential flooding concerns. (See Final Staff Report in Section 5.1.)

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20.6	The Proposed Trash Amendments should clarify whether municipalities would be able to switch tracks throughout the course of implementation. This may provide a buffer should practical experience, budget constraints or economic considerations force the city to reassess, and for example, purchase and installation of full capture devices under Track 1.		The State Water Board is appreciative of this concern. The ability to change Tracks would be possible at the discretion of the permitting authority after the effective date of the first implementing permit. If a permittee changes Tracks, then permitting authority would likely need to modify the permit requirements to be in compliance with the implementation provisions in the Trash Amendments. For example, if a permittee begins implementation under Track 1 and switches to Track 2, then the permittee would be responsible for achieving the Track 2 requirements, such as submission of an implementation plan, and monitoring and reporting.
20.7	The City views these amendments as an unfunded mandate. The implementation costs alone are onerous, and the maintenance of capture devices will be an ongoing and even larger expense than installation costs. The State should commit to offer implementation grants for small and medium-sized jurisdictions during the initial period (ten years after incorporation into Regional MS4 Permits).		Please see Responses to Comments 10.4 and 29.4.
20.8	The City recommends that comprehensive recommendations regarding full capture devices are presented as part of the guidance. It will provide reassurance to the City that a method for full capture accepted in another region can be transferred to our region. This will avoid burdensome and lengthy approval processes and reduce redundancy across different Regional Boards.		The State Water Board intends for resources to be efficiently directed towards effective treatment controls to capture and remove trash. The proposed Final Staff Report specifies the full capture systems currently certified by the Los Angeles Water Board and listed in Appendix I of the Bay Area-wide Trash Capture Demonstration Project, Final Project Report (May 8, 2014) that will satisfy the requirements of the Trash Amendments. (See Final Staff Report in Sections 2.8 and 5.1, Ocean Plan Amendment and Part I ISWEBE definition for "full capture system equivalency.")

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20.9	The City is concerned that sources of trash from non-MS4 sources will be attributed to the City's compliance responsibility under these amendments. Such sources include: littering on highways under Caltrans management homeless encampments and/or dumping directly in receiving waters, Phase II MS4 properties, and School District properties. The Proposed Trash Amendments should address how material from these other sources will be accounted for.		Please see Response to Comment 10.6.
20.10	Section 2 of the Draft Staff Report states "No Other Agency approvals are expected to be required to implement the Proposed Amendments." When the Sediment Quality Objectives were adopted, EPA Region XI had to approve the amendment. Why is that not true with these amendments?		The proposed Trash Amendments and Draft Staff Report discussed the actual implementation of the Trash Amendments by permittees when it stated that no other agencies are expected to be required to implement the Trash Amendments (i.e., once the Trash Amendments become final there are no other agencies that have separate jurisdiction over the action). The proposed Trash Amendments and Draft Staff Report did not detail how the Trash Amendments “become final”. After the State Water Board adopts the Trash Amendments, the Final Staff Report will be submitted for review of the regulatory record to the California Office of Administrative Law and final approval from the U.S. Environmental Protection Agency. The Trash Amendments become effective following approval by the U.S. Environmental Protection Agency. Accordingly, Section 2.12 has been revised in the proposed Final Staff Report.

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20.11	On page 65 of Section 4 in the Proposed Amendments the trash definition should include the size minimum of 5 mm similar to that as presented in Consideration 3 of Section 4.1. Inclusion of a 5 mm minimum would provide consistency with compliance requirements for full capture devices.	"Trash means all improperly discarded solid material over 5 mm in size from any production, manufacturing, or processing operation including, but not limited to products, product packaging, or containers constructed of plastic, steel, aluminum, glass, paper, or other synthetic ~~or natural~~ materials."	The State Water Board disagrees that there should be a size limitation on the definition of trash. A size limitation doesn't address small pieces of trash, such as preproduction plastics and small pieces of trash, which can adversely impact beneficial uses. (See the Final Staff Report Section 4.1.)
20.12	III.I.2.d of the Proposed Trash Amendments allows permitting authorities to determine that other, specific land uses generate substantial amounts of trash and require permittees to implement Track 1 and Track 2 for those land uses. If a permitting authority adds new priority land uses during the duration of the compliance period, it could be difficult for a permittee to achieve compliance with the Proposed Amendments if the areas they are required to address change while they are attempting to address those areas. We recommend adding language to the Proposed Amendments requiring a permitting authority to consider revisions to the final compliance date of the Proposed Amendments if new priority land uses are added during		Trash is a priority pollutant across California. The Trash Amendments aim to focus trash controls on areas high trash generation rates, as specified by the priority land uses for Phase I and Phase II MS4 permittees. In addition to trash controls in priority land uses, the Trash Amendments propose to allow a permitting authority to make a determination that other specific land uses or locations to generate substantial amounts of trash and require Track 1 or Track 2 trash controls. The Trash Amendments proposed a ten year compliance schedule for Track 1 and Track 2; however, there was not a time schedule for specific land uses and locations designed as high trash generating. Additional language has been provided in the proposed final Trash Amendments specifying that a permitting authority can set a time schedule for the specific land use and locations determined to generate substantial amounts of trash where the final compliance can be no later than ten years from the determination. (Ocean Plan Amendment III.L.4.a.5 and Part I ISWEBE IV.A.5.a.5.)

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	the duration of the compliance period.		
20.13	As drafted, the Proposed Amendments would supersede existing stakeholder-based watershed planning efforts, effectively determining, without validation, that trash is the highest priority and potentially requiring the refocusing of resources from stakeholder developed priorities.	We recommend including language in Chapter IV.B.3of the ISWEBE Plan and Chapter III.L.2.a of the Ocean Plan stating: A MS4 Permittee may request that compliance requirements for trash be established through a watershed prioritization and planning process outlined in MS4 Permit requirements. This prioritization process would allow for evaluation of the trash in the context of other watershed priorities and provide a mechanism for modifying or reducing the requirements for compliance in accordance with the procedures outlined in the MS4 permit and an approved watershed plan. Through this process, monitoring data could be utilized to demonstrate that trash controls are not necessary for all priority land uses.	Please see Response to Comment 11.9.

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20.14	The Proposed Trash Amendments appear to require implementation of Track 1 or Track 2 for any storm drain that captures any runoff from a priority land use. This would trigger compliance requirements for a storm drain even if only a very small portion of a priority land use drains to the storm drain.	Recommendation: Recommend adding language to Chapter IV.B.3.a.(1)/IV.B.3.a.(2) and Chapter III.L.2.a.(l)/Chapter lll.l.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively stating that permittees must address catchment areas where the priority land uses are greater than 25% of the total catchment area. Track 1: Install, operate and maintain full capture systems in their jurisdictions for all storm drains that captures runoff in catchment areas where priority land uses comprise >25% of the land area in the catchment; or Track 2: Install, operate, and maintain any combination of full capture systems, other treatment controls, institutional controls, and/or multi-benefit projects within either the jurisdiction of the MS4 permittee or within the jurisdiction of the MS4 permittee and	Please see Response to Comment 11.4.

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		contiguous MS4s permittees, so long as such combination achieves the same performance results as compliance under Track 1 would achieve for all storm drains that captures runoff in catchment areas where priority land uses comprise >25% of the land area within the catchment.	
20.15	Demonstration of performance under Track 2 should not be limited to monitoring as demonstrating effectiveness of trash BMPs through monitoring is extremely difficult. Permittees should be allowed to propose the method of demonstrating performance in their plan. In addition, receiving water monitoring should not be required since other sources contribute trash. While a permittee may want to conduct receiving water monitoring to demonstrate performance, it should not be mandated in case other methods are appropriate (e.g. pounds of t rash removed through a control measure). Numeric trash data, no matter the metric (pieces, weight, volume), are an unreliable way to determine BMP effectiveness. Monitoring programs in the Los Angeles Region have shown that		Please see Response to Comment 4.6.

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	trash accumulation is highly variable leading to an inability to discern any trends in data. Permittees must have the flexibility to identify non-numeric monitoring measures to demonstrate effectiveness.		
21.1	Additional time for the comment period.		The State Water Board did not lengthen the 55-day comment period because it also held a public workshop in the midst of the comment period to provide an opportunity to address concerns, clarify issues, and answer questions.
21.2	The State of California needs to provide a source of funding for Cities to comply with the Proposed Trash Amendments. The City does not have a drainage fee/utility and as such, 100% of the stormwater management program costs are funded by the General Fund and impact fees. Prop 218 currently precludes the City from establishing a fee for stormwater management activities therefor increased costs must be taken from budgets for other programs and services (General Fund). This is not the time to put such an administrative burden on cities and cities cannot afford to comply with these unfunded mandates. To put this into context, the City is currently only able to budget approximately $200,000 per year on storm drain improvement projects. The capital cost to meet the Proposed Trash Amendment requirements will require approximately an additional		Please see Responses to Comments 10.4 and 29.4.

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	$200,000 per year. Likewise, the City is currently only able to budget approximately $400,000 per year for storm drain system maintenance activities and street cleaning activities. The increased maintenance cost to meet the Proposed Trash Amendment requirements will require approximately an additional $650,000 per year by the tenth year of the program. The City recognizes the water quality benefits of reducing trash, however the costs to comply exceeds our funding capability. Recommendation: The State must assist with funding for those requirements.		
21.3	Due to the significant cost to comply with the Proposed Trash Amendments, as currently written, we are concerned that much of our limited resources will be taken away from current efforts to reduce our target pollutants, to implementing trash removal BMP's in many areas that are not generating significant amounts of trash. Recommendation: The Proposed Trash Amendments allow cities to evaluate areas in question and provide the Regional Water Boards with the authority to approve an area exemption if the City has demonstrated that the area in question generates trash at rates that are significantly lower than estimated for the priority land use		Trash is a priority pollutant across California. A dual alternative "compliance Track" approach tailored to each NPDES storm water permit category would provide flexibility to permittees to determine the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation. The priority land uses are shown to be areas that generate significant amounts of trash and would thereby be the focus of limited resources. With the "equivalent alternate land uses," a permittee can exchange priority land uses shown to be low trash generating with alternative areas shown to be high trash generator. (See Ocean Plan Amendment and Part I ISWEBE definition for "priority land uses.") Therefore, limited resources are being applied to the areas with the highest trash generating rates.

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	listed.		
21.4	Supports the comments of CASQA and the Statewide Stormwater Coalition.		Please see the Responses to Comment Letters 10 and 68.
22.1	High-density residential land use with at least 10 developed dwelling unit/acre results in focusing on single family. High-density residential land use should be defined at equal to or greater than five dwelling units per building.		The proposed final Trash Amendments continue to be defined with at least 10 dwelling units per acre. (See Ocean Plan Amendment and Part I ISWEBE definition for "priority land use.")
22.2	The commercial land use definition should be refined to focus on commercial uses that have the potential to produce trash (such as fast food or take-out restaurants, retail and food markets) and exempt professional and office uses that only provide services.		The State Water Board disagrees that the definition of commercial should be modified as it focuses on the "sale or transfer of goods". The Trash Amendments do provide the ability to substitute a priority land use for an alternate land use. The alternative equivalent land uses allows for the situation to exchange parts of commercial for other high trash generating land uses. (See Ocean Plan Amendment and Part I ISWEBE definition for "priority land uses.")
22.3	The definitions Priority Land Uses are unnecessarily broad and will mandate storm drain retrofits in wide areas of low trash generation. Recommendation: To address the need for better tailored priority area definitions and the inherent variability of development-related trash generation across the state, the City recommends a process whereby municipalities are able to propose modifications to high priority areas to focus on high-trash generating areas/land uses/development types based on site-specific documentation, such as catch basin		Please see Response to Comment 12.2.

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	cleaning data or trash generation studies.		
22.4	If the City implemented Track 1, full capture devices would be required on approximately 4,600 catch basins. Utilizing the estimated cost from Appendix C: Economic Considerations for the Proposed Amendments to Statewide Water Quality Control Plans to Control Trash of $1,142 per catch basin insert for installation and one year of operations and maintenance, an estimated total cost to implement Track 1 for the City of Irvine is $5,253,200. This cost estimate results in a cost per capita of $21.65, more than double the $10.50 Estimated Annual Cost Per Capita (After Full Implementation in Year 10) from Table 13.		The Economic Considerations analysis used two methods to estimate the incremental costs of compliance with the Trash Amendments. The first method is based on cost of compliance per capita, and the second method is based on land cover. It is recognized that the estimated incremental annual cost to comply may vary for site specific conditions. As the Economic Considerations represent a statewide average, communities may wish to conduct their own cost analyses. (See Appendix C of the Final Staff Report.)
22.5	While it could be argued that compliance through Track 2 would provide some flexibility to address the above concerns, the burden of proof of performance results for Track 2 programs is impossible to meet for the following reasons: • A performance evaluation cannot be developed for an unknown target. The performance results to be achieved by the exclusive use of full capture systems (Track 1) is unknown, unless a municipality has already installed full capture		The proposed final Trash Amendments were modified to address the performance standard concern with the incorporation of the term full capture system equivalency. Track 2 allow for multi-jurisdictional collaboration. (Ocean Plan Amendments III.L.2.a, Part I ISWEBE IV.A.3.a, and definition of "full capture system equivalency.") Additionally, if the existing trash generation is low then the reduction target is also low and achievable. Please see the Response to Comment 6.2.

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	systems and monitored their performance. • It is unclear how effectiveness of an individual municipal program could be objectively measured and quantified, since the original source of trash in receiving waters is unknown. Trash from upstream dischargers will pass between jurisdictional boundaries and could be erroneously attributed to downstream municipal systems. • If the level of trash discharged from a municipal system is already low, it may be impossible to document reductions from the previous year.		
23.1	The City of La Mesa supports the focus on high trash generating land uses. Focus on these areas within a community will allow stormwater programs to invest resources where they will provide the best return on the investment in the controls. Recommendation: Rather than installing devices in areas where the return on the investment will be low, we recommend that the Trash Amendments allow for flexibility by establishing a process through which permittees could petition their Regional Water Board to review the areas in question and give the public agency the authority to exempt such areas if they are found not to be high		Please see Responses to Comments 10.7 and 12.2.

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	trash generating.		
23.2	Many MS4s around the state have been working extensively with the Regional Water Boards to develop and implement programs based on watershed planning and the prioritization of water quality conditions. Recommendation: The Proposed Trash Amendments need to recognize the value of current management programs and not divert resources away from ongoing successful efforts to control trash in our waterways or place additional demand on already limited resources. We urge the State Water Board to allow MS4 programs with existing focused water quality implementation plans to address trash in the prioritization context of those existing plans.		Please see Response to Comment 11.9.
23.3	City of La Mesa does not dispute the water quality benefits of controlling trash, however, the amendments represent added costs, and may take away from other planned water quality efforts. Not only are we concerned with the initial cost of installing these full capture devises but also the ongoing costs of managing and maintaining them. Recommendation: The City of La Mesa recommends that the State		The State Water Board agrees that permittees partnering together or partnering with other entities is a beneficial idea for controlling trash. As such, the Trash Amendments specify coordination of effort between Caltrans and MS4 in overlapping significant trash generating and/or priority land uses. Coordination with Caltrans will increase the avenues for funding. The State Water Board has and will continue to support loans and grants for projects that implement the Trash Amendments. The State Water Board has multiple programs to provide funding. The Public Resources Code requires that the Proposition 84 Storm Water Grant Program funds are used to

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	Water Board partner with permittees to explore possible ways to fund these trash control measures.		provide matching grants to local public agencies for the reduction and prevention of storm water contamination to rivers, lakes, and streams. Please visit the following website for more information: http://waterboards.ca.gov/water_issues/program/grants_loans/prop84/index.shtml Additional financial assistance information including information on the Clean Water State Revolving Fund loans, is available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/ CalRecycle administers funding programs to assist with waste disposable, specifically reducing beverage container litter in the waste stream. Information on the Beverage Container Recycling Grants is available at: http://www.calrecycle.ca.gov/bevcontainer/grants/
24.1	The City of Lodi also supports the comments submitted by the California Stormwater Quality Association, the Statewide Stormwater Coalition, and the County of San Diego,		Please see Response to Comment Letters 10, 45, and 68.
24.2	Request the State Water Resources Control Board to provide all agencies more time to work together and develop a more flexible policy to address trash that is aligned with local planning efforts, instead of a 'one size fits all' approach.		The Trash Amendments have undergone an extensive public participation. The State Water Board believes the Trash Amendments have been crafted to provide both statewide consistency and flexibility. (See Final Staff Report Section 2.14.)
24.3	Delay until a funding source is identified to provide for the implementation or ongoing maintenance of the structural controls required to capture trash. Limited local resources shifted from		Please see Response to 10.4.

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	local priority efforts to address trash is a disconnect between local and statewide planning efforts.		
24.4	Compliance with Water Quality Objective and Prohibition of Trash Discharge The Proposed Trash Amendments provide a narrative water quality objective (WOO) in Chapter lll.B and Chapter ll.C of the ISWEBE Plan and Ocean Plan, respectively and a prohibition of trash discharge in Chapter IV.B.2 and Chapter lll.I.6 of the ISWEBE Plan and Ocean Plan, respectively. The permittees would be considered in full compliance with the prohibition of trash discharge so long as the permittees were fully implementing Track 1 or Track 2 (Chapter IV.B.2.a and Chapter lll.I.6.a, of the ISWEBE Plan and Ocean Plan, respectively). However, the Proposed Trash Amendments do not indicate that meeting the discharge prohibition requirements would also mean the permittees are in compliance with receiving water limitations (i.e., meeting the WOO). This could result in permittees being subject to a Trash TMDL for the receiving water, even if in compliance with permittees' MS4 Permit.	Recommendation: City of Lodi recommends adding language to the Proposed Trash Amendments indicating the permittees are in compliance with the receiving water limitations so long as they are fully implementing Track I orTrack2.	Please see Response to Comments 4.1 and 10.9.

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24.5	As defined in the Proposed Trash Amendments, the predefined priority areas may not be appropriate for all jurisdictions and does not consider local knowledge of receiving water conditions and previous data collection efforts. As currently drafted, the Proposed Trash Amendments assume that there is a problem in the defined priority areas, effectively forcing a costly "one size fits all" approach onto the jurisdictions. City of Lodi supports the concept of prioritized land uses to address problem areas; however, the approach should allow for more local flexibility in this prioritization. City of Lodi and the other municipal separate storm sewer system (MS4) Co-permittees in our watersheds have been working extensively with the Regional Water Quality Control Board to develop and implement a MS4 Permit based on watershed planning and the prioritization of water quality conditions. The comprehensive planning process considers trash, as well as a host of other potential pollutants, with trash currently categorized as a lower tier priority pollutant. Additionally, the expected costs to implement the Proposed Amendments will be substantial and the value of these requirements are uncertain, given the current receiving water priorities developed through the stakeholder	Recommendation: City of Lodi recommends including language after Chapter IV.B.3.a of the ISWEBE Plan and Chapter lll.L.2.a of the Ocean Plan that states: A MS4 Permittee may request that compliance requirements for trash be established through a watershed prioritization and planning process outlined in M54 permit requirements. This prioritization process would allow for evaluation of the trash in the context of other watershed priorities and provide a mechanism for modifying or reducing the requirements for compliance in accordance with the procedures outlined in the MS4 permit and an approved watershed plan. Through this process, monitoring data could be utilized to demonstrate that trash controls are not necessary for all	Please see Response to Comment 11.9.

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	process. As drafted, the Proposed Trash Amendments would supersede existing stakeholder-based watershed planning efforts, effectively determining, without validation, that trash is the highest priority in all watershed areas and potentially requiring the refocusing of resources from stakeholder developed priorities.	priority land uses.	
24.6	The Proposed Trash Amendments appear to require implementation of Track 1 or Track 2 for any storm drain that captures any runoff from a priority land use [Chapter IV.B.3.a.(1)/1V.8.3.a.(2) and Chapter lll.L.2.a.(1)/Chapter lll.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively. This would trigger compliance requirements for a storm drain even if only a very small portion of a priority land use drains to the storm drain.	Recommendation: Recommend adding language to Chapter IV. B. 3.a. (1)/IV. B. 3.a. (2) and Chapter I I I. 1.2.a. (1)/Chapter lll.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively stating that permittees must address catchment areas where the priority land uses are greater than 25% of the total catchment area. (1)Track 1: Install, operate and maintain full capture systems in their jurisdictions for all storm drains that captures runoff in catchment areas where priority land uses comprise >25% of the land area in the catchment; or (2)Track2: Install,	Please see Response to Comment 11.4.

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		operate, and maintain any combination of full capture systems, other treatment controls, institutional controls, and/or multi-benefit projects within either the jurisdiction of the MS4 permittee or within the jurisdiction of the MS4 permittee and contiguous MS4s permittees, so long as such combination achieves the same performance results as compliance under Track 1 would achieve for all storm drains that captures runoff in catchment areas where-priority land uses comprise >25% of the land area within the catchment'	
24.7	The Proposed Trash Amendments, in Chapter IV.B.7.b and Chapter II¡.L.6.b of the ISWEBE Plan and Ocean Plan, respectively, require permittees implementing Track 2 to monitor to demonstrate mandated BMP performance results; effectiveness of the full capture systems, other structural BMPs, institutional controls, and/or multi-benefit projects; and compliance with performance standards. In addition,	Recommendation: City of Lodi recommends the State Water Board revise the language in the Proposed Trash Amendments (Chapter IV.8.7.b and Chapter III.L.6.b of the ISWEBE Plan and Ocean Plan, respectively) to allow for more flexibility	Please see Response to Comment 4.6.

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	the permittees must monitor the amount of trash in receiving waters. Demonstration of performance under Track 2 should not be limited to monitoring as demonstrating effectiveness of trash BMPs through monitoring is extremely difficult. Permittees should be allowed to propose the method of demonstrating performance in their plan. In addition, receiving water monitoring should not be required since other sources contribute trash. While a permittee may want to conduct receiving water monitoring to demonstrate performance, it should not be mandated in case other methods are appropriate (e.9. pounds of trash removed through a control measure).	in determining Track 2 performance and to remove the requirement for receiving water trash monitoring.	

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24.8	It appears that the Proposed Trash Amendments will serve as an alternative to a TMDL, thereby preventing the need to develop trash TMDLs in the future. City of Lodi recommends the State Board adds additional language to clarify the intent of the Proposed Trash Amendments with respect to the development of future TMDLS. It seems that implementation of the Proposed Trash Amendments represents a single regulatory action addressing MS4 permittee requirements thereby removing the need to develop wasteload allocations via a TMDL for MS4 permittees.	Recommendation: City of Lodi recommends that language should be included in the Proposed Trash Amendments stating that if the requirements in the Proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully implemented.	Please see Response to Comment 10.10.
24.9	The well-established Community Planning Groups in these rural areas have established priority issues through rigorous stakeholder planning processes. Rural towns have commercial areas that will be under the Trash Amendments. These rural communities have limited resources available to fund programs, and there is not a reasonable return on investment for these small communities to implement extensive trash controls. Based on their local planning processes, the threat of firestorms or other local priorities may be the best	Recommendation: City of Lodi recommends exempting rural areas from the Trash Amendments that are not directly contiguous to urbanized areas.	Trash is a priority pollutant across California and is impairing the beneficial uses of surface waters. This issue is not limited by community type, e.g., rural or urban. The State Water Board agrees that rural communities might contribute less trash than urban communities, due to population size; however, the State Water Board does not think the recommended language is necessary. The implementation provisions of the Trash Amendments are aimed to focus trash controls in five priority land uses. A rural community covered by a MS4 permit would comply with the prohibition of discharge via Track 1 or Track 2 to the extent that there are priority land uses.

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	use of their limited resources.		
25.1	Full capture devices installed in private drains; inlets downstream of priority land uses that already have trash controls. Rationale for change Page 74 of the staff report references maintenance of full capture systems installed on private properties, which indicates that the State Water Board intended to allow treatment BM Ps installed on private properties to help satisfy the requirement to remove trash from discharges from priority land uses. However, the existing text of L.2.a.(l) and L.2.a.(2) implicitly prohibits installation of full capture devices and other treatment controls or institutional I controls on private property from being part of the municipality's approach to comply with the proposed Trash Amendments. The suggested revisions above would give municipalities subject to MS4 NDPES permits the option of complying either by installing BMPs or implementing institutional controls on their own public property or by requiring the implementation of these approaches on private property. Additionally, the proposed language would allow municipalities not to have to install a full capture device (or Track 2 equivalent) when the only priority land use draining to a given storm drain is a facility permitted	Suggested revision to L.2.a.(1) and L.2.a.(2) (1) Track 1: Install, operate and maintain, or require to be installed, operated, and maintained, full capture systems* ~~for all storm drains that captures~~ to treat-runoff from all land area in each permittee's jurisdiction that drains to the permittee's MS4 and is classified as one or more of the priority land uses*~~ in their jurisdictions~~; or (2) Track 2: Install, operate, and maintain, or require to be installed operated, and maintained, any combination of full capture systems*, other treatment controls*, institutional controls*, and/or multi-benefit projects* within either the jurisdiction of the MS4* permittee or within the jurisdiction of the MS4* permittee and contiguous MS4s* permittees, so long as such combination achieves the same	Pursuant to the express terms of the Trash Amendments (Ocean Plan Amendment at III.L.2.a; Part I ISWEBE at IV.A.3.a), the requirement for MS4 permittees to comply with Track 1 or Track 2 extends to the extent they have "regulatory authority" over priority land uses in their jurisdiction. If the MS4 permittee has legal authority to install, operate, and maintain full capture systems for a storm drain, whether at the actual site of the drain or inline, then that permittee would be required to do so under the Trash Amendments. To comply with Track 1, full capture systems must be installed, operated, and maintained for "all storm drains that capture runoff from priority land uses. (Ocean Plan Amendment at III.L.2.a.1; Part I ISWEBE at IV.A.3.a.1.) Insofar as an MS4 permittee does not have authority over a private storm drain, the MS4 would comply with Track 1 by, for example, installing a vortex separator system inline, which would capture trash from a whole drainage area of individual storm drains (see Staff Report section 5.1.3), or installing trash nets (see Staff Report section 5.1.4) to capture trash from drainage areas of storm drains. (See generally, discussion in Staff Report in Section 5 through 5.1.5.) The State Water Board does not support the recommendation. Additionally, Please see Response to Comment 11.4.

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	under the Industrial General Permit (IGP), which would be required to install trash controls as a condition of its own coverage under the JGP. Under that circumstance, requiring the MS4 permittee to install a full capture system (or Track 2 equivalent) for a priority land use that has already been addressed at the source as a condition of the JGP would not be an effective use of MS4 permittee resources. Overall, the revised language proposed above gives jurisdictions more flexibility to find the most efficient and effective way to remove trash from priority land use discharges, which appears to have been the intent of the regulations given the discussion in the staff report.	performance results as compliance under Track 1 would achieve for all land area In each permittee's jurisdiction that drains to the permittee's MS4 and is classified as ~~all storm drains that captures runoff from~~ one or more of the priority land uses * ~~within such jurisdiction(s).~~	
25.2	The City agrees that public transportation stations, such as light rail stations or bus terminals, have the potential to be significant sources of trash and should be considered priority land uses. Bus stops, on the other hand, may change locations every few years. This could create compliance difficulties for strategies that involve structural BMPs, and it could also discourage expansion or optimization of public transportation routes within the City of National City. The City of National City is pursuing and implementing smart growth development practices and	Suggested revision to Appendix I (Definitions) "(5) Public transportation stations: major facilities or sites where public transit agencies' vehicles load or unload passengers or goods (e.g., bus or light passenger rail stations ~~and steps~~)."	The State Water Board is encouraged by the City of National City's implementation for smart growth development practices and does not anticipate the Trash Amendments will discourage the expansion of public transportation and smart growth. Within Track 2, the Trash Amendments provide flexibility with options such as of the use of low-impact development and multi-benefit projects to control trash.

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	encouraging non-car transportation, including public transportation, in a significant portion of the City. The City is concerned that the proposed Trash Amendments could discourage expansion of public transportation opportunities and smart growth, which could have unintended negative environmental consequences.		
26.1	The Staff Report states the proposed program has been in development for a number of years and that a group of stakeholders was convened to provide input on the development of the program. It is also noted that stakeholder group meetings were not made public and the Staff Report is the first publicly available document that provides information on how the program is to be implemented. We believe this is a large undertaking for a statewide program and our experience has shown that significant resources and costs will be expended to comply with these amendments. We urge the State to move slowly and provide additional time and more workshops to allow municipalities additional comments before these amendments are formally adopted. The time factor also does not allow for the review of the many supporting studies cited in the Staff Report within the comment period allowed.		Please see Response to Comment 3.1.

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26.2	The Staff Report states that the strategy to control trash is taken primarily from the experience in the San Francisco Bay and Los Angeles regions. We agree that those regions may have similar conditions applicable statewide but it must also be recognized that there are differences between regions and what is applicable in one region is not necessarily applicable in another region. It is important to recognize these differences because the cost to each municipality for the proposed program will be in the thousands to millions of dollars over the term of implementation as noted in the Appendix C of the Staff Report. We commend the State for proposing a trash control strategy that is reasonable and applicable only to high trash generating areas instead of implementing a zero discharge policy for all land uses and water bodies. This latter option would make no sense and would be a waste of public funds and resources since wind driven trash can find its way to a water body and lead to a finding of noncompliance even with full implementation of trash control devices. It should also be noted that the storm events greater than the one-year event may produce trash that should not lead to a finding of noncompliance. Recommendation: Recognize that		A full capture system has been defined to "trap all particles that are 5 mm or greater, and has a design treatment capacity that is either:…b) appropriately sized to, and designed to carry at least the same flows as, the corresponding storm drain." The intention of part b) of the definition is to address the concern that storm events greater can carry trash into water bodies. (See Ocean Plan Amendment and Part I ISWEBE definition for "full capture system.")

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	storm events greater than one-year can carry trash into water bodies.		
26.3	The proposed amendments are based on strategy to control trash from priority land uses, which include residential high density, urban mixed, industrial and commercial, transportation hubs, bus stops and others. While it is clear that these land uses may produce high amounts of trash, how these land uses are incorporated into the program and defined needs to be considered. High Density Residential: It is anticipated that residential high density neighborhoods will generate significant amounts of trash as shown in studies but it should be noted that the term and definition of high density varies among municipalities and the resulting densities are not all the same. In Orange, the term "high density" is not a category within the City's Zoning Code. The proposed amendments define high density as ten dwelling units per acre. In Orange, this would translate to a zoning district categorized as Low Medium Density ResidentiaiR-2 that allows within its mixture duplexes and small apartment buildings and has a density range of six to fifteen units per acre with an expected range of 8 units per acre.		The proposed Trash Amendments focus on areas with high trash generation rates, such as priority land uses for MS4 Phase I and Phase II permittees and significant trash generating areas for Caltrans. There is no existing data on the location of priority land uses. A GIS analysis was used to determine the possible geographic scope of the proposed Trash Amendments. Land cover data within census designated places and regional water board boundaries were used to provide an estimate the area covered under the proposed Trash Amendments. Due to lack of statewide consistency in land use planning and GIS data from individual municipalities, "Developed, High Intensity" was assumed to be an analogous proxy to the priority land uses of the proposed Trash Amendments: high density residential, industrial, commercial, mixed urban, and public transportation stations. However, high density residential, as defined in the Trash Amendments, is based on units per acres and not impervious area percentage. (See Final Staff Report Section 3.1.)

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	Impervious area in this district can range from 45% to 90% as noted in the Orange County Hydrology Manual for this building density. Because the R-2 district allows ten units per acre, it would be categorized as a priority land use even though it may not meet the impervious area definition of 80-100% for high density as defined in Staff Report Section 3.2. Clearly, the lower range of Low Medium Density Residential in Orange of six units per acre would not meet this definition or be compatible with Figure 24 of the Staff Report. Recommendation: The amendments should be revised to clarify that high density as used in the amendments with a building density of ten units per acre is a surrogate for residential land use that contains 80-100% impervious area. Municipalities should be allowed the opportunity to review their respective codes to ascertain what type of residential density meets the 80-100% impervious area criteria. It should also be recognized that zoning such as Orange's R-2 has a range of building densities and that trash control devices would only be used in areas where the existing built condition contains 80-100% impervious area. A field reconnaissance would be allowed to ensure only those areas with high		

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	impervious areas are retrofitted with trash control devices.		
26.4	Within the category of Industrial land use there can be many subdivisions. In Orange, there is light and heavy manufacturing. Within the City we have seen a shift in industrial processing particularly in the Light Industrial use category where manufacturing processes are conducted indoors under cover and are not exposed to the elements. As a result, we have not seen a significant amount of trash generated on public streets in most areas with this land use. This is confirmed by the number of times City maintenance crews have had to clean catch basins within these areas. To require the use of trash control devices in industrial areas without verifying that significant trash is generated would result in a waste of public funds. In heavy industrial manufacturing areas many facilities are subject to the State General Industrial Storm Water Permit where it is expected that trash control devices will be required onsite. The use of onsite trash control devices will minimize onsite trash discharged to the street and trash control devices may not be required within the public street. Recommendation: The amendments should be revised to allow municipalities the opportunity to		For these situations described, the permittee can utilize "equivalent alternate land uses" to substitute a priority land use for an alternate land use within the permittee's jurisdiction that generates rate of trash equivalent to or greater than the priority land use being substituted. (See Ocean Plan Amendment and Part I ISWEBE, Definitions Section, for "priority land uses.") Additionally, please see Response to Comments 10.1, 11.4, 12.2, and 25.1.

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	assess whether industrial land use areas are high trash generating areas. The amendments should also be clear that municipalities are only responsible for providing trash control devices within a public street or areas they are responsible for maintaining. This does not include responsibility for providing and maintaining trash control devices on private land (shopping areas, apartment complexes, mobile home areas, etc.) or private communities with private streets.		
26.5	Bus Stops: Bus stops are also designated a priority land use where trash controlling devices must be used. As with residential development, not all bus stops generate significant amounts of trash. Provisions should be included in the amendments to allow surveys of bus stop areas to determine which areas produce significant amounts of trash. In these areas, alternate methods to control trash such as more frequent cleaning should be allowed in lieu of providing a full capture device downstream. Recommendation: Allow alternate methods to capture trash in lieu of installing full capture devices downstream.		Please see Response to Comment 12.2.
26.6	The amendments propose a two path alternative for compliance: Track 1 or Track 2. Track 1 requires		A full capture system has been defined to "trap all particles that are 5 mm or greater, and has a design treatment capacity that is either:…b) appropriately sized to, and designed to carry at

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	operation and maintenance of full capture systems that capture runoff from priority land uses. Track 2 can be a combination of full capture systems and other alternative measures that achieve the same trash reduction goal. Full Capture Devices: As defined in the amendments, full capture devices must be able to capture trash 5mm and greater and sized for the 1-hr rainfall intensity of a 1-year storm event. Alternatively, it can be sized to handle the inlet storm drain capacity. This definition borrows from the full capture definition used in the Los Angeles River Watershed Trash TMDL. Using this definition may make sense to match the ongoing trash control efforts in the Los Angeles and the San Francisco Bay Area where municipalities are trying to comply with existing trash TMDLs. However, this definition will have a negative impact in other regions where existing trash control devices, particularly vortex separators, were installed to meet MS4 permit design requirements such as the 0.2 inches per hour rainfall intensity specified in the Orange County Santa Ana Region permit. The proposed criteria will significantly reduce the usefulness of these devices that were installed at great expense. Recommendation: The full capture		least the same flows as, the corresponding storm drain." The intention of part b) of the definition is to address this concern of storm drain design. (See Ocean Plan Amendment and Part I ISWEBE definition for "full capture system.")

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	design criteria should be revised to match existing criteria in municipal MS4 permits for rainfall intensity or at a minimum grandfather devices installed or under design in existing MS4 permits.		
26.7	Certification Process: The Staff Reports indicates that devices already approved by the Los Angeles Regional Board will be accepted but that all new full capture devices used to satisfy Track 1 would be certified and approved by the State. A listing of these devices would be useful. However, there is no listing of approved devices nor is information provided on what needs to be submitted for obtaining approval of the new device. The processing and review time to get a device approved is also not specified. This information is important to know in selecting future trash control devices. It may be possible that a municipality elects to implement a device that has not been approved and submits the device for State approval. If the State fails to act in a timely manner the potential exists for the municipality to be out of compliance because it failed to install 10% of the devices due to State delays or inaction. Recommendation: Provide a listing of approved full capture devices and the		Please see Response to Comment 10.5.

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	information needed to get full capture devices approved and the anticipated review time.		
26.8	A major concern with the program is the timing of the proposed amendments and their cost implications. Over the last ten years there has been a significant expansion in the listing of impaired waters statewide and development of their corresponding TMDLs. TMDLs typically cover one pollutant and can cost millions of dollars annually to implement as shown by the statewide trash and bacteria TMDLs and the proposed solution for treating selenium in Orange County. Add to these existing TMDLs additional TMDL programs or a program such as the one proposed and the result can be millions of dollars in annual expenditures to municipalities. Because of the significant cost of this program, the additional costs cannot be taken lightly and it must be noted that the proposed program is being implemented statewide without a finding of water body impairment that is typically a prerequisite before dischargers are required to comply with imposed limits. In addition, stakeholders are generally involved in developing TMDLs so that the solution is clear and everyone understands the potential costs. In this program, stakeholders are being		Trash is a priority pollutant across California. A dual alternative "compliance track" approach tailored to each NPDES storm water permit category would provide flexibility to permittees to determine the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation. With the priority land use approach, efforts to control trash would be focused to the areas that contribute the most to the problem. This approach contrasts a trash TMDL approach which establishes a numeric target of zero for the entire watershed. Therefore, the Trash Amendments provide a lower resource alternative to control trash in contrast to a water body by water body TMDL approach.

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	given an opportunity to provide comments instead of a thorough vetting of the program.		
26.9	To assess the expected program cost to municipalities, Appendix C provides tables of costs incurred by municipalities in the Los Angeles region and from a survey of MS4 permittees. These tables provide useful information and show that the anticipated program costs will be in the millions. Data from the City's experience with trash capturing devices has shown that automatic retractable screens cost an average of $833 per catch basin. Add to that the cost of pipe screen connectors to make it a full capture system and the result would be an additional $300-$400 dollars per catch basin. This translates to about $1100 per catch basin or about $14.90 per capita. This amount is higher than the $8.96 shown in Table 13 of Appendix C (page C-24) and the $800 per unit noted on page C-30. Experience with the automatic retractable screens has also shown that they require extensive maintenance to prevent captured trash from discharging downstream. As a preliminary estimate to assess the cost to the City, if we assume a range of one third to one half of the City's 1900 catch basins are to be retrofitted with automatic retractable		The Economic Considerations in Appendix C provides a summary overview of the costs associated with reasonably foreseeable means of compliance that permittees may select to be in compliance with the proposed Trash Amendments. The economic analysis is conducted at the macro level to assess the estimated overall impact of the proposed Trash Amendments and provides gross average estimates of the cost per capita and the cost per acre based on specific cost assumptions. The Economic Considerations does not specify the compliance cost for specific permittees. Page C-8 of the analysis states that "A more detailed analysis would be needed to estimate cost at the micro or project-specific level for each individual permittee." The value of $8.96 per capita in Table 13 (page C-24) is the average capital cost per capita for communities with a population between 100,000 and 500,000. The City of Orange estimate of $14.90 per capita is within the range of cost considered in the analysis for their population size group (139,419). On page C-32 of the economic analysis, the State Water Board identified that the cost per capita ranged from $3 per person per year to up to $60 per person per year.

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	screens and pipe connector screens, the anticipated costs would range from $700,000 to about $1,000,000. However, these devices are maintenance intensive and this cost must be balanced against a vortex separator which needs to be maintained 1-2 times per year but is likely to cost up to $100,000 per unit. A mixture of the two types of trash control devices is likely to be the preferred solution but that would put the program cost in the millions of dollars.		
26.10	Faced with the anticipated high costs of the program and the ever expanding universe of storm water programs that compete for the same resources, municipalities will have a difficult time securing funding without assistance. Municipalities cannot simply raise rates. The Bighorn-Desert View Water Agency decision of 2006 effectively prohibited raising utility rates under Proposition 218 without voter approval. With no money to fund trash control devices, this program along with health and safety programs will compete for General Fund revenues. Municipalities will be faced with the difficult choice of deciding which programs to fund at the expense of others. The State should consider ways to fund the program or assist municipalities in finding appropriate funding. Another way to lessen the		Please see Responses to Comments 10.4 and 29.4.

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	financial burden is to expand the time allowed for implementation of the program. TMDLs with anticipated high costs now routinely allow implementation periods up to twenty years. Recommendation: a) The amendments should be revised to provide up to twenty years to implement the trash control program. b) The State should assist in funding the trash control program or find funding solutions.		
27.1	The City also supports and includes by reference comments submitted by the Bay Area Stormwater Management Agencies Association (BASMAA) and the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP).		Please see Response to Comment Letters 4 and 63.
27.2	For the expanded plastic bag ordinance, data on store compliance, observations of bag use at stores, as well as field observations and counts of bags at clean up events show that plastic bags used and found in the environment have been significantly reduced. Therefore, the benefit of such source control actions should be better accounted for in the Trash Amendments.		Please see General Response to Comment Letter 1 and Comment 1.3. (Ocean Plan Amendment at removed III.L.5; Part I ISWEBE at removed IV.A.6)
27.3	The City of Palo Alto supports BASMAA's request to provide an alternative track in the		Please see Response to Comment 4.2.

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	implementation requirements of the trash amendments for the San Francisco Bay Area Phase I MS4 dischargers under the jurisdiction of the San Francisco Bay Regional Water Quality Control Board. Bay Area permittees have already spent significant resources on preparing and implementing long-term trash reduction plans and mapping community-specific high, medium, and low trash generating areas. This effort provides a path to complying with trash reduction goals in the Bay Area Phase I regional NPDES municipal stormwater permit. Therefore, the submittal of written notice on whether a permittee will follow Track 1 - full trash capture or Track 2 - a combination of controls, as well as the requirement for those permittees electing to follow Track 2 to submit an implementation plan, is duplicative of efforts already undertaken in the Bay Area and would divert resources away from implementing trash controls already planned. At a minimum, the requirements for duplicative efforts should be waived for Bay Area permittees, and priority land areas identified in the long-term trash plans should be deemed acceptable.		
27.4	The City of Palo Alto is also concerned about the monitoring requirements included in the Trash Amendments, specifically the		Please see Response to Comment 4.6.

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	monitoring questions asking MS4s to determine whether trash discharge has decreased through the MS4 and in the receiving water from year to year. The City supports BASMAA's request to replace these questions with "to what extent has trash from priority land uses been addressed?" This question could be answered through on-land visual assessments, which have been performed successfully as an assessment tool in Bay Area municipalities, including Palo Alto. Receiving water trash amounts should not be used to measure compliance with stormwater trash reduction requirements. While the goal of all our efforts is to reduce trash in receiving waters, the receiving waters in Palo Alto are heavily influenced by discharges from areas that Palo Alto has no jurisdiction over (notably Highway 101, which is under the jurisdiction of Caltrans).		
27.5	Trash data from shoreline clean ups is highly variable from year to year and is not an accurate indicator of trash that may have been discharged through the storm drain system nor of the effectiveness of the City's substantial efforts in controlling trash. Rather than prescribing documentation of Track 2 performance, permittees should have the ability to determine and implement cost-effective methods to		The Trash Amendments do provide the ability and flexibility to the permittee to determine and implement cost-effective methods to monitor trash reduction associated with MS4s. In the method developed for the proposed Trash Amendments, the permittee who selects Track 2 must demonstrate that the selected trash controls are effective and achieve equivalent trash load reductions to Track 1 in order to be in compliance with the prohibition of discharge for trash. The proposed final Trash Amendments introduced the term full capture system equivalency to provide clarity of how to demonstrate and achieve equivalent trash load reduction in Track 2 to Track 1. The Trash Amendments both establish the framework to full

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	monitor trash reduction associated with MS4s.		capture system equivalency and Track 2 monitoring and provide the flexibility to both the permittee and permitting authority to determine the permit specifics within the framework.
28.1	We recognize the importance of developing effective, cost-effective measures that will result in overall trash reduction in these sensitive environments. While Roseville supports the goal of incorporating feasible measures to reduce trash impacts, this goal must be balanced with practical realities. For example, the draft Amendment requires full capture of trash within "high priority" land uses, which we contend is an unreasonable and unattainable goal that will ultimately make permittees vulnerable to increased legal challenges.		Trash is a priority pollutant across California. The State Water Board agrees that the Trash Amendments should provide flexibility for permittees to determine the most effective and efficient methods and controls to control trash discharges from the areas that have high trash generation rates. Therefore, the Trash Amendments focus on a dual alternative "compliance track" approach to provide the flexibility to permittees to determine the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation. The priority land uses are based on lessons learned and extensive data collected from permittees with existing trash controls, either trash TMDLs or permit conditions. The priority land uses include five categories of land uses that generate high amounts of trash.
28.2	We appreciate the efforts of the State Board staff to conduct stakeholder meetings held in 2013 on the proposed draft; however, there was virtually no communication with the regulated communities between the time of the last workshop and the release of the draft amendment on June 11th of this year. Based on the information provided during the July 16th workshop, it was apparent that the environmental community was fully apprised of the content and requirements being included in the draft document. We believe that if		Please see Response to Comment 3.1.

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	the regulated communities participated in a similar manner during the development of the draft that the outcome would have resulted in a document that was better understood resulting in more effective outcomes.		
28.3	We also, find that the draft Amendment is economically impracticable. Roseville along with many other jurisdictions throughout the state is just beginning to recover from the economic downturn and have neither staff nor resources capable of responding to the vast majority of the increased requirements. Our initial analysis of the draft is that it will cost Roseville approximately $8 million to fully implement the proposed requirements over a ten year period. The cost estimate does not include the expenses of maintaining the equipment or systems in perpetuity. Due to constraints on fee collection for stormwater systems these costs directly impact our City's general fund, which continues to be subjected to a list of growing demands placed on it each-and-every year. The reality of local government's limited funds must be addressed within the draft Amendment through safe-harbor provisions for permittees who are fiscally unable to comply.		Please see Responses to Comment 10.4.

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29.1	The Proposed Trash Amendments stem from identified trash-impaired water bodies in highly populated regions of the state (Los Angeles, San Francisco, San Diego, and Colorado River Basin). The City appreciates the efforts of the State and Regional Water Boards to work with municipalities to address the nature of this problem specific to these areas. The current proposal uses studies from these areas and superimposes these solutions statewide. This extrapolation does not translate to the City or other communities of lesser population densities, differing geography, and demographics. The Proposed Trash Amendments clearly are focused on MS4 discharges as the primary contributor of trash. This is evidenced by the structure of Track 1 and Track 2 alternatives for compliance. For Track 1 compliance, only MS4 discharges are addressed. This track fails to address other sources of trash in waterways which can be the primary contributor of trash in many communities. This could result in implementation of an expensive and ineffective prescriptive methodology for many communities, without any measurable results from a baseline condition to assess true effectiveness. Track 2, as proposed, does create somewhat of a		Please see Responses to Comments 4.6, 6.1, 6.2, 10.1, 10.7 and 12.2.

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	methodology for assessment and measurement, but creates an endless process of chasing an unachievable goal of zero trash. Failure to be able to achieve this goal under Track 2 will drive many municipalities to move toward Track 1 based purely on the potential of third party lawsuits and not on what is best for water quality. We recommend that the Proposed Trash Amendments be modified to require a clearly-defined methodology to perform these assessments to determine the actual impact of trash in all MS4 jurisdictions. This assessment should not be limited to trash from MS4 discharges, but should include identification of all sources (i.e. illegal dumping, windblown trash, etc.). This would allow the municipalities to calibrate their efforts to mitigate trash based on what is the major source contributor. If implemented thoughtfully, the State could be provided much needed data on the primary sources of trash, which could drive science-based regulations for source control.		
29.2	The proposed regulations place an undue burden on MS4 communities and do not require the producers of products that negatively impact the environment to be part of the solution. Plastics, fast food wrappers, cigarette butts, and other		Please see Response to 4.5.

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	single use items are the bulk of the items that are contributing to trash in waterways. Where possible the State should take action to eliminate or reduce the source of trash. Through forward-thinking programs, and working with other State agencies such as the Department of Resources Recycling and Recovery, trash reduction can be achieved through statewide bans on specific products and increased fees to incentivize recycling. There are many great examples already in place where source control or alternative products have been effectively implemented statewide. Chlorpyrifos and Diazinon were once used as primary pesticides for decades and resulted in impairments in water bodies in many regions. Copper used in brakes is also a water quality problem. Through statewide phasing out of these products, and changing to alternative materials that achieve the same results, these impairments are no longer ongoing threats to water quality. In cases where elimination of a product is not feasible, such as the use of plastic and glass bottles, significant trash reductions could be achieved by increasing redemption values and making recycling more convenient. The Cal Recycle program for waste oil can be a model for implementing and funding these		

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	types of activities. Source control and funding for trash mitigation should be borne by the producer and consumer of these products. By placing the burden to mitigate these issues on municipalities the Proposed Trash Amendments do little to address the source of the issue for the long term.		
29.3	The City has over 20 years of water quality data that is used to establish which pollutants of concern (POC) or target pollutants is the highest priority for the community. Programs and funding have been defined based on the prioritization of the water quality conditions. The Proposed Trash Amendments will require funding for implementation, which with the limitations of Proposition 218 will likely require the recalibrating of funds from other water quality priorities. Effectively trash will be the highest priority for funding and resources, while identified watershed based priorities become a secondary issue. The Proposed Trash Amendments need to recognize the value of current management programs and not divert resources away from ongoing successful efforts to control t rash in our waterways or place additional demands on already limited resources. We urge the State Water Board to allow MS4 programs with existing POC-focused water quality		Please see Responses to Comments 10.4 and 11.9.

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	implementation plans to address trash in the prioritization context of those existing plans.		
29.4	The cost to local government of complying with the Proposed Trash Amendments is significant. The economic analysis included as Appendix C to the Draft Staff Report estimates an incremental annual cost for Phase I MS4s ranging from $4 to $10.67 per capita. This cost estimate includes capital and operation and maintenance (O&M) costs, but the analysis excludes costs of developing implementation plans, monitoring, and reporting, citing the uncertainty of such costs. For the City of Sacramento, with a population of approximately 475,000 residents, using the State Board's own economic analysis translates to an additional annual cost ranging from $1.9 million to $5.07 million to implement the Proposed Trash Amendments. As noted, this does not include costs of developing implementation plans, monitoring, and reporting, which also can be significant based on the City's experience with the development of implementation plans, monitoring, and reporting to meet other NPDES requirements. The Draft Staff Report does not include any explanation or discussion of how agencies responsible for operation of MS4s, like the City, are expected to pay		Please see Responses to Comments 4.7 and 10.4. Regarding the estimation of costs referenced by commenter, Water Code section 13241 requires the State Water Board to consider certain factors, including economic considerations, in establishing the narrative water quality objective for trash which it did as more fully described in the Staff Report (Section 9 and Appendix C). In accordance with the California Code of Regulations, title 23, section 3777, subsections (b)(4) and (c), the Staff Report also considers a range of economic factors in its environmental analysis of the reasonably foreseeable methods of compliance, but the Staff Report does not engage in speculation or conjecture, nor does it conduct a site-specific project level analysis for the methods of compliance. The Economic Considerations in Appendix C provide an overview of the costs associated with reasonably foreseeable means of compliance that permittees may select to be in compliance with the Trash Amendments. The economic analysis was conducted at the macro level to assess the estimated overall impact of the Trash Amendments and provides gross average estimates of the cost per capita and the cost per acre based on specific cost assumptions. The Economic Considerations does not specify the precise compliance cost for specific permittees. Page C-8 of the analysis states that "A more detailed analysis would be needed to estimate cost at the micro or project-specific level for each individual permittee." It is very difficult to determine the actual cost of implementing compliance programs because of the highly variable factors and unknown level of implementation among different permittees and differences in monitoring and reporting by permittees. It is also difficult to isolate program costs attributable to permit compliance because they can vary widely. Despite those difficulties, effort has been made to identify program compliance costs to aid in the economic

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	these significant additional costs to address a problem- the deposit of trash- that the agencies do not create and cannot fully control. The City funds its MS4 NPDES permit compliance from storm drainage rates paid by City businesses and residents. The City's storm drainage system currently has a significant backlog of unmet capital improvement needs because the lion's share of annual revenues from storm drainage rates must be spent to meet current O&M requirements. Adding capital, O&M, implementation, monitoring, and reporting requirements to the City's NPDES permit to comply with the Proposed Trash Amendments will impose significant new costs that the City cannot fund with its current storm drainage rate revenues. Unless funding is provided by the State or from other sources, these new requirements may constitute an unfunded State mandate subject to re imbursement under article XIII B, section 6 of the California Constitution. Section 6 of article XIII B provides, in relevant part: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or		consideration required by Water Code section 13241. To implement the narrative water quality objective for trash in accordance with Water Code section 13242, the Trash Amendments contain a prohibition of discharge, implementation provisions, time schedule, and monitoring and reporting requirements. The Trash Amendments do not establish the requirements for the monitoring programs or reports, although they do provide that the reports should consider addressing a number of issues to demonstrate compliance with the requirements applicable to the discharger and that such reports must be submitted to the applicable Water Board annually. The costs for completing the monitoring and reporting reports will vary depending on the permittee's size and particular compliance track (Track 1, Track 2, or the existing permit prohibition in the general permit for storm water discharges associated with construction activities). Since the Trash Amendments do not establish the specific requirements for the monitoring, the economic analysis does not include an estimate of those potential costs. These costs are expected to be negligible relative to capital and operation and maintenance costs. However, to provide a further estimation on the cost of monitoring, the State Water Board has allocated $1,080,000 in Proposition 84 Storm Water Grant Program funds to the project Tracking California's Trash focused on developing planning, designing and monitoring templates for evaluating trash controls necessary for complying with Track 2 requirements. In addition, State Water Board estimates the cost to perform trash monitoring and reporting for a city with 350,000 inhabitants (such as Bakersfield). The initial estimate indicates that the Track 2 monitoring and reporting might cost on the order of $105,000 annually or $0.30 per year per capita. Additionally, there is an element of cost consideration inherent in the maximum extent practicable (MEP) standard. While the term "maximum extent practicable" is not specifically defined in the Clean Water Act or its implementing regulations, U.S. EPA,

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	increased level of service ...." This subvention requirement does not extend to federally mandated programs (Government Code§ 17556 (c)), and a program that requires a higher level of service does not constitute a mandate within the meaning of article XIII B, if the local agency has the authority to levy charges, fees, or assessments sufficient to pay for the program (Government Code,§ 17556 (d)). The subvention requirement should apply in this instance, because: (1) the Proposed Trash Amendments are not federal mandates since they exceed any specific requirements for MS4s specified in the Clean Water Act or other federal law; and (2) while the City has authority to impose storm drainage rates to pay its cost to comply with the Proposed Trash Amendments, this authority is significantly constrained by the constitutional requirement specified in Proposition 218 (California Constitution article XIII D, section 6, subd. (c)) for voter approval of any increase in storm drainage rates. Further, the recent passage of Proposition 26 (California Constitution article XIII C, section 1) prevents the City from adopting new regulatory fees to fund such costs without voter approval of a special tax. For these reasons, imposing the Proposed Trash Amendments on the		courts, and the State Water Board have addressed what constitutes MEP. MEP is not a one-size fits all approach. Rather, MEP is an evolving, flexible, and advancing concept, which considers practicability. That includes technical and economic practicability. Compliance with the MEP standard involves applying BMPs that are effective in reducing or eliminating the discharge of pollutants in storm water to receiving waters. BMP development is a dynamic process, and the menu of BMPs may require changes over time as experience is gained and/or the state of the science and art progresses. MEP is the cumulative effect of implementing, evaluating, and making corresponding changes to a variety of technically appropriate and economically practicable BMPs, ensuring that the most appropriate controls are implemented in the most effective manner. The State Water Board has held that “MEP requires permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the costs would be prohibitive." (State Water Board Order WQ 2000-11.) Regarding commenter’s assertion that the costs necessary to comply with the Trash Amendments may constitute an unfunded state mandate, the State Water Board disagrees. The costs incurred by a local government to implement the provisions required by the Trash Amendments are not subject to the requirement contained in Article XIIIB, Section (6) of the California Constitution that local government costs mandated by the State must be funded by the State—for numerous reasons, including the following: First, the Trash Amendments requirement that a MS4 permittee elect and comply with either Track 1 or Track 2 is not self-implementing. The Trash Amendments require the applicable State or Regional Water Board to include the requirements contained in the Trash Amendments into applicable NPDES permits. Any argument that the Trash Amendments are an

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	City's MS4 permit without providing funding may create an unfunded State mandate for which reimbursement will be required.		"unfunded state mandate" is premature until the issuance of such permits. Second, reimbursement or subvention does not extend to federal mandated programs. The costs associated with implementing the permit's eventual conditions (including compliance with Track 1 or Track 2, monitoring, implementation plans, etc.) are not a state, reimbursable mandate because the trash provisions are required under the broad, federal mandate of the Clean Water Act NPDES program. The water boards must comply with federal law when issuing a NPDES permit. The Clean Water Act compels the State Water Board to include broad treatment controls in MS4 permits as it determines necessary to reduce the discharge of pollutants. (CWA § 401(p)(3)(B)(iii).) Although federal law does not expressly require the precise trash provisions' treatment controls, upon incorporation into permits, the trash provisions would come within the mandate of Clean Water Act section 401(p)(3)(B)(iii) that permits contain controls to reduce trash to the "maximum extent practicable" and "such other provisions as the [State Water Board] determines appropriate." The requirements contained in the Trash Amendments do not exceed the obligations required under federal law but comports with the federal "floor." Additionally, it is well established that "[a] mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service." (*Long Beach Unified Sch. Dist. v. State of California* (225 Cal.App.3d 155, 173.) Third, compliance with Track 1 is not a state mandate because a permittee is not absolutely required to implement Track 1. A permittee may implement any combination of controls identified under Track 2 (full capture devices, multi-benefit projects, institutional controls and other treatment controls). Such controls include best management practices of street sweeping, education and outreach programs, trash collection, and ordinances. Any permittee selecting Track 2 may cater the controls it implements to the unique circumstances of the trash

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			generation within its jurisdiction, so long as the permittee can demonstrate that those controls will be equally effective in controlling trash as the "full capture system equivalency" standard. Fourth, under the Clean Water Act, the discharge of pollutants is prohibited without a permit. The permittees have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in federal Clean Water Act section 301, subdivision (a) and in lieu of numeric restrictions on their discharges. To the extent, the local agencies have voluntarily availed themselves of the permit, the program is not a state mandate. (See e.g., *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 107-08.) Likewise, the permittees have voluntarily sought a program-based municipal storm water permit in lieu of a numeric limits approach. (See *City of Abilene v. U.S. E.P.A.* (5th Cir. 2003) 325 F.3d 657, 662-63 [noting that municipalities can choose between a management permit or a permit with numeric limits].) The local agencies' voluntary decision to file a report of waste discharge proposing a program-based permit is a voluntary decision not subject to subvention. (See *Environmental Defense Center v. USEPA* (9th Cir. 2003) 344 F.3d 832, 845-48.) Fifth, reimbursement is not required where a local agency permittee has authority to levy charges, fees, or assessments sufficient to pay for such a program. Assuming for the sake of argument that a local agency assesses fees to address trash generation in a way that requires voter approval pursuant to Proposition 218 or Proposition 26, as commenter suggests, that does not mean the local agency does not have fee authority for purposes of subvention/mandates law.
29.5	MS4s communities would be considered in full compliance with the prohibition of trash discharge so long as they were fully implementing		Please see Response to Comments 4.1 and 10.9.

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	Track 1 or Track 2. However, the Proposed Trash Amendments do not indicate that meeting the discharge prohibition requirements would also mean the MS4s are in compliance with the stated narrative water quality objective. The City requests language be added to the Proposed Trash Amendments indicating that the MS4s are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2. In conclusion, the City believes that the intent of the Proposed Trash Amendments has merit, but fails to address the issue in a well-rounded and scientific manner. We look forward to working with the Board on a collaborative process to move this issue forward and create a consistent trash policy that also addresses the unique nature of each community. Based on our comments and those comments and concerns expressed by stakeholders at the July 16, 2014 workshop, the City requests that when the revised draft of the Trash Amendments is released for public review that the entire document, not just the changed text, be open for further comment. This will allow stakeholders to consider the revisions in the context of the entire proposal.		

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30.1	The City is again encouraged by the State Water Resources Control Board's (State Board) stakeholder engagement in the adoption process as this provides an opportunity to incorporate stakeholder perspectives into the trash amendments and develop a sound approach for protecting beneficial uses that are impaired due to trash.		The State Water Board has undergone an extensive stakeholder engagement with the proposed Trash Amendments in order to create a program to provide statewide consistency and flexibility to protect beneficial uses that are impaired due to trash. (See Final Staff Report Section 2.14.) Please see Response to Comment 10.12.
30.2	We support the use of the narrative water quality objective as proposed as it provides a clear, concise definition from which the City can prioritize management decisions using our existing watershed management plans. The City also supports the option of developing and implementing regulatory source controls and the potential for time extensions where these are implemented. As proposed, the State Board has provided incentives for local jurisdictions to develop innovative approaches to regulatory compliance.		Comment noted. The State Water Board is appreciative of the support.
30.3	The Proposed Trash Amendments need to recognize time schedule differences between implementation and certification of full capture systems. While the Los Angeles TMDL program has provided a list of certified full captured systems, the Proposed Trash Amendment should allow permit holders an opportunity to evaluate additional full capture		The State Water Board does not anticipate that the timing of implementation plans and certification of full capture systems will be an issue. In addition to systems certified by the Los Angeles Water Board, the Trash Amendments have been modified to incorporate full capture systems listed in Appendix I of the Bay Area-wide Trash Capture Demonstration Project. This provides a wide range of full capture systems to begin development of an implementation plan based on the existing market conditions for full capture systems. (See Final Staff Report Section 5.1 and the Ocean Plan Amendment and Part I

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	systems that are applicable at the local level. It is recommended that the compliance schedule start when the Certification of a Full Capture Systems proposed by a permit holder has been approved by the State Board.		ISWEBE definition for "full capture systems.")
30.4	It appears that the Proposed Trash Amendments will in effect be an alternative to a TMDL, thereby preventing the need to develop trash TMDLs in the future. The City recommends additional language be added to clarify the intent of the State Water Resources Control Board with respect to the development of future TMDLs and that implementation of the Proposed Trash Amendments represents a single regulatory action addressing MS4 NPDES Permittee requirements thereby removing the need to develop wasteload allocations via a TMDL for MS4 NPDES Permittees. Multiple pollutant TMDLs are allowed 20 year compliance schedule to achieve the necessary load reductions. Recommendation - Expand the compliance schedule to 20 years when trash is being included in a watershed with other TMDLs.		Please see Responses to Comments 7.7 and 10.10.

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30.5	It is unclear whether implementation of Track 1 or 2 would ensure compliance with all of the provisions in the Proposed Trash Amendments, including the water quality objectives. Language should be included within the Proposed Trash Amendments to state that implementation of Track 1 or Track 2 constitutes compliance with the discharge prohibitions and receiving water limitations.	Recommendation- Amend language in III.I.6 (Ocean Plan) and IV.B.2 (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) as follows: The discharge of Trash to surface waters of the State, or the deposition of Trash where it may be discharged into surface waters of the State is prohibited. Compliance with this prohibition of discharge <u>and with the receiving water limitations</u> shall be achieved as follows:	Please see Response to Comments 4.1 and 10.9.
30.6	The Proposed Trash Amendments do not account for current watershed planning and prioritization efforts are occurring throughout southern California. Under the current Phase I MS4 Permit for the San Diego Region (Order R9-2013-0001), the watershed co-permittees and stakeholders (including San Diego Water Quality Control Board, Region 9 staff) are required to identify, assess, and prioritize pollutants, including trash, within the various watersheds in the San Diego region. As proposed, the Proposed Trash Amendments will supersede recent planning efforts, diverting limited	Recommendation- Modify language in Section III.L.2.a. (Ocean Plan) and IV.B.3.a. (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) as follows: a. <u>For discharges to water bodies in which the beneficial uses are impaired by trash or discharges to water bodies located in regions where MS4 permittees have determined trash to be a highest priority</u>	Please see Response to Comment 11.9.

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	resources from the highest priority water quality conditions (e.g., bacteria) within a particular watershed to trash, which has often not been found to be the highest priority water quality condition in a watershed. The watershed planning and prioritization process in the Proposed Trash Amendments is well aligned with the San Diego Regional Water Quality Control Board's Practical Vision for protecting receiving waters. The Practical Vision creates a set of guiding principles including prioritization of water quality conditions based on receiving water quality, which is followed by implementation of strategies to address the highest priority water quality conditions. Implementation of the Proposed Trash Amendments should be required in watersheds where either trash has been identified as causing impairment or, if through a watershed management planning process, trash has been identified as the highest priority water quality condition. Where trash has not been identified as causing an impairment or as a highest priority water quality condition, it should be addressed according to current MS4 Permit requirements.	water quality condition pursuant to a watershed management program required under a MS4 Permit, MS4 permittees with regulatory authority over priority land uses shall comply with the prohibition of discharge in Chapter III.I.6.a. herein by either of the following measures:	

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30.7	The Proposed Trash Amendments state "treatment controls likely to be used for compliance with the proposed Trash Amendments may include installation of catch basins inserts within existing catch basins." In many cases, municipalities are moving toward LID installations, so installing a catch basin insert may not line up with the green infrastructure plans. While LID is included as an option under Track 2, the amendments and certified trash capture devices should recognize LID measures under Track 1, as full-capture devices.	Recommendation- Amend language for Track 1 as follows: (1) Track 1: Install, operate and maintain full capture systems (e.g., catch basin inserts, hydrodynamic separators, low impact development BMPs)	The State Water Board aims to utilize storm water as a resource to improve water quality and supply, as well as protect and restore key watershed processes such as overland flow, groundwater recharge, and pollutant uptake. When done properly, catch basins can help reduce flooding, mitigate storm water pollution, enhance habitat, and improve water use efficiency. Low impact development is a key BMP to treat storm water as a resource. If low impact development projects and multi-benefit projects can be demonstrated and certified to be full capture systems, then these projects will be considered applicable under Track 1. Additionally, please see Response to Comment 10.5 for more discussion on full capture system certification. (Ocean Plan Amendment and Part I ISWEBE definition for “full capture system.”)
30.8	The Proposed Trash Amendments appear to require implementation of Track 1 or Track 2 for any storm drain that captures any runoff from a priority land use. This would trigger compliance requirements for a storm drain even if only a very small portion of a priority land use drains to the storm drain.	Recommendation- Amend language for Tracks I and II to designate a threshold (e.g., priority land use covers a percent of the catchment area) that would trigger implementation within the catchment. (1) Track 1: Install, operate and maintain full capture systems in their jurisdictions for all storm drains that capture runoff in catchment areas where priority land uses comprise >25% of the land area in the catchment area.	Please see Response to Comment 11.4.

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		(2) Track 2: Install, operate, and maintain any combination of full capture systems, other treatment controls, institutional controls, and! or multi benefit projects within either the jurisdiction of the MS4 permittee or within the jurisdiction of the MS4 permittee and contiguous MS4s permittees, so long as such combination achieves the same performance results as compliance under Track 1 would achieve for all storm drains that captures runoff in catchment areas where priority land uses comprise >25% of the land area within the catchment area.	
30.9	As defined in the Proposed Trash Amendments, the defined priority areas may not be appropriate for all jurisdictions because they do not consider local knowledge of receiving water conditions and previous data collection efforts. As currently drafted, the amendments assume that there is a problem in the defined priority areas, effectively imposing a costly "one size fits all"	Recommendation- Modify language in Section III.L.2. (Ocean Plan) and IV.B.3 (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) by adding Section III.L.2.e and IV.B.3.e, respectively, as follows: e. A regulated MS4	Please see Responses to Comments 10.7 and 15.2.

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	approach onto the local jurisdictions. The City supports the concept of prioritized land uses to address problem areas; however, the approach should allow for more local flexibility in this prioritization. The City has managed an extensive monitoring program for evaluating trash conditions at the MS4 major outfalls for many years, resulting in an in-depth understanding of the problem areas within its watersheds. While the Proposed Trash Amendments provide flexibility for the Regional Boards to designate additional priority areas, it does not appear to provide flexibility for Responsible Agencies to lower the priority in certain areas. Local knowledge, supported by data, should suffice as justification for local jurisdictions to designate appropriate drainage areas as "non-priority," regardless of land use.	permittee may determine which priority land use areas in its jurisdiction generate trash accumulation in receiving waters (or in areas adjacent to receiving waters) in such amounts that do not adversely affect beneficial uses, or cause a nuisance condition. In the event that the regulated MS4 permittee identifies such areas and provides data supporting such a finding, the permitting authority may waive the compliance requirement of Chapter III.L.2.a/IV .B.3 .a for that MS4 permittee with respect to the identified priority land use locations. The regulated MS4 permittee shall submit documentation supporting a continued finding of no beneficial use impairment or nuisance condition with annual reports as required under Section III.L.6/IV.B.7.	

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30.10	Construction sites may generate significant amounts of trash and the City supports regulation of trash from facilities covered under the Construction General Permit. However, where construction does not result in the developed site falling into a priority land use category under the Proposed Trash Amendments, controls specific to trash should only be required during construction.	Recommendation- Add language in Section III.L.2.c (Ocean Plan) and IV.B.3.c (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) to clarify. Termination of permit coverage for industrial and construction storm water dischargers shall be conditioned upon the proper operation and maintenance of all post-construction controls as required by local land development regulations (e.g., full capture systems, other treatment controls, institutional controls, and/or multi-benefit projects) used at their facility(ies).	It is not the intention of the State Water Board to add a significant burden to construction site dischargers. The current Construction General Permit already has prohibition on trash (debris) which may prove adequate to implement the Trash Amendments. Please see Responses to Comments 5.1-3.
30.11	Through provisions III.L.2.d and III.L.3 (Ocean Plan) and IV.B.3.d and IV.B.4 (Inland Surface Waters, Enclosed Bays, and Estuaries Plan), the Regional Water Quality Control Board is provided discretion to add additional requirements for other sources, including non-point sources. While local flexibility may be appropriate (see Comments #3, #6), a statewide approach that provides broad discretion to Regional Water Quality Control	Recommendation - The Proposed Trash Amendments should provide clear guidance on how the discretion should be used by the Regional Water Quality Control Boards.	Please see Response to Comment 11.5.

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	Boards can result in uneven implementation and undermines the concept of a statewide approach.		
30.12	It is evident that other regulated sources (e.g., individual NPDES permit holders, agricultural operations) often contribute trash to receiving waters. While the City continues to work with its partners to identify successful management strategies for preventing trash from reaching receiving waters, it is critical that the Proposed Trash Amendments limit the liability of MS4 Permit holders for these other regulated sources and support a process that allows the City to apply its resources towards controlling trash within its areas of responsibility. The City recommends that the State Water Resources Control Board require that other regulated entities (e.g., individual NPDES permit holders, agricultural operations) implement the Proposed Trash Amendments through a regulatory process external to the NPDES Phase I and Phase II MS4 permits.	Recommendation-Language in III.L.3 (Ocean Plan) and IV.B.4 (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) appears to provide direction/authority to the permitting authority to address other sources of trash. Examples should be added to include other NPDES permit holders and agricultural operations. The language could be strengthened by citing the authority from which this oversight is provided in the California Water Code (i.e., CWC §13263, 13267). The State Water Resources Control Board should also include provisions to require implementation of the Proposed Trash Amendments, not only through inclusion in MS4 Permits, but through other NPDES Permits, WDRs, and Waiver Provisions.	Please see Response to Comment 10.6.

Comment Letter	Comment	Recommended Language	Response
30.13	The City supports the option for time extensions where regulatory source controls are implemented and supports the concept of allowing credit for source control programs that are implemented prior to the effective date of the Proposed Trash Amendments. However, source control initiatives can take many years to come to fruition. Therefore, limiting the timeframes for implementation to three years from adoption may not be sufficient time to conduct research and outreach to communities in order to gain local support for true source control methodologies that may require behavioral changes on the part of the public. Due to the significant time necessary to develop and implement regulatory source controls, the three-year implementation timeframe in order to be considered for a time extension of the full compliance requirements, should be removed. In cases where regulatory source controls are employed within the 1 0-year compliance timeframe, Responsible Agencies should be eligible for the one year time extensions.	Recommendation- Modify language in Section III.L.5 (Ocean Plan) and IV.B.6 (Inland Surface Waters, Enclose Bays, and Estuaries Plan) as follows: The permitting authority may give MS4 permittees that are complying under Chapter III.L.2.a up to a three (3) year time extension for achieving full compliance in areas where regulatory source controls are employed that take effect prior to or within ten (10) years of the effective date of these Trash Provisions. Each regulatory source control employed by an MS4 permittee will be eligible for up to a one (1) year time extension.	Please see Response to Comment 4.5.

Comment Letter	Comment	Recommended Language	Response
30.14	Demonstration of performance under Track 2 should not be limited to monitoring. MS4 permittees should be allowed to propose the method of demonstrating performance in their implementation or watershed management plans. Receiving water monitoring should not be required since other sources outside of the control of MS4 permittees may contribute trash. While an entity may decide to conduct receiving water monitoring to demonstrate performance, it should not be mandated in the event another method is more appropriate (e.g., pounds of trash removed through a control measure). Further, The City has managed an extensive monitoring program for evaluating trash conditions at the MS4 major outfalls for 11 years. It is important for the Proposed Trash Amendments to recognize the value of existing data sets to answer management questions about the status and trends of any trash discharged from the MS4. As such, the Proposed Trash Amendments should include the flexibility to allow existing trash monitoring programs to continue under the Track 2 implementation requirements for areas that are not represented by a full capture device.	Recommendation: Include a provision in Track 2 monitoring requirements to allow for existing monitoring programs to fulfill implementation requirements at MS4 outfalls not fitted with a full capture device, as long as monitoring efforts demonstrate that trash is not accumulating in amounts that adversely affect beneficial uses or cause a nuisance condition.	Please see Response to Comment 4.6.

Comment Letter	Comment	Recommended Language	Response
30.15	The Proposed Trash Amendments indicate that the State Water Resources Control Board will take responsibility for the certification process for full capture systems, but those full capture systems previously certified by the Los Angeles Regional Water Quality Control Board would remain certified for use by permittees as a compliance method. A more extensive list of certified devices should be prepared prior to the adoption of the Proposed Trash Amendments. Full trash capture devices vary widely in capital and maintenance costs. Therefore, having a better idea of the devices that will be certified is necessary for MS4 permittees to develop credible costs estimates that inform the permittees whether to commit to Track 1 or Track 2. Alternatively, the language could be revised to indicate that any full-capture device that meets the stated criteria fulfills the certification requirement. Additionally, the timeframe for obtaining certification is a concern. The Executive Officer approval process needs to have a rapid turnaround time to allow permittees to move forward with planning and installation within the time schedule granted.	Recommendation- Amend language in Appendix I to define full-capture systems as follows: Prior to installation, full capture systems must be certified by the Executive Director, or designee, of the State Water Board. Uncertified full capture systems will not satisfy the requirements of these Trash Provisions unless they meet the criteria for full capture systems as defined above. Recommendation - Modify the compliance schedule to start when the state of California provides a list of certified full capture systems.	Please see Response to Comment 10.5.

Comment Letter	Comment	Recommended Language	Response
30.16	The City has many responsibilities and recognizes the importance of finding cost-effective approaches to provide the services our community requires and expects, while providing safe and clean water. As one of the largest cities in California, the expected costs to implement the Proposed Trash Amendments will be substantial and the value of implementing the provisions on a City-wide basis is uncertain given that trash has often not been identified as a receiving water priority through the watershed planning processes required under the current MS4 Permit (Order R9-2013-0001). Furthermore, the City's funding is limited and catch basin inserts and other likely control devices will not considered eligible for the water supply exception resulting from AB2403. As noted in previous comments (see comments #3, #6), the City would prefer that the Proposed Trash Amendments allow local jurisdictions to prioritize trash as a highest priority water quality condition, where substantiated, by taking into account all other water quality conditions and regulatory obligations. Further, the City should be allowed to use recently collected data to evaluate existing land uses to determine where there is a need for trash control, thus resulting in the implementation of controls where	Recommendations- Modify language in Section III.L.2.a. (Ocean Plan) and IV.B.3.a. (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) as follows: (1) <u>For discharges to water bodies that are impaired by trash and for discharges to water bodies located in regions where MS4 permittees have determined trash to be a highest priority water quality condition pursuant to a watershed management program required under a MS4 Permit, MS4 permittees with regulatory authority over priority land uses.</u> (2) Modify language in Section III.L.2. (Ocean Plan) and IV.B.3 (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) by adding Section III.L.2.e and IV.B.3.e, respectively, as follows: e. <u>A regulated MS4 permittee may determine which priority land use areas in its jurisdiction generate trash</u>	Please see Response to Comment 11.9.

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	necessary and appropriate. It would not be a prudent use of public funds to implement trash controls in all priority land uses, as designated in the Proposed Trash Amendments, without a local evaluation of the problem where data are available.	accumulation in receiving waters (or in areas adjacent to receiving waters) in such amounts that do not adversely affect beneficial uses, or cause a nuisance condition. In the event that the regulated MS4 permittee identifies such areas and provides data supporting such a finding, the permitting authority may waive the requirement of Chapter III.L.2.a/IV .B.3 .a for that MS4 permittee with respect to the identified priority land use locations. The regulated MS4 permittee shall submit documentation supporting a continued finding of no beneficial use impairment or nuisance condition with annual reports as required under Section III.L.6/IV.B.7. Recommendation - Please provide all calculations, notes, and assumptions used to determine proposed costs shown in Appendix C, Section V.	

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31.1	City of San Jose supports the recommendations in the BASMAA comment letter.		Please see Responses to Comment Letter 4.
31.2	Provide consistency between the proposed narrative Water Quality Objective and trash discharge prohibitions by revising the prohibitions to include language that qualify that the trash discharges being prohibited and controlled by the specified implementation requirements, is the trash "in amounts that cause impairment of beneficial uses or conditions of nuisance in receiving waters".		Please see Response to Comments 4.1 and 10.9.
31.3	Create an alternative that supports the progress of the Bay Area Phase I MS4s. San Jose and other cities regulated under the Bay Area Phase I permit have already spent considerable time and resources identifying, mapping, assessing, and programming high trash generating areas in their respective jurisdictions. The option of an alternative track will allow Bay Area cities to continue to focus on their high trash generation areas and implement their specific implementation plans. As currently written, Track 2 uses simplified land use designations to identify high trash generation areas. This varies significantly from the approach established by the Bay Area Phase I permittees. The proposed Track 2 approach does not contemplate the		Please see Response to Comment 4.2.

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	importance and necessity of applying local knowledge, nor does it account for site-specific variation. While Track 2, as currently drafted, will provide a valuable roadmap for Phase II jurisdictions that have not yet developed plans for trash reduction, it represents a step backward for San Jose and other cities that have spent years and millions of tax dollars preparing and submitting the required planning and compliance documentation and have made significant progress in targeting high priority trash generation areas.		
31.4	The City supports the use of institutional Controls as discussed in the State Amendments. However, granting a brief time extension for regulatory source control efforts, understates the significance of such actions in improving on-land and receiving water conditions. The City also recommends that the State Board use its authority to incentivize local government collaboration to support statewide advocacy for development of product and packaging redesign, take-back programs, and deposit legislation. The State Board has an opportunity to provide incentives for creating a collaborative environment that bring local governments together with regulators, private industry, and other stakeholders to work on		Please see Response to Comment 4.5.

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	product stewardship initiatives aimed at specific items such as cigarette butts and other forms of single-use packaging.		
31.5	The City recommends that the State Board add language that more clearly specifies the expectation that Caltrans and MS4 Phase II permittees will coordinate and fully capitalize on the opportunities presented by combining resources.		The State Water Board agrees that Caltrans and MS4 Phase I and Phase II permittees will have greater success of controlling trash in overlapping jurisdictions if they coordinate and full capitalize on the opportunities presented by combining resources in overlapping jurisdictions. (Ocean Plan Amendment III.L.2.b; Part I ISWEBE IV.A.3.b.)
32.1	There is no calculation or reporting standards listed in the proposed Trash Amendments. It is expected that reporting will be addressed in later versions.		The Trash Amendments provide the framework for minimum reporting and monitoring requirements that must be included in the implementing permit. Please see Responses to Comments 4.6 and 6.2.
32.2	Economic impacts should be considered, whether it be for full capture devices or additional programs. MS4 Permittees are struggling to maintain the current requirements. Requiring additional infrastructure or programs will further strain fiscal resources. Proposition 218 remains a major issue to consider when asking our citizens to fund these additional requirements.		Please see Response to Comment 10.4.
32.3	While ten to 15 years may seem like a long time, it is relatively short when taking into account the research, planning, bidding, funding, construction, and compliance with other regulations MS4 Permittees must consider. At a minimum, a 20		For statewide consistency and recognizing the need for site-specific flexibility, a ten year compliance schedule was developed for both Track 1 and Track 2. As permits are updated every five years, a ten year compliance schedule allows for adaptive management of the implementation plan to control trash. A ten year compliance schedule provides a sufficient amount of time for trash control with either Track 1 or

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	year timeframe should be considered.		Track 2 to be successful. A reduced compliance time for Track 2 may result in less effective programs at control trash. For these reasons, both Track 1 and Track 2 should have a ten year compliance schedule. (See Ocean Plan Amendment III.L.4 and Part I ISWEBE IV.A.5.) Additionally please see Response to Comment 7.7 and Staff Report section 2.5.
32.4	Instead of piecemeal treatment devices and programs for trash are the purpose of the Trash Amendments, projects that offer multiple benefits should be given priority. It is understood that trash is a visible nuisance, but projects that treat for multiple pollutants or act to replenish local groundwater should be considered more beneficial and a better use of resources. An efficient use of resources should be viewed as far more favorable by the regulators as well as our local and state citizens.		The State Water Board agrees with this comment. The Storm Water Program at the Water Boards encourages the management of storm water as a resource. The main objective of treating storm water as a resource is to protect and restore those watershed processes that are critical to watershed health. Multi-benefit projects that infiltrate and treat storm water runoff are encouraged within MS4 Phase I and Phase II permits. Within Track 2, multi-benefit projects are a supported method of compliance to control trash. In addition to trash control, multi-benefit projects treat other storm water runoff priority pollutants. As a whole, multi-benefit projects prevent impacts from flooding, mitigate storm water pollution (such as trash), create open space, enhance fish and wildlife habitat and improve water efficiency. (See Final Staff Report Section 5.4.)
32.5	Storm drain drainage areas are not specific to land-use areas. The regulated drainage areas should be defined as having more than 75% of the specified land-use in order to address the area.		Please see Response to Comment 11.4.

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32.6	It should be acknowledged that land-use areas are dispersed throughout communities and are not necessarily in defined quadrants. Municipal activities such as street sweeping routes are based on clustered areas and are not based on land-use zones. Measurements or reporting for specified land-use would be impossible or exceptionally difficult. Land-use areas should be amalgamated or defined as 75% or more.		Please see Response to Comment 11.4.
32.7	There is a perception that new regulations will affect properties that are privately owned and are already developed. With a specified timeframe to install treatment devices, requiring private properties to install treatment devices creates an eminent domain issue that creates a wide-variety of issues. It should be specified that treatment devices shall be required only on land that is within the public right-of-way or publically owned.		Please see Responses to Comments 11.4 and 25.1.
33.1	Santa Maria supports the State Board staffs decision to use a narrative water quality objective for trash. The narrative objective provides a clear standard that all can understand and that the City can use to prioritize its programs. The City agrees with State Board staff's recommendation not to use a numeric objective of "zero trash".		The State Water Board appreciates the support on a narrative water quality objective for trash.

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	While the City can and will continue to control and address many sources of trash, there are many sources that even the best program cannot control in all cases. A numeric objective is therefore not feasible in this situation, and Santa Maria urges the State Board to support staff's recommendation on this important question.		
33.2	Santa Maria generally supports the focus in the proposed Trash Amendments on priority land uses as a means of identifying key areas within the City where limited resources should be allocated to achieve maximum control benefit. The City believes that this approach should be refined and improved, but State Board staff's recommendation to focus trash controls on areas with high trash generation rates is the correct one and Santa Maria hopes the State Board supports it.		The State Water Board appreciates the support for prioritization of land uses for trash control.
33.3	As proposed, the Trash Amendments provide that the City could achieve compliance with the prohibition on the discharge of trash by implementing either Track 1 or Track 2. The clarity of this path to compliance with the discharge prohibition is appreciated and welcomed by the City. To provide similar clarity with regard to achieving compliance with the receiving water limitations language		Please see Response to Comments 4.1 and 10.9.

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	contained in the City's MS4 permit, which has been interpreted to require strict compliance with water quality objectives, the State Board should include a provision in the Trash Amendments that links compliance with the discharge prohibition to compliance with the narrative water quality objective. This level of regulatory certainty is important to support the City's ability to make the large capital investment that will be required to address trash under either Track 1 or Track 2. If implementation of either Track 1 or Track 2 results in compliance with the discharge prohibition, such compliance should also result in achievement of the water quality objective and compliance with the receiving water limitations language in the City's MS4 permit.		
33.4	Many municipalities in California are currently moving toward a watershed-based approach to achieving water quality requirements. There appears to be a scientific and regulatory consensus that a watershed-based approach that involves multiple stakeholders represents a better way to address water quality problems, as opposed to a narrow jurisdictional focus. Santa Maria is currently developing an Integrated Plan that is designed to look at all of the City's water quality obligations in a watershed-		Please see Response to Comment 11.9.

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	based context that will put the City in the best position to achieve all of its obligations through a consolidated approach. The concern with the Trash Amendments is that it prioritizes trash as a water quality concern above other sources of water quality impairment that may be more pressing on a watershed basis. Therefore, the City requests that the State Board consider adding language to the Trash Amendments that would allow for prioritizing issues for each watershed, through efforts such as the City's Integrated Plan or other similar approaches.		
33.5	Santa Maria supports the use of prioritized land uses to focus efforts in areas with the greatest contribution of trash. However, the proposed Trash Amendments should allow the City to determine at the local level which land uses contribute the greatest amount of trash in Santa Maria. While the Trash Amendments allow the City to identify additional land use types that should be prioritized, the document does not appear to allow the City to remove prioritized land use types. The Trash Amendments should establish a process to both add and delete prioritized land use types so that localized efforts can focus on the areas with the greatest contribution of trash.		Please see Responses to Comments 10.7 and 12.2.

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33.6	The Trash Amendment as proposed would establish a ten- to 15-year implementation timeline (1 0 years after the next permit adoption or 15 years, whichever occurs first). Implementation of either Track 1 or Track 2 will take time and a large capital investment. As with any large-scale public works project, it will take time for the City to plan, design, fund, and install the devices needed to implement the program. In addition, it will take time for the City to educate its community and change community norms regarding trash. A time horizon of 15-20 years would better reflect the implementation challenges the City will face.		Please see Response to Comments 32.3.
33.7	Because the Trash Amendment seeks to establish a statewide policy and approach to addressing trash, the Trash Amendment should specify that the policy and implementation approach replaces the need to develop local TMDLs for trash. Since the Trash Amendments are designed to establish compliance with the water quality objective for trash over the compliance period, it would appear to negate the need for local TMDLs or additional listing of impairment of trash.		Please see Response to Comment 10.10.
34.1	While the City generally supports the State Boards efforts with the proposed Amendments, the policy is		The Trash Amendments aim to establish a narrative water quality objective for trash and a prohibition of discharge, and then a set of implementation provisions to achieve compliance

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	focused on achieving 100% trash capture from the storm drain system (Page 11, Table 1) while the overall objective is focused on prohibiting trash accumulation in the waterway, "No trash shall accumulate in state waters (or in areas adjacent to state water) in amounts that would either adversely affect beneficial uses, or cause nuisance" (Page 11, 2.2). These two items appear to be inconsistent.		with the water quality objective and prohibition of discharge. These implementation provisions focus on controlling the discharge of trash from the areas and locations that generate highest amounts of trash. The Trash Amendments do not aim for a 100 % reduction of trash to state waters but reduction from the high trash generating areas that adversely affect beneficial uses or cause harm. Additionally, please see Response to Comment 4.1.
34.2	It is the City's experience that a significant percentage of the trash in our waterways is from homeless encampments, and is not in fact conveyed through the storm drain system. As written, the City could go through the resource intensive process of achieving full capture from the storm drain system and still not achieve the water quality objective. It is requested that the language of the objective be revised to specify that if no accumulation occurs as a result of discharge of trash from the storm drain system. Alternatively it is requested that the language in the proposed compliance tracks be revised to include the requirement to address trash that reaches the waterways through routes other than the storm drain system.		Although the implementation provisions for compliance with the prohibition of discharge focus on trash discharge via storm water, it is well recognized that trash is transported in surface waters via both point and non-point sources. The dual alternative “compliance track” approach provides flexibility to determine the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation. Specifically, Track 2 makes available a wide range of trash control strategies, from treatment to institutional controls, to target the high trash generating areas. Additionally, the permitting authority has the discretion to determine other land use or locations generate substantial amounts of trash and require trash controls. The permitting authority may also issue WDRs or waivers of WDRs to the land owner for other trash generating areas or facilities to address trash. Please see Responses to Comments 6.5 and 6.6.

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34.3	In order to achieve full trash capture, the City would need at to invest an estimated minimum of $1.2 million into storm drain improvements plus an additional l $1.2 million per year for maintenance. These dollar figures are substantial as the City has very limited funds and is limited in its ability to collect fees to fund this program by Proposition 218. It is requested that the State Board support the ability of Permittees to secure funding sources for storm water quality programs, such as this trash policy.		Please see Response to Comment 10.4.
34.4	In order to adequately address the systemic trash issue, high trash generating industries and sources need to be targeted in addition to implementing trash capture. It is requested that the State Board partner with State and Federal programs, such as CalRecycle (formally the Integrated Waste Management Board), to support policies, laws, and practices to reduce packaging and trash generation at the source.		State Water Board and CalRecycle staff worked in the development of the Trash Amendments and agree that there is a synergy between reducing trash at the source and controlling trash as a pollutant.
35.1	The City supports the use of the narrative water quality objective as proposed. This narrative objective provides a clear, concise definition from with the City can prioritize management decisions. As a Phase I MS4 permittee, the City also appreciates the two track for		The State Water Board appreciates the support for the narrative water quality objective for trash and two tracks. Please see Response to Comments 4.1 and 10.9.

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	compliance with the Proposed Trash Amendments. As proposed, the Trash Amendments would consider the City to be full compliance with the prohibition of trash discharge, as long as the City implements either Track 1 or Track 2. The proposed Trash Amendments, however, do not clearly indicate that meeting the discharge probation requirements would also mean the City is in compliance with receiving water limitations. This lack of clarity could result in the City being subject to further regulation for receiving water, even if it is in compliance with the Proposed Trash Amendments.		
35.2	The Proposed Trash Amendments also identify, but do not address certain significant source categories and transport pathways for trash. These include wind, illegal littering, illegal encampments in riverbeds, and water recreation/cruise ships. It is unclear who is responsible for attaining the trash water quality objective for trash from sources and pathways unaddressed by the Proposed Trash Amendments.		The Trash Amendments recognize that there are many pathways of trash to reach surface waters, and they aim to protect from amounts that adversely affect beneficial uses. The Trash Amendments focus on controlling trash transported via storm water to surface waters in the areas and location that generate the highest amounts of trash. While the focus of the Trash Amendments is not on the other sources of trash, the permitting authority has the ability to determine additional areas and locations to require trash controls through NPDES permits, WDRs, waivers of WDRs, and enforcement. (See Final Staff Report Appendix A.) Additionally please see Response to Comment 6.5.
35.3	The proposed Trash Amendments do not clearly indicate that meeting the discharge prohibition requirements would also mean the City is in compliance with receiving water limitations. This lack of clarity could result in the City being subject		Please see Response to Comments 4.1 and 10.9.

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	to further regulation for the receiving water, even if it is in compliance with the Proposed Trash Amendments. The City requests the addition of language to the Proposed Trash Amendments indicating the MS4 permittees will be in compliance with receiving water limitations so long as they are fully implementing Track 1 or Track 2.		
35.4	The City requests that language be included in the Proposed Trash Amendments stating that if the requirements in the Proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully implemented. Further, waters listed as impaired for trash should be removed from the 303d list because the Proposed Trash Amendments address the impairment.		Please see Response to Comment 10.10.
35.5	The City requests that language be included in the Proposed Trash Amendments to accommodate local and regional processes for prioritizing pollutant issues for each watershed, such as the WQIP. The City also requests language is included in the Proposed Trash Amendments that would provide a process to exclude from, modify, or delay implementation of the Proposed Trash Amendment requirements for those watersheds		Please see Response to Comment 11.9.

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	and subwatersheds where trash is not identified as a high priority water quality concern. The City also requests language be included in the Proposed Trash Amendments that would allow agencies, such as MS4 permittees, to complete a watershed based trash assessment, confirm the applicability of the Proposed Trash Amendments to each waterway, and allow time for industry to implement effective solutions to identified sources of trash.		
35.6	The Proposed Trash Amendments are being proposed without adequate consideration of the funding sources for implementing the amendments' requirements. The City has no clear source of funding to meet these requirements and believes these obligations constitute an unfunded mandated. Prior to approval of the Trash Amendment, the City requests the Board conduct a full assessment of the costs and benefits of the Proposed Trash Amendment. The City requests that language be added to the Proposed Trash Amendments allowing delayed implementation until a funding source is identified for the implementation and ongoing maintenance of the structural controls required to capture trash.		Please see Responses to Comments 10.4 and 29.4. Additionally, under state law, the State Water Board does not perform a cost benefit assessment.

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35.7	The City requests that language be added to the Proposed Trash Amendments that allows the City to adequately evaluate, designate, and prioritize those areas that would realize the greatest benefit. Including a process by which the City may lower the priority of areas that the Proposed Trash Amendments currently designates as "high priority" is essential to effective implementation.	A regulated MS4 may determine that areas within priority land uses do not generate trash that accumulates in state waters (or in areas adjacent to state waters) in amounts that would either adversely affect beneficial uses. or cause nuisance. In the event that the regulated MS4 identifies such areas and is able to provide data supporting the finding. the permitting authority may waive the requirement for the MS4 to comply with Chapter III.L.2.a/IV.B.3.a with respect to the identified locations. The regulated MS4 shall submit documentation of the continued condition with annual reports as required under Section III.L.6/IV.B.7.	Please see Responses to Comments 10.1 and 10.7.
35.8	The City requests that the language in the Proposed Trash Amendments, establishing a ten- to 15-year implementation timeline, be revised to establish a 15- to 20-year timeline (i.e., 15 years after the next permit adoption or 20 years, whichever		Please see Response to Comment 7.7.

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	occurs first).		
36.1	Our city is participating in two Watershed Management Programs (WMPs) pursuant to the requirements of Los Angeles Regional Board Order No. R4-2012-0175. One of these is for the Lower Los Angeles River Watershed, and the other is for the Los Cerritos Channel Watershed. The Lower Los Angeles River WMP lists trash as a highest priority pollutant since there is a trash TMDL for the Los Angeles River. The Los Cerritos Channel WMP lists trash as a high priority pollutant because there is a 303(d) listing for trash for the Los Cerritos Channel, but there is not yet a TMDL for trash for this water body. The proposed Trash Amendments would functionally make trash a highest priority pollutant for the Los Cerritos Channel Watershed. The Trash Amendments would also make trash a priority pollutant for the defined "priority land uses" statewide, even though the receiving waters for land uses might not have been determined to be impaired for trash.		The Water Boards are charged with protecting all beneficial uses from pollution and nuisance that may occur as a result of waste discharges in the region. The State of California recognizes that trash is a high priority pollutant that impairs the beneficial uses of aquatic life and public health, causes an aesthetic nuisance, and reduces the economic value of California's recreation areas. The presence of trash in surface waters, especially coastal and marine waters, is a prevalent issue in California. As the City of Signal Hill is participating in two Watershed Management Programs where trash is listed as a high priority pollutant, the State Water Board does not see a conflict with existing permit prioritizations and the Trash Amendments. Additionally, please see Response to Comment 11.9.
36.2	The fact that the three Regional Water Boards with 71 of the 72 trash listings already have programs in place to address trash indicates that the Trash Amendments, as drafted, are not necessary. There is a need to ensure that where trash TMDLs or		Regardless of current 303(d) listings for trash, trash is a problem statewide. The Trash Amendments aim to provide statewide consistency to reduce trash discharge from the areas that generate the highest amounts of trash. The Trash Amendments would establish a prohibition of discharge on preproduction plastics as well as establish a definition for trash. (See Ocean Plan Amendments III.I.6; Part I ISWEBE IV.A.2.)

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	other measures to address trash impairments arc developed permittees are allowed to focus on truly high trash generation areas and catch basins. The application of a prohibition of discharge of preproduction plastic by manufacturers of preproduction plastics, transporters of preproduction plastics and manufacturers that use preproduction plastics in the manufacture of other products is also needed. In addition, there should be statewide definitions of trash and debris.		
36.3	The Trash Amendments, as currently drafted, will likely result in multiple unintended consequences. First the de facto definition of trash as a high priority pollutant will likely result in the diversion of funds away from addressing local water quality issues such as listed impairments and other local pollutants of concern since, in the absence of major stormwater quality funding programs, most local governments have limited money available to address water quality. Secondly, making trash a high priority pollutant in the absence of a 303(d) listing for trash may cause financial hardships. Especially for Phase II MS4s, since neither of the specified compliance tracks is inexpensive.		Please see Responses to Comment 10.4.

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36.4	This assessment, prepared by the Coalition tor Environmental Protection, Restoration and Development, is not listed in the References section of the Draft Staff Report, and it should be reviewed before any action is taken on the proposed Trash Amendments. For the convenience of the Board. It is attached to this comment letter.		Thank you for your comment and attached report.
36.5	The focus of the proposed Trash Amendments on five priority land uses is a good start to focusing on high trash generation areas. By focusing on high density residential (with at least 10 developed residential units per acre). Industrial, commercial mixed urban, and public transportation station land uses. the areas addressed by either Track 1 or Track 2 procedures could be reduced by 50% or more of a municipality's land area, depending on the density and location of transportation stations. However, as noted above, a small percentage of catch basins in commercial and industrial areas have been demonstrated in a research study to contribute a major portion of the trash load. Of the 258 catch basins analyzed in the 2006 report. I 05 were in commercial and industrial areas, and all but one of the 34 catch basins responsible for generating 50% of the trash loadings were		The State Water Board is appreciative of the report and support for periodization of commercial and industrial areas for trash controls with priority land uses in the Trash Amendments. (Ocean Plan Amendment and Part I ISWEBE definition of “priority land uses.”)

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	located in commercial and industrial land use drainages.		
36.6	The draft amendments do allow an MS4 permittee with regulatory authority over priority land uses to request a Water Board allow the permittee to comply with Track 1 or Track 2 requirements with alternate land uses that generate loads of trash equivalent to or greater than one of the priority land uses. However, the draft amendments do not specifically allow targeting of high trash generation areas with priority land uses through the use of such tools as the "Keep America Beautiful Visible Litter Survey:· The draft Trash Amendment should be revised to allow - even encourage - targeting of truly high trash generation areas within the broad priority land uses.		Please see Responses to Comments 10.7 and 12.2.
36.7	The City of Signal Hill agrees with the California Stormwater Quality Association (CASQA) that regulatory source controls should be developed and implemented. The staff report notes on page 7 that "California is the leader in implementing local ordinances with goals of reducing trash specifically plastics. However, what is needed is a statewide program to reduce trash to complement the "consistent statewide approach to controlling trash discharges into waters of the		Please see Response to Comment 4.5.

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	state'· being developed by the State Water Board. The City agrees with the option of granting time extensions for adoption of regulatory source control ordinances by local governments. Such an incentive will encourage more local and perhaps regional, source control programs, but State action is also needed. Product and packaging stewardship should be encouraged and/or required by the State. SB 346, the brake pad bill, became law in 2010 and is on track to greatly reduce copper stormwater pollution by 2025. A similar effort is needed to reduce trash. Producers of products and packaging that ends up in the water could be required to design and implement recycling/collection programs and/or redesign products to be biodegradable in water. The State Water Board should work with other state agencies. The legislature, the California Product Stewardship Council, the Governor and product and packaging manufacturers to reduce trash at the source. In addition, the State Water Board should consider the market-related approaches to source control assessed in the 2006 report entitled "Market-Based Strategies For Reducing Trash Loadings to Los Angeles Area Watersheds, An Initial Assessment" discussed above.		

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36.8	Actually, the final compliance date for the Los Angeles River Trash TMDL is September 30, 2016. For September 30, 2014, the compliance point is 10% of the baseline load calculated as a rolling 3-year annual average. For July 30, 2015 the compliance point is 3.3% of the baseline load calculated as a rolling 3-year, average. The Regional Water Board clarified the final compliance date for the Los Angeles River Trash TMDL in Attachment 0 of Order No. R4-2012-0175. Section A.2 of the Attachment states, "Permittees shall comply with the final water quality based effluent limitation of zero trash discharged to the Los Angeles River no later than September 30. 20 I 6 and every year thereafter. Several cities, especially those installing certified full capture devices, have already achieved 90% compliance. However, achieving full compliance will be very expensive due to the need to retrofit or replace catch basins in which the certified full capture devices could not be installed.		Comment noted. The proposed Final Staff Report has been modified to reflect the final compliance date for the Los Angeles River Watershed Trash TMDL of September 30, 2016 (see Final Staff Report pp 5 and 75).
36.9	The City of Signal Hill requests that the phrase. 'except for the Los Angeles River Watershed and Ballona Creek Trash TMDLs, because these two TMDLs are approaching final compliance		The State Water Board considered this comment and modified the final compliance dates. (See Final Staff Report pp. 5 and 75.) However, the State Water Board does not recommend modifications final compliance point of the Los Angeles River Watershed and Ballona Creek Trash TMDLs.

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	deadlines of July 1, 2014 and 2014. respectively" be deleted and replaced with: "The final compliance point for the Los Angeles River and Ballona Creek Trash TMDLs will be delayed until six months after the Los Angeles Regional Water Board completes its reconsideration of the scope of its trash TMDLs. Further the Los Angeles Regional Water Board should be directed to consider each Permittee that is determined to have achieved 90% compliance with the current Los Angeles River and Ballona Creek Trash TMDLs to be in full compliance with the TMDLs. 90% compliance with a TMDL covering an entire jurisdiction is more than equivalent to compliance with the Trash Amendments. Those jurisdictions determined to be a minimum of 80% in compliance shall be allowed to achieve full compliance through focusing trash control efforts on high trash generation areas.		
36.10	The greatest assistance that the State Board could provide to local governments is in allowing the use of a certified trash surveys to focus the implementation of this new policy to catch basins that generate significant amounts of trash, irrespective of the land use category.		Comment noted. The proposed Trash Amendments allow for this flexibility to determine areas that generate comparative amounts of trash through the “alternative equivalent land use” provision within priority land uses.

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37.1	Given the site specific conditions within the City, and documented lack of trash in the drain inlets as documented by Lake Tahoe TMDL studies), Track 1 is not a viable option for the City since the MS4 is not the primary source of trash conveyed to local waterways and Lake Tahoe.		The State Water Board appreciates the feedback on Track 1. The Trash Amendments recognize Track 1 might not fit all municipalities, and thus has Track 2.
37.2	The City is concerned that the existing text in Track 2 requires extensive outfall monitoring and trash counting to determine load reductions, although site specific TMDL studies, data and volunteer collection efforts find that the primary source of trash is littering at Lake Tahoe beaches, not conveyance and delivery via the storm drain system. The City requests that Track 2 language include more flexible methods for monitoring and reporting, based on site specific information, not extrapolated methods from studies conducted in urban, heavily populated areas of the state.		Please see Response to Comment 4.6.
37.3	The City is concerned that the studies used to develop this statewide mandate focused on the sources of trash and methods for monitoring and reporting that were developed in large urban centers, which may not be applicable to many of the less developed, rural portions of the state.		Trash is a prevalent and controllable priority pollutant across California's surface waters, which is described in Sections 1 and 3, Appendix A, and Appendix C of the proposed Final Staff Report. While currently only 73 water bodies are 303(d) listed as impaired for trash, this number is increasing and TMDL implementation can be costly and intensive. A central element

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			of the proposed Trash Amendments is a land-use based compliance approach to focus trash controls to the areas with high trash generation rates, in contrast to all land uses. Within this land-use based approach, a dual alternative "compliance track" approach is proposed for permitted storm water dischargers to implement a prohibition of discharge for trash. While the dual alternative compliance track approach might not cover the entire jurisdiction of the permittee, it will target and reduce trash from the areas of the high rates of trash generation and protect the beneficial uses of California's surface waters.
37.4	The City is concerned that the proposed Statewide Amendments are based primarily on studies conducted in highly urbanized population centers, and will force smaller, less urbanized communities to include costly and time consuming monitoring efforts based on studies and methodologies developed for major urban areas within California. The City requests the Track 2 language include changes to allow flexibility to avoid counting and reporting trash quantities at outfalls, and focus efforts on more effective clean ups that target the primary source of trash at Lake Tahoe: littering at the beach.		Please see Responses to Comments 10.7 and 12.2.
38.1	The City and County recommend that the State Water Board partner with permittees to explore the creation of a non-competitive program to fund trash control measures. One such program that could serve as an example is the		Please see Response to Comment 4.7.

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	Used Oil Payment Program (OPP). The State Water Board should work with the California Product Stewardship Council to assess the most prevalent forms of litter and pursue legislative remedies for litter including taxes on products (such as cigarette butts) to fund local trash control programs.		
38.2	The City and County recommend that the Proposed Trash Amendments recognize the value of current management programs and not divert resources away from ongoing, successful efforts to control trash in our waterways or place additional demand on already-limited resources. We urge the State Water Board to allow MS4 programs with existing POCs-focused water quality implementation plans to address trash in the prioritization context of those existing plans.		Please see Response to Comment 11.9.
38.3	The City and County recommend that the State Water Board assess how already-established CalRecycle funding could be enhanced and/or redirected to local agencies to meet the trash reduction control requirements of the Proposed Trash Amendments.		Pursuant to Public Resources Code section 14581(a)(4)(A) of the California Beverage Container Recycling and Litter Reduction Act, the Department of Resources Recycling and Recovery (CalRecycle) is distributing $10,500,000 to eligible cities and counties specifically for beverage container recycling and litter cleanup activities though the Beverage Container Recycling Grant and Payment Program. This program has funded full capture systems and other litter abatement programs. For more information please see: http://www.calrecycle.ca.gov/BevContainer/Grants/CityCounty/default.htm
38.4.	A statewide ballot initiative should be proposed to help fund trash control		Comment noted. A statewide ballot initiative is outside of the scope of these proposed Trash Amendments.

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	in waterways with statewide impact.		
38.5	While the City and County continue to work to identify successful management strategies for preventing trash from reaching receiving waters, it is critical that the Proposed Trash Amendments limit the liability of MS4 Permit holders and support a process that allows the City and County to apply their resources towards controlling trash within their areas of responsibility. Language in III.L.3 (Ocean Plan) and IV.B.4 (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) appears to provide direction/authority to the permitting authority to address other sources of trash. Examples should be added to include other NPDES permit holders and agricultural operations. The language could be strengthened by citing the authority with which this oversight is provided in the California Water Code (i.e., CWC §13263, 13267). The City and County recommend the State Water Board also include provisions to require implementation of the Proposed Trash Amendments, not only through inclusion in MS4 Permit, but through other NPDES Permits, WDRs, and Waiver Provisions.		Please see Response to Comment 10.6.

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38.6	The Proposed Trash Amendments state that for Permittees selecting Track 1 , "one potential compliance schedule is 10% completion of controls per year" (p. C-30). This suggested compliance schedule is likely to be infeasible for many Permittees, given the time it will take to accurately identify high priority areas, request and evaluate bids for installation of control devices, establish contracts, and order and install the control devices. Recommendation: The City and County recommend that Permittees be allowed to determine feasible milestones that are commensurate with the efforts that will need to take place each year.		Please see Response to Comment 6.8.
38.7	The Proposed Trash Amendments require Permittees selecting Track 2 to develop and submit an implementation plan that identifies the combination of controls that will achieve the same performance as Track 1. The Proposed Trash Amendments provide no guidance on either what will be considered an acceptable implementation plan or how equivalency should be demonstrated. We strongly recommend that clear guidance for the implementation plans and standards of equivalency be established prior to or with the adoption of the Trash Amendments.		Please see Response to Comment 16.3.

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	Clearly establishing these expectations is essential to informing the decisions regarding the choice of track. At present, it is unknown what efforts will be considered "equivalent" to full-trash capture. Permittees incur financial and compliance risks in choosing a Track which has no guidelines for determining compliance, placing them in a situation where the guidelines would be subject to on-going interpretation. Recommendation: The City and County recommend that standards of equivalency be established prior to or with the adoption of the Proposed Trash Amendments.		
38.8	While stormwater permittees may want to conduct receiving water monitoring to demonstrate performance, the City and County feel it should not be mandated. Other sources contribute trash to receiving waters, and imposing this requirement on stormwater permittees will not provide an indication of the effectiveness of stormwater trash control programs.		Please see Response to Comment 4.6.
38.9	The City and County recommend that a more extensive list of certified devices be prepared prior to the adoption of the Proposed Trash Amendments. We also recommend refining the full capture device certification process to streamline		Please see Response to Comment 10.5.

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	the certification process as much as possible. Additionally, the timeframe for obtaining certification is a concern. The Executive Officer approval process should have a rapid turnaround time to allow permittees to move forward with planning and installation within the time schedule granted.		
39.1	Specifically, the City is very supportive and greatly values of the multi-track implementation approach to meeting the water quality objectives set forth in the Proposed Amendments. Track 2 provides much needed flexibility for local jurisdictions to prioritize implementation based on available resources and local knowledge of the presence and source of trash in our community.		The State Water Board appreciates the support for Track 2.
39.2	The City is concerned that the Implementation Provisions, including the Time Schedule, as currently delineated in the Trash Amendments will divert resources and possibly compromise years of research, planning, and the implementation efforts that have been invested into our Short and Long Term Trash Reduction Plans. We respectfully request that the State Board consider establishing a mechanism that allows MRP permittees to comply with Track 2 implementation via continued implementation of the		Please see Response to Comment 4.2.

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	already developed Long Term Trash Reduction Plans, submitted to the San Francisco Bay Regional Water Quality Control Board as required by the MRP.		
39.3	We request that the State Board allow for the full trash capture devices previously "approved" by the San Francisco Bay Water Quality Control Board for installation under the Project to satisfy the requirements of the Trash Amendments consistent with process outlined for the full trash capture devices previously certified by the Los Angeles Regional Water Board as defined in the Trash Amendments.		Please see Response to Comment 4.3.
39.4	The City strongly supports the inclusion of these types of regulatory source controls as an institutional control available for implementation to comply with the Trash Amendments.		Please see Response to Comment 4.5.
40.1	We appreciate State Board's efforts to incorporate stakeholders' comments provided during the outreach meetings, particularly the inclusion of Track 2 type control measures in the draft Policy.		The State Water Board appreciates the support and attendance of the City of Walnut Creek at the focused stakeholder meeting in San Jose.
40.2	While the draft Policy is more clearly written, the regulatory provisions fail to acknowledge progress made by municipalities in the San Francisco Bay Area. Under the Municipal		Please see Response to Comment 4.2.

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	NPDES Regional Permit (MRP) for stormwater discharges, Bay Area municipalities have assessed the extent and magnitude of the trash issues and implemented enhanced control measures to reduce their impacts on our waterways and the San Francisco Bay.		
40.3	State Board should revise the proposed Policy to include "Track 3" for municipalities covered under the MRP to continue using any combination of full capture systems, other treatment controls, institutional controls and/or multi-benefit projects in a phased and prioritize approach that focuses on high trash generation areas as defined in the community-specific trash management plans.		Please see Response to Comment 4.2.
40.4	The proposed Policy should be revised to account for the benefit of true source control actions that we initiate or participate in addressing litter-prone items. Therefore, time extensions should be granted to municipalities for participating with other local agencies to advocate for legislation and industry cooperation in the development of product redesign, packaging redesign, take-back programs and deposit legislation.		Please see Response to Comment 4.5.
40.5	State Board should revise the definition of “high trash generating areas" to allow municipalities the option of identifying geographical		Please see Responses to Comments 10.7 and 12.2.

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	areas within their jurisdictions that generate problematic levels of trash, regardless of land use. As an example, a regional transit hub and freeway on-ramps, both of which are outside the City's authority, generate a problematic level of trash in comparison to our robust downtown core areas.		
40.6	Because trash is transported to receiving waters from pathways other than MS4s (such as illegal dumping into receiving waters, homeless encampments and wind), trash from these pathways may compound municipalities' abilities to observe trash reductions in creeks and shorelines. For this reason, data collected in receiving waters should not be considered a primary indicator of compliance.		Please see Response to Comments 4.6 and 34.2.
41.1	While the Draft Trash Control Amendment Staff Report purports to provide flexibility, closer examination of the proposed requirements and additional narrative adds, if adopted, additional reporting of monitoring requirements for construction site dischargers, and most importantly, adds a significant burden of proof element to compliance that is unnecessary given CICWQ research into existing construction site trash control practices. In other words, it appears the State Water Board is proposing regulation that is		It is not the intention for the Trash Amendments to add a significant burden to construction site dischargers. The current Construction General Permit already has prohibition on trash (debris) which may prove adequate to implement the Trash Amendments. Additionally, please see Response to Comments 5.1 and 5.2.

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	unnecessary and unhelpful given current regulation and industry practice.		
41.2	The problem of trash in receiving waters is localized and is being effectively addressed in that manner through the TMDL process and through implementation of other existing NPDES permits. We therefore question the need for any additional regulation at this time, in part because of the additional resources and time that will be required to comply with the Draft Trash Control Amendment when a problem with trash may never exist.		Trash is a problem statewide and greater action is necessary than the existing TMDLs and NPDES permits. Please see Response to Comment 44.4.
41.3	The determination of Track 1 and Track 2 equivalency is under development at this time according to the Draft Trash Control Amendment staff report and State Water Board staff (who provided clarification of intent at a workshop on 7/16/2014), and will be left to the discretion of the Regional Boards to develop at some future date. This kind of uncertainty in process is concerning, as is the fact the current prohibition of the discharge of trash appears to be working from the perspective of the construction industry, and additional regulation and so-called flexibility is unhelpful and may actually increase the cost to comply because of the difficulty of proving Track 2 equivalence with		Please see Response to Comment 16.3.

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	Track 1.		
41.4	We have concerns about the monitoring and reporting program (described on page 17 of the Staff Report, Section 2.7), which strongly implies a level of effort required by builders and contractors, significantly above and beyond what is currently required to demonstrate compliance (handled in the SWPPP, implemented vis-à-vis daily physical collection and containment of trash using source control principles). And, the Draft Trash Control Amendment makes conflicting statements about the necessity of specific monitoring requirements for construction dischargers, and clarification of intent by the State Water Board is requested. Specifically, see conflicting information discussed on page 17, Section 2.7 and pages 81-82 of the Staff Report, 4.10 No. 3.		The Industrial General Permit (IGP) and Construction General Permit (CGP) are statewide permits that regulate discharges of storm water and authorized non-storm water discharges associated with very specific industrial activities. These permits apply to thousands of projects with diverse features and characteristics between facilities and sites. As such, prescribing appropriate and consistent trash monitoring and reporting requirements for all permittees poses significant challenges. While the Trash Amendments do not contain trash monitoring requirements for the IGP and CGP, permittees would, however, be required to report the measures used to either (1) achieve the outright prohibition of trash or (2) achieve equivalent trash control through alternative methods. (Ocean Plan Amendment III.L.2.c and Part I ISWEBE IV.A.3.c.) Currently, the CGP prohibits the discharge for any debris, which includes plastic and other trash materials. The Trash Amendments establish an outright prohibition of the discharge of trash. The existing provisions in the CGP would be similar to the outright prohibition for trash. State Water Board does not intend to create additional regulations or monitoring for trash for CGP permittees. Please see Responses to Comment 5.1 and 5.2.

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41.5	The State Water Board did not estimate the financial impact of the Draft Trash Control Amendment on construction dischargers, and concluded the Draft Trash Control Amendment would not have any impact on the incremental cost of compliance. This is a faulty assumption considering that if the Draft Trash Control Amendment was adopted and construction dischargers chose to comply using Track 2, there will most certainly be a cost for demonstrating equivalency with Track 1 and this cost would be borne by the individual discharger/permit holder as we currently understand how the Draft Trash Control Amendment Track 2 process would be implemented.		Please see Response to Comment 5.2.
42.1	The narrative water quality objective stated here should be replaced with the numeric water quality objective of zero trash to reflect the fact that receiving waters have no assimilative capacity for trash. There are no legal findings presented to support the selection of any other standard. The zero trash objective contained in the Los Angeles area Trash TMDLs has been tested and upheld by the Fourth Appellate District Court. Although there are technical challenges to limiting all trash entering jurisdictional waters,		Please see Response to Comment 6.1.

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	properly designed and maintained full capture systems are established means of eliminating the discharge of trash from municipal separate storm sewer systems.		
42.2	The level of control provided in these trash amendments is not sufficient to meet the narrative water quality objective proposed for the Ocean Plan since trash control is not required for non-priority land uses. These areas do generate trash, albeit generally at lower levels than priority land uses. These amendments essentially shield dischargers from having to control trash from these land uses by defining compliance with the water quality objective as treatment of priority land uses only. This is unacceptable. Preferably, the water quality objective for trash would be satisfied only for areas adequately treated by Track 1 and Track 2 controls. Other "non-priority" areas would not escape coverage but treatment there would be de-prioritized in favor of a focus on high priority areas.		See Final Staff Report, sections 1.5 and 2. A central element of the Trash Amendments is a land-use based compliance approach to focus trash controls to the areas with high trash generation rates. (Ocean Plan Amendment at III.L.2; Part I ISWEBE at IV.A.3.) However, the Trash Amendments do not, as the commenter suggests, limit control to priority land uses only. See Ocean Plan Amendment at III.L.1.a and Part I ISWEBE at IV.A.1.a, which describes the scope of the dischargers subject to the prohibition of discharge of trash. Additionally, the Trash Amendments allow the permitting authority to determine other locations or land uses within an MS4's jurisdiction, on a case by case basis, that have significant trash generation rates (e.g. sufficient to cause or contribute to an exceedance of water quality objectives or creation of nuisance) and require additional trash controls. (Ocean Plan Amendment at III.L.2.d and III.L.3; Part I ISWEBE at IV.A.3.d and IV.A.4.) The Trash Provisions also allow the permitting authority to require other dischargers to implement trash controls. These approaches are sufficient trash controls to meet standards in a reasonable amount of time.
42.3	Track 1 does not differentiate		Pursuant to the express terms of the Trash Amendments

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	between public and private drains, instead referring to "all storm drains". Please confirm that this includes storm drains on private property.		(Ocean Plan Amendment at III.L.2.a; Part I ISWEBE at IV.A.3.a), the requirement for MS4 permittees to comply with Track 1 or Track 2 extends to the extent they have "regulatory authority" over priority land uses in their jurisdiction. If the MS4 permittee has legal authority to install, operate, and maintain full capture systems for a storm drain, whether at the actual site of the drain or inline, then that permittee would be required to do so under the Trash Amendments. To comply with Track 1, full capture systems must be installed, operated, and maintained for "all storm drains that capture runoff from priority land uses. (Ocean Plan Amendment at III.L.2.a.1; Part I ISWEBE at IV.A.3.a.1.) Insofar as an MS4 permittee does not have authority over a private storm drain, the MS4 would comply with Track 1 by, for example, installing a vortex separator system inline, which would capture trash from a whole drainage area of individual storm drains (see Staff Report section 5.1.3), or installing trash nets (see Staff Report section 5.1.4) to capture trash from drainage areas of storm drains. (See generally, discussion in Staff Report in Section 5 through 5.1.5.) The State Water Board does not support the recommendation. Additionally, Please see Response to Comment 11.4.
42.4	Avoid backsliding in areas with existing trash regulation - Appendix D - Section III.I.6.a Section III.I.6.a seems to provide dischargers with existing trash control requirements that are more stringent than the proposed provisions with a less stringent compliance option. For example, the 15 Los Angeles area TMDLs set a trash reduction target of zero trash. Applicability in Los Angeles region is addressed in the "Applicability" section, but section III.I.6.a should		Backsliding generally refers to reductions in treatment levels required by NPDES permits. The Clean Water Act and U.S. EPA's regulations limit the circumstances under which modified or reissued permits may set less stringent effluent limitations than required by previous permits. (CWA § 402(0)(3)(A)-(E); 40 CFR § 122.44(l); see also 40 CFR § 122.62 (applicable circumstances for permit modification or revocation).) The "anti-backsliding" provisions generally prohibit relaxation of effluent limitations previously established on the basis of best professional judgment, unless circumstances exist which make one of the exceptions to the general rule applicable. The commenter also misconstrues applicability of the prohibition contained in Section III.L.6.a, which states: "Dischargers with NPDES permits that contain specific requirements for the control of Trash that are consistent with these Trash Provisions

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	be modified to state: "Only programs with less stringent existing trash control requirements would be deemed in compliance with the prohibition of discharge if they are consistent with section III.L.2." Where more stringent standards already apply, for example as part of an NPDES permit incorporating local TMDLs, they must remain in place to avoid backsliding.		shall be determined to be in compliance with this prohibition if the dischargers are in full compliance with such requirements." Such applicability of the prohibition does not authorize a reduction in treatment levels required by NPDES permits. The Trash Amendments' prohibition of discharge does not apply the waters for which the 15 Los Angeles TMDLs apply. The Trash Amendments do not effectuate a lowering of treatment levels by accepting more stringent TMDLs from their application. Additionally, the proposed Trash Amendments direct the Los Angeles Water Board to hold a public meeting to reconsider the scope of its trash TMDLs within one year of the Trash Amendments' effective date and focus its permittees' trash control efforts on high trash generation areas rather than all areas within each permittee's jurisdiction. The reconsideration would occur for all existing trash TMDLs except for the Los Angeles River Watershed and Ballona Creek Trash TMDLs, because those two TMDLs are approaching final compliance deadlines.

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42.5	Full capture system approval process must be improved - Appendix D – Section III.L.1.b.(1) To ensure reliable performance of full capture systems, the following improvements to the certification process are recommended: · Prohibit the use of on-line trash control devices that direct peak flows through the trash storage area unless they are cleaned out after each significant storm event (<0.25" depth); or specify that full capture systems must retain trash in an off-line configuration where peak flows are diverted upstream of the trash storage area. · Require in-field demonstration that trash control systems can capture and retain trash at the design treatment flow rate. Alternatively laboratory demonstration of trash capture and retention may be demonstrated using an influent stream containing a representative mix of gross solids including sediment, organic debris and trash. · Document the maintenance procedures and frequency required to maintain adequate trash removal and retention at the design flow rate. Include this information in any full capture certification. · Require an initial inspection frequency of monthly or after each significant event greater than 0.25" in depth for		Comment noted. These recommendations may be considered during the certification process. See Staff Report at section 2.8, which includes a revised discussion for the certification process the State Water Board will utilize.

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	the first year with maintenance performed when screens are 25% clogged or when trash systems. Based on observations during this period inspection frequency may be extended, but should occur at twice the frequency that maintenance is required. Prior to acceptance by the State Board, an independent audit of the effectiveness of previously certified full-capture BMPs in Los Angeles is needed per the requirements above and with particular focus on the actual operation and maintenance burden imposed by each type of system. To receive credit for full capture system treatment, maintenance efforts must be adequate to ensure that devices continuously have capacity to remove and retain 5 mm particles from the one year storm.		
42.6	Los Angeles area trash TMDL requirements should not be undermined Appendix D – Section III.L.1.b.(2) Although not explicitly stated, this section seems to allow Los Angeles area permittees to reduce the scope of their trash control efforts to focus only on priority land uses. This is unacceptable since it contradicts the clear direction given in the Trash TMDLs that the goal of zero trash discharge be		See Responses to Comments 6.7 and 42.2.

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	attained.		
42.7	This section (Section III.L.2.a) should be amended to require permitting authorities electing to pursue Track 2 to implement full capture systems where feasible, prior to consideration of other controls.		The proposed Trash Amendments define Track 2 so that any combination of the treatment controls, institutional controls, and multi-benefit projects may be used to achieve the same performance results as compliance under Track 1, namely full capture system equivalency. To provide flexibility to the permittee in trash control plan development, the proposed Trash Amendments do not specify the order of types of controls that should be installed. However, in order to achieve "full capture system equivalency," the Trash Amendments provide that the State Water Board expects that MS4 permittees will elect to install full capture systems where such installation is not cost-prohibitive. This expectation and the phrase full capture system equivalency were incorporated into the proposed final Trash Amendments. (Ocean Plan Amendment and Part I ISWEBE at definition for "full capture system equivalency".) The term "feasible" would have to be further defined and the State Water Board is disinclined to introduce that term under Track 2 as a compliance requirement. Please see Responses to Comment 6.2 and 6.3.
42.8	This section requires permittees to select either Track 1 or 2. Although not expressly stated, it seems that this decision is intended to be made once based on mitigation approaches selected for the entire drainage network under the jurisdiction of the permittee. Considering the likelihood that there will be at least one location in each jurisdiction where full capture systems are infeasible, this interpretation will push virtually every jurisdiction into Track 2. A better approach would be to allow the jurisdiction to select Track 1 or Track		Comment noted. See Response to Comment 42.7.

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	2 on a catchment by catchment basis with a requirement that full capture systems be installed where feasible. Alternatively, a Track 1 could include an allowance of up to 5% of area treated by non-full capture systems.		
42.9	The reference in this section to Chapter III.I.6.a should be corrected to reference Chapter III.I.6.		The section references have been corrected in the proposed final Trash Amendments.
42.10	This section seems to offer industrial permittees a path to compliance with the narrative trash objective that is based on installation of full capture systems. This is surprising given the fact that preproduction plastics are typically smaller than 5 mm in diameter and will not be controlled by full capture systems. Since industrial sites are listed among the priority land uses that are covered in section III.L.2.a, full capture controls or equivalently effective controls would already be required. This section must be amended to require additional controls that are effective for preproduction plastics. For example, the CDS system is available with standard screen apertures of 1.2 mm, 2.4 mm, and 4.7 mm. The 2.4 mm screen has been used extensively in California and is the default standard in several other states. The hydraulic and pollutant removal capabilities of this system for trash as well as fine		The section referenced provides NPDES permittees subject to the Industrial Storm Water General Permit a path to comply with the prohibition. Additionally, NPDES permittees subject to the Industrial Storm Water General Permit must comply with the best management practices requirements for trash in that permit. Regardless of the Trash Amendments, all facilities with the potential to discharge preproduction plastics are subject to the best management practices permit requirements required pursuant to Water Code section 13367(a). By the express terms of the Trash Amendments, the prohibition applies to the discharge of preproduction plastic by manufactures and transporters of those plastics. (Ocean Plan Amendment at III.I.6.e; Part I ISWEBE at IV.A.2.e.) For these reasons, the State Water Board does not support the recommendation.

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	sediment and oil and grease are well documented. To ensure that systems are installed that actually address preproduction plastics, the following change is recommended: · Replace “full capture systems” with “preproduction plastic capture systems” in section III.L.2.c.(1) and specify that such systems must remove and retain particles 2.4 mm and larger during the peak flow rate generated by the 1-year storm. · Replace references to “full capture systems” elsewhere in section III.L.2.c with “preproduction plastic capture systems”.		
42.11	The 10 year final compliance time line is appropriate for those permittees that select the full-capture option considering the complexity of identifying, designing, permitting and constructing storm drain retrofit projects.		Comment noted.
42.12	The 10 year final compliance time line should be shortened to 7 years for those permittees that select Track 2. Since many of the non-full capture solutions can be implemented without new capital improvement projects the time line can be shorter. For example increasing street sweeping, enforcement and public education can be done quickly. A shorter time line also incentivizes selection of the		To allow for statewide consistency and provide sufficient time for permittees to successfully achieve the prohibition of discharge, the State Water Board will provide a ten year compliance deadline for both Track 1 and Track 2. (Ocean Plan Amendment III.L.5.a-b; Part 1 ISWEBE IV.A.6.a-b.) This deadline allows for implementation of trash controls to occur over at least two permit cycles. This also provides the ability to use the second permit cycle to build on the first permit and allow for adaptive management. Additionally, for MS4 permittees that are designated after the

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	full capture track which provides more trash capture certainty. Controls selected under either track should be undertaken in the context of a broader compliance plan such that redundant controls are avoided and maximum leverage is gained toward satisfying other water quality goals.		effective date of the Trash Amendments, their time schedule of ten years begins on the effective date of the designation. In that context, the State Water Board does not consider it equitable for a MS4 permittee that is designated, for example, six years after the effective date of the Trash Amendments to have a shorter time schedule in comparison to MS4 permittees designated prior to the effective date of the Trash Amendments. Additionally please see Response to Comment 7.7 and Staff Report section 2.5.
42.13	There is an inequity for catch basin scale controls for short duration rainfall intensities. The full capture definition should be amended as follows: · Catch basin scale controls must be sized using the peak one-year, five-minute rainfall intensity · For devices serving multiple the rainfall intensity corresponding to the actual time of concentration for the contributing catchment must be used.		While there is a relationship between the scale of the catch basin, rainfall intensity, and trash mobilization, the definition the of full capture systems will remain as proposed in the Trash Amendments with a focus on the peak flow rate resulting from a one-year, one-hour storm. No change is needed.

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42.14	Trash reduction success following Track 1 hinges on adequate maintenance of full capture systems. To ensure that systems are functioning as designed, they should initially be inspected after every significant storm event (>0.25" depth) until experience justifies a less frequent schedule. Where 25% of the screen is occluded the screen should be cleaned. For those systems storing trash in an on-line configuration, trash should be removed when it reaches 25% storage capacity. For those systems storing trash in an off-line configuration, trash should be removed when it reaches 75% of storage capacity. The local Regional Board should perform periodic spot checks to ensure accuracy and adequacy of reported maintenance information.		Within reporting requirements for Track 1, the permittees shall demonstrate on an annual basis the proper installation, operation, and maintenance of full capture systems to the permitting authority. (Ocean Plan Amendment at III.L.2.a.1; Part I ISWEBE at IV.A.3.a.1.) The purpose of this requirement is to demonstrate progress towards compliance and establish accountability for proper operation of full capture systems. The permitting authority does have the discretion to perform period spot checks, especially if there are areas of concern. However, it is not appropriate to include in a statewide water quality control plan, the type of product specific inspection and maintenance language proposed by the commenter. Therefore, the State Water Board does not propose adding an inspection criterion as proposed by the commenter.
42.15	Full capture system – The last sentence of this section allows the Executive Director of the State Water Board to decline certification of some full capture systems certified by the Los Angeles Regional Water Board. This is encouraging since some of the certified devices are unable to capture and retain trash with the required effectiveness (100% removal for the 1 year storm) at feasible maintenance levels. More information regarding criteria for		The Executive Director does have the authority to certify or decline certification for full capture systems requested for certification with relevant supporting documentation. (See Trash Amendments, Definitions, App. I, "Full capture system" and Staff Report, section 2.8 Adding revised language to the certification process and stating that the State Water Board would follow a similar process established by the Los Angeles Water Board and referencing: Yang, M. Procedures and requirements for certification of Best Management Practice for trash control as a full capture system. Letter to Jonathan Bishop. 3 August 2004. Available at: http://www.waterboards.ca.gov/rwqcb4/water_issues/programs/stormwater/municipal/full%20capture%20system.pdf.)

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	accepting or rejecting full captures systems should be given to allow entrepreneurs and engineers information needed to create the next generation of trash controls. Simply reverting to the failed approach of considering only the screen aperture size and modeled flow rates gives system designers little incentive to consider operational feasibility, especially if maintenance enforcement is weak.		The focus of the certification process is to provide assurance to permittees that their valuable resources are used on full capture systems that will successfully capture trash from storm water. The information regarding criteria for certification contained in the Staff Report is sufficient.
42.16	The term "vortex separation system" has been used in Trash TMDLs and related documents as a generic term for the CDS system which is a proprietary system marketed by Contech Engineered Solutions, LLC. The CDS system has been used in California for over 15 years and at thousands of locations nationally. There are approximately ten other vortex separation systems available in the market, none of which were part of the trash TMDL development process and none of which have been certified as full capture systems by the Los Angeles Regional Water Board. These systems are typically used in California as pretreatment upstream of infiltration, detention and filtration systems. Continuing to use the term "vortex separation system" is misleading in that it seems to include those systems without screens that do not meet the full		The State Water Board appreciates the explanation of this distinction between vortex separation system and CDS systems. However, no change is necessary to Staff Report 5.1.3.

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	capture system standard. Where it is being used in a historic context, the actual product name should be used in lieu of "vortex separation system", for example in references to the Calabasas CDS system used to develop baseline trash loads. Also where "vortex separation systems" are called out as an approved full capture system by the Los Angeles Regional Water Board, the trade name CDS should be used.		
42.17	Although trash control is the focus of these amendments, it is noteworthy that some full capture systems provide significant ancillary benefits. For example, the CDS system is unique among trash controls in that it has spill storage and sediment removal capabilities that are well documented in field studies and should be noted in Section 5.1.3. In addition, these important ancillary benefits should be considered in any cost/benefit analysis and may play a significant role in meeting other pollution control objectives either by removing particulate bound pollutants of concern directly or by significantly extending the useful life of downstream filters, infiltration systems, biotreatment systems and other BMPs.		The State Water Board agrees that trash controls like full capture systems, low impact development, and multi-benefit projects can provide benefits to multiple storm water pollutants while extending the useful life of downstream filters, infiltration systems, bio-treatment systems, and other pest management practices. However, consideration of ancillary benefits is beyond the scope of this project and will not be added to the Staff Report.
42.18	The 10 year final compliance time		Comment noted. The State Water Board will maintain the ten

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	line is appropriate for those permittees that select the full-capture option considering the complexity of identifying, designing, permitting and constructing storm drain retrofit projects.		year time schedule for Track 1
43.1	The fiscal analysis within the Draft Amendment Report estimates that the installation and maintenance costs of this new program could range between $8-$10 per person per year. The County has approximately 180,000 residents, so using that logic - this program could cost the County $1.8 million per year. That is completely unsustainable amount of money for the County to spend and would no doubt trump all other water quality priorities that the County has. The ability to develop a property fee to fund this new program is limited by Proposition 218 which requires a two-thirds voter approval. Today's voter climate has demonstrated repeatedly that increased fees are not supported for any program of this nature. Grant funding to satisfy regulatory requirements is also difficult to obtain. The scale of the Draft Amendments should be tailored and scaled to different community types so that a more appropriate level of effort is required that is more financially feasible to achieve.		The success of Proposition 218 is outside of the scope of the proposed Trash Amendments. Additionally, please see Responses to Comments 4.7 and 10.4.

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43.2	Due to the rural nature of the County, Track 2 appears to be a more appropriate Track for the County to follow. However, many of the requirements for Track 2 require data collection, management, analysis and reporting which will do nothing to directly improve water quality conditions. The staffing required to implement these requirements appears to be substantial based on the current version of the Draft Amendments. Proposed monitoring requirements will generate data that may be difficult to interpret, with the results potentially not being applied in any meaningful way to improve water quality.		Please see Response to Comment 4.6.
43.3	Screening drain inlets (DI's) to a 5 millimeter standard will increase that potential which will create significant flooding, nuisance and overflow erosion hazards throughout the County. Maintenance of accessible screened DI's throughout the County would compromise resources and funding dedicated to various obligated urgencies and necessities of the County.		Please see Response to Comment 20.5.

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43.4	Many the central and easternmost portions of the County range in elevations between 2,000 to over 6,000 feet above mean sea level and are subject to snow and ice conditions between the months of December through April. DI's located within these elevations are subject to snow and freezing temperatures and based on experience will most likely be inaccessible for maintenance throughout the winter season. If DI's are screened to a 5 millimeter standard and become obstructed with vegetative litter and debris due to maintenance inaccessibility, runoff throughout the winter months and during the ice and snowmelt periods will produce significant safety hazards, damage to infrastructure and consequential erosion.		The State Water Board appreciates the conditions of high elevation municipalities. Trash is a priority pollutant in California. The Trash Amendments provide flexibility to NPDES permittees with the dual alternative "compliance track" approach, so that permittees can determine the most effective means of controlling trash in their respective jurisdictions while taking into consideration particular site conditions (e.g., elevation), types of trash, and the available resources for maintenance and operation.
43.5	Thus, the number one priority and the majority of the County's financial resources there are dedicated to capturing and removing fine sediment particles prior to their discharge to Lake Tahoe. This is a significant and costly exercise that is of great importance to the preservation of that important natural resource water. If the Draft Amendments are adopted as drafted, resources will need to be diverted from the TMDL to address controlling trash and Lake Tahoe's		The presence of trash in surface waters, including Lake Tahoe, is a serious issue in California. The State Water Board does not see a conflict between the ongoing efforts to achieve compliance with the sediment TMDL and framework proposed in the Trash Amendments. As proposed, Track 2 encourages the use of multi-benefit projects. Projects to capture and remove fine sediment particles could also function to capture and remove trash. The State Water Board believes that trash is a controllable pollutant in Lake Tahoe and across California. Controlling trash would protect the beneficial uses of California's surface waters.

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	famed clarity could be jeopardized.		
43.6	The Draft Amendments may be in conflict with the Delta Regional Monitoring Plan (RMP) and the currently in production Municipal Region-wide (Region 5) Storm Water Permit due to the requirement to elevate trash as a priority.		The State Water Board does not see a conflict with the proposed Trash Amendments and the Delta Regional Monitoring Plan and Municipal Region-Wide Storm Water Permit. Trash is a prevalent pollutant impairing the beneficial uses of California's surface waters including the Delta, rivers, and lakes in Central Valley Region. Please see Response to Comment 11.9.
43.7	The Draft Amendments would require participants to redirect efforts and funds to trash, which could eliminate funding for addressing one or all other identified priority pollutants and areas of concern. The ability for the County to prioritize our resources on critical water issues and maximize staff resources will result in achieving the greatest outcome for the environment within and downstream of the County.		The State Water Board is supportive of the prioritization of resources for reduction and control of storm water pollutants; however, trash is a priority pollutant across California. With the Trash Amendments, it is intended that Trash be a high priority along with other regional priority pollutants. Please see Response to Comment 4.7.

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43.8	The County feels that source control is the best way to deal with trash in our waterways. A focus on source control of plastic trash, especially compared to full capture provisions of the Draft Amendments, is consistent with State legislative and agency goals for reducing solid waste and associated generation of greenhouse gases (GHGs). There should be additional focus on source control added to the Draft Amendments.		Please see Response to Comment 4.5.
43.9	How will the Draft Amendments provide relief for the County when managing trash resulting from the County's homeless demographic? Known encampments are located on non-County owned property and are typically near surface waters. In 2011, the County conducted a survey and 90 persons were identified as meeting HUD's definition of homelessness and 130 were identified as meeting the expanded definition of homelessness.		Please see Response to Comments 6.5 and 34.2.
43.10	How will the Draft Amendments provide relief for the County from windblown, vehicle blown, animals, accidents, and/or illegal direct dumping into or near surface waters which all can significantly contribute to trash accumulating in receiving waters? Full capture systems and institutional/source controls will be		Please see Response to Comments 6.5 and 34.2.

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	ineffective for preventing these types of discharges.		
43.11	Due to the Draft Amendments enforcing the issue of trash, how possible would it be to require solid waste providers to share the responsibility for installation, operation, maintenance and enforcement of full capture systems and fee collection?		Permittees should continue to strengthen partnerships between their municipality's waste management agencies and recycling centers to address trash control.
43.12	The County is in favor of "shall not accumulate" language and is not in favor of a "zero trash limit". The County feels a zero trash limit establishes unrealistic goals.		The State Water Board agrees with this comment. In addition, please see Response to Comment 6.1.
43.13	The County is in favor of the Track 2 option remaining in place, with modifications. The County does not feel full capture systems are the only approach for effectively managing trash.		Comment noted. The dual alternative "compliance track" approach is proposed to provide flexibility for permittees to determine the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation.

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43.14	The County would like to see more guidance on the Track 2 monitoring methodology. The County feels there is a need for a standardized methodology for proving effectiveness. Additionally, the County would like to see language in the Draft Amendments to address how the Track 2 Implementation Plans will be evaluated. In what units will trash be measured? The County is unable to accurately estimate what the actual cost of implementation and program maintenance will be based on the current Draft Amendments.		Please see Response to Comment 4.6.
43.15	The County would like the flexibility to apply to both Tracks 1 and 2, with amendments, due to different land use areas located throughout the County's MS4 boundaries. This would allow the County the ability to reduce monitoring requirements if we find Track 1 to be the best approach in one or more areas of the municipalities.		Please see Response to Comment 4.6.
43.16	The County is in favor of the time extension language provided for regulatory source controls requiring extensive jurisdictional ordinance adoption time.		Please see Response to Comment 4.5.

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44.1	The County shares the State Board's concern for ensuring the State's waterways are free from litter and debris. The proposed Trash Amendments will apply to all surface waters of the State. The Draft Staff Report, however, identifies 73 water bodies that are listed for trash, which represents only 2 percent of the total water bodies in California. Only four regions have trash listings, two of which have TMDLs for trash (Los Angeles and Colorado). In addition, most of the factual justification described in Appendix A justifying the proposed Trash Amendments comes largely from the coastal areas of Los Angeles and San Francisco. Furthermore, there has not been a demonstration that trash is likely to cause a discharge of waste to most waters of the State. Therefore, there is a lack of substantial evidence justifying application of the proposed Trash Amendments to every storm drain statewide, particularly with respect to inland areas.		Trash is a prevalent and controllable priority pollutant across California's surface waters, as described in Section 1 and 3, Appendix A, and Appendix C of the proposed Final Staff Report. While only 73 water bodies are currently 303(d) listed as impaired for trash, this number is increasing and TMDL implementation can be costly and intensive. A central element of the Trash Amendments is a land-use based compliance approach to focus trash controls to the areas with high trash generation rates -- not in all land uses (i.e., not in "every storm drain statewide"). Within this land-use based approach, a dual alternative "compliance track" approach is proposed for permitted storm water dischargers to implement a prohibition of discharge for trash. The dual alternative "compliance track" approach targets and reduces trash from the areas of high rates of trash generation and protect the beneficial uses of California's surface waters. Additionally please see Responses to Comments 10.10 and 18.4.

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44.2	The primary means to regulate trash has been through the federal 303(d) listing and TMDL processes. In the two regions subject to trash TMDLs, TMDLs have either been established by the Regional Board or EPA. The proposed regulatory basis for imposing the proposed Trash Amendments, however, is Water Code section 13170, whereby the State Board may adopt water quality control plans where they are applicable. Without substantial evidence to justify statewide trash controls, the State Board would be regulating waterways where the proposed Trash Amendments should not be applicable.		The State Water Board is responsible for reviewing statewide water quality standards and for modifying and adopting standards in accordance with section 303 (c)(1) of the federal Clean Water Act (33 U.S.C. § 1313(d)) and § 13170.2(b) of the California Water Code. Trash is a pervasive problem in California. Controlling trash is a priority, because trash adversely affects our use of California's waterways. Trash impacts aquatic life in streams, rivers, and the ocean as well as terrestrial species in adjacent riparian and shore areas. Trash, particularly plastics, persists for years. It concentrates organic toxins, entangles and ensnares wildlife, and disrupts feeding when animals mistake plastic for food and ingest it. Additionally, trash creates aesthetic nuisance and reduces the economic value of California's recreation areas including beaches. Additionally, please see Response to Comment 44.1.

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44.3	Furthermore, the State Board would essentially usurp the Constitutional land use authority of local governments as well as the expertise of the Regional Water Boards, which are in a better position to identify priority pollutants and regulate accordingly. State Board staff appears to utilize the compliance approach used in the LA Trash TMDL that was upheld in City of Arcadia v. State Water Resources Control Board but sidesteps the listing and TMDL process entirely.		The Clean Water Act and Porter-Cologne direct the Water Boards to regulate the discharge of pollutants into waters of the United States and waters of the State, respectively. Trash is considered a pollutant and where runoff and storm water transports trash into these waters, it is considered discharge of waste subject to Water Board authority. Trash is a prevalent and controllable priority pollutant across California's surface waters. The Trash Amendments propose to address the impacts of trash to the surface waters in California (with the exception of those waters within the jurisdiction of the Los Angeles Water Board with trash or debris TMDLs that are in effect prior to the effective date of the Trash Amendments) through development of a statewide plan to control trash. The project objective for the proposed Trash Amendments is to provide statewide consistency for the Water Boards' regulatory approach to protect aquatic life and public health beneficial uses, reduce environmental issues associated with trash in state waters, and focus limited resources on high trash generating areas. A central element of the proposed Trash Amendments is a land-use based compliance approach to focus trash controls to the areas with high trash generation rates. Within this land-use based approach, a dual alternative compliance Track approach is proposed for permitted storm water dischargers (i.e., MS4 Phase I, MS4 Phase II, Caltrans, IGP, and CGP) to implement a prohibition of discharge for trash. The implementation provisions would be incorporated to NPDES permits by the permitting authority, either the State Water Board or one of the nine regional water boards. Additionally, the implementation provisions are modeled after existing programs and lessons learned across the state, such as trash and debris TMDLs and the San Francisco Bay MRP.

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44.4	Lastly, while MS4s may transport trash into statewide waterways, the studies cited in Appendix A note that trash is largely a non-point source issue due to storm and wind events. To the extent that the State Board exercises proper authority to require the installation of catch basins to prevent non-point sources of trash, the State Board would act under authority of State Law, not federal law.		Trash is a priority pollutant across California. The absence of an identified impairment does not mean that a water body is not impaired for a certain constituent. Specifically, many water bodies have no data on which to base any impairment decision. Thus the lack of a determination of impairment may not be used as evidence of good water quality. The presence of trash in surface waters, especially coastal and marine waters, is a serious issue in California. Trash discarded on land is frequently transported through storm drains to waterways, shorelines, the seafloor, and the ocean. Statewide and local studies have documented the presence of trash in state waters and the accumulation of land-based trash in the ocean. Street and storm drain trash studies conducted in regions across California have provided insight into the composition and quantity of trash that flows from urban streets into the storm drain system and out to adjacent waters. There are multiple transport mechanisms of trash to state waters from point and non-point sources including storm water transport, direct dumping, and wind-blown. To control trash in surface water from both point and non-point sources, the Trash Amendments propose to implement the water quality objective for trash through a conditional prohibition of discharge of trash directly into waters of the state or where trash may ultimately be deposited into waters of the state. The prohibition of discharge applies to both permitted and non-permitted dischargers. Dischargers would comply with the prohibition as outlined with the plan of implementation when such implementation plan is incorporated into the dischargers' NPDES permits, WDRs, and Waivers of WDRs.

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44.5	The County recommends the approach suggested by San Diego County that the State Board should establish the narrative water quality objective for trash and establish implementation procedures for the water quality objective that are triggered when the water quality objective has been exceeded and the NPDES permit holder has been demonstrated to be a source of trash causing the exceedance. This approach is consistent with the approach taken to regulate all other pollutants in the State, and allows an MS4 to prioritize trash control where its water body is specifically listed for trash.		Please see Response to Comment 6.1.
44.6	The costs for implementation of the proposed Trash Amendments are much higher than estimated by State Board staff. For example, if the City of Irvine were to implement Track 1, full capture devices would be required at 4,600 catch basins (out of 6,423 total). Utilizing the estimated cost from Appendix C: Economic Considerations for the Proposed Amendments to Statewide Water Quality Control Plans to Control Trash of $1,142 per catch basin insert for installation and one year of operations and maintenance, the estimated total cost to implement Track 1 is $5,253,200. This cost estimate results in a cost per capita		Please see Response to Comment 26.9.

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	of $21.65, more than double the $10.50 estimated cost per capita included in the proposed Trash Amendments in Table 13. Operations and maintenance costs would then continue for the life of the device.		
44.7	Furthermore, Permittees subject to the Los Angeles River TMDL have expressed substantial difficulty in reaching full compliance for the final 5% of the catch basins in their city without expending substantial amounts, ranging from $10,000 to $100,000 per catch basin, to completely retrofit the remaining catch basins. Moreover, if the State Board properly exercises its authority over MS4s, it is exercising State authority. The County therefore supports the California Stormwater Quality Association (CASQA) recommendation that the State Board assist with the development of funding sources for Permittees to comply with the proposed Trash Amendments.		See Response to Comment 4.7 and Comment Letter 10.
44.8	MS4 permittees would be considered in full compliance with the prohibition of trash discharge so long as the permittees were fully implementing Track 1 or Track 2. The proposed Trash Amendments, however, are silent on whether meeting the discharge prohibition requirements also means full compliance with		Please see Response to Comments 4.1 and 10.9.

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	receiving water limitations. This creates an ambiguity where a permittee could still be subject to a trash TMDL or could potentially be deemed as not complying with the receiving water limitations section of its permit. The proposed Trash Amendments should be clarified to define compliance accordingly.		
44.9	As was previously stated in the County's May 10, 2013 letter, the definition of "full capture systems" should be refined to specify that the point of compliance is the street level (drain inlet) for catch basin-based BMPs. Additionally, full capture system specifications should be consistent with existing MS4 Permit numeric sizing criteria for structural treatment BMPs. The proposed Los Angeles River Watershed Trash TMDL language provides one example calculation for establishing a flow-based system; however, other MS4 permit numeric sizing criteria should be included as an option. For example, existing MS4 Permit language for Orange County requires that BMPs be sized to treat either: 1) the maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour, for each hour of a storm event; 2) the maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity, as determined from the local historical		Please see Response to Comment 26.6.

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	rainfall record, multiplied by a factor of two; or 3) the maximum flow rate of runoff, as determined from the local historical rainfall record, which achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile hourly rainfall intensity multiplied by a factor of two.		
44.10	The definition of "trash" should be amended to include a size limit of 5mm, consistent with the definition of "full capture systems" that are the basis for compliance for Track 1. State Board staff's rationale for omitting the size limit from the definition is to ensure the prohibition pertains to pre-production plastics and "other materials." There are two problems with this justification: (1) The State Board assumes that pre-production plastics will be adequately and thoroughly addressed by industrial activities via the Industrial General Permit; and, (2) The State Board has not defined "other materials," thereby creating an additional source of trash of unknown composition or origin that must be controlled without an explanation as to which entity would be responsible. Without the inclusion of a size limit in the definition of "trash," MS4 operators could end up liable for pre-production plastics and "other materials" less than 5mm in size that		Please see Response to Comment 20.11.

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	are found within its storm drain system, even if in full compliance with either Track 1 or Track 2.		
44.11	Several municipalities within the County have participated in grant-funded Measure M projects through the Orange County Transportation Authority (OCTA) to install catch basin BMPs. Per Measure M rules, these BMPs must remain in place for at least ten years or the participating municipalities would be required to repay the funding they received. These catch basin BMPs were not designed to meet the definition of a full capture system as outlined by the proposed Trash Amendments; therefore, the municipalities face either non-compliance with the Trash Amendment provisions or the loss of a significant amount of funds due to repayment of their Measure M grant(s). The County requests that either the affected catch basins be exempted from the requirements of the proposed Trash Amendments, or these municipalities be granted an extension to comply with the proposed Trash Amendments at these catch basin locations.		The State Water Board appreciates the work of the County of Orange and the Orange County Flood Control District on the Measure M projects. Existing projects can aid in the achieving compliance in the ten-year time schedule with a head start on projects. However, proposed final Trash Amendments do not have a time extension option. Please see Response to Comment 4.5.
44.12	As currently drafted, the proposed Trash Amendments equate high trash generating areas to priority land use areas, which are defined as		Please see Responses to Comments 10.7 and 12.2.

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	areas developed as high density residential, industrial, commercial, mixed urban, and public transportation stations. State Board staff estimate that this definition of priority land use areas will equate to 2.35% of the Santa Ana Regional Board land area and 1.68% of the San Diego Regional Board land area; however, this is a gross underestimation of the land area that would actually be categorized "priority land uses" in Orange County, per the current definition. For example, the City of Irvine has conducted a GIS analysis of the land use areas in their city and found that 71% of the City's developed area would be considered priority land use areas under the proposed Trash Amendments. This figure is expected to be equal or greater for the majority of the other cities within Orange County, as Irvine ranks 28th in the County for population density, and many of the areas that would be considered priority land use areas are not high trash generating locations. The County recommends that each municipality be allowed to identify the high trash generating locations in their municipal area (a) or, if the priority land use designation is retained, that the definition for high density residential is revised to be consistent with state and local standards (b).		

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44.13	Given that the extent of the proposed Trash Amendments will be much greater than the State Board staff anticipated, the County requests that each municipality be allowed to determine which areas constitute high priority trash generating locations within its jurisdiction. The definition of priority land use areas included in the proposed Trash Amendments is based on a review of trash generation in Los Angeles County, and is not necessarily reflective of conditions in Orange County. Furthermore, MS4 Permittees in Orange County have collected data on catch basin maintenance for over ten years and could easily refer to this data to identify the greatest trash generating areas within their municipal area. This beneficial revision can be accomplished through amending the language on page E-9 regarding authorization of "equivalent alternative land use[s]" to include the following: "An MS4 may request its permitting authority to approve an exemption from treatment controls if that MS4 has areas within its jurisdiction that generate trash at rates that are significantly lower than estimated for the priority land use listed."		Please see Responses to Comments 10.7 and 12.2.
44.14	Although State Board staff cite the Governor's Office of Planning and		The definition for high density residential is not uniform across the state. Based on the feedback from the Focused

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	Research 2003 General Plan Guidelines as an "example of the dwelling unit standards used in local general plans" at 15-30 units per acre, high density residential is defined in the proposed Trash Amendments as "all land uses with at least ten (10) developed dwelling units/acre." The most prevalent standard for high density residential in Orange County is nearly double that of the proposed Trash Amendments, at 18 units per acre. The County recommends that the definition for high density residential be amended in one of the following three ways: (1) allow each municipality to use the definition of high density residential included in their General Plan; (2) revise the definition of high density residential in the proposed Trash Amendments so that it is consistent with the Governor's Office of Planning and Research 2003 General Plan Guidelines at 15 units per acre; or (3) replace high density residential with multi-family residential in the definition of priority land use areas.		Stakeholder Meetings, 10 *developed* dwelling units per acre was agreed to be appropriate. The permitting authority may additionally allow for flexibility to the permittee General Plan definition as long as there is not a substantial decrease in the area that requires trash controls through the "equivalent alternate land use" provision. (See Ocean Plan Amendment and Part I ISWEBE definition for "priority land uses" and "equivalent alternate land uses.")
44.15	Orange County Permittees in Region 9- San Diego will be required in 2015 to identify the highest priority water quality conditions within each watershed and develop strategies to address those priority areas and pollutants. The County has already determined bacteria, nutrients, and		Please see Response to Comment 11.9.

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	toxicity to be the top pollutants of concern in both Region 8 and Region 9. Requiring trash capture within catch basins under Track 1 will create a system-wide repository of organic debris within the drainage that will likely function as a source of bacteria and nutrients in both dry and wet weather. The proposed Trash Amendments, as currently drafted, would effectively have trash supersede these top pollutants of concern and, indeed, likely confound efforts to address the highest priority water quality conditions as required by MS4 permits. The County strongly recommends that a mechanism be included in the proposed Trash Amendments to allow for watershed planning efforts to continue unimpeded, with trash being among the pollutants that are considered and prioritized as part of these efforts, but not necessarily the top priority if data does not support it as such. Allowing Permittees to identify which areas in their municipal area are truly high trash generating locations, as recommended in comment 8a, would be one way in which the proposed Trash Amendments could be supportive of watershed planning efforts.		

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44.16	It is unclear how the equivalency of Track 2 to Track 1 would be demonstrated, given that the level of trash removed through Track 1 would not be known if implementing Track 2. If the monitoring that is required for Track 2 is essentially infeasible, then there is only really a Track 1, which is problematic for Orange County (see prior comments). The County strongly recommends that this requirement be removed and that the proposed Trash Amendments be reframed to make Track 2 a truly equivalent option, particularly for municipalities required by permit to develop strategies to address priority areas and pollutants at a watershed scale.		Please see Response to Comment 16.3.
44.17	The County is supportive of the option to extend the compliance time by up to three years for implementing regulatory source controls and requests that the time extensions also be granted to those municipalities that have proactively implemented regulatory source controls such as the Cities of Huntington Beach and Laguna Beach, which have implemented bans on single-use plastic bags, and the City of Dana Point, which has implemented bans on both single-use plastic bags and Styrofoam.		Please see Response to Comment 4.5.

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44.18	As presented, the proposed Trash Amendments would only allow for devices certified by the Los Angeles Water Board to be considered as full capture devices at the time of adoption. Thousands of devices currently installed and removing trash in the State would not be certified. The proposed Trash Amendments should provide a process for non-approved devices to be considered certified as full capture if also certified by the San Francisco Water Board and a significant transition period for non-conforming devices to be replaced beyond the 15 year compliance deadline.		Please see Response to Comment 4.3.
44.19	We also support the recommendation of CASQA that the State Board create a list of certified devices prior to the adoption of the proposed Trash Amendments and establish a streamlined process to approve future devices.		Please see Response to Comment 10.5.
45.1	We support the use of the narrative water quality objective as proposed, which provides a clear, concise definition from which the County of San Diego can prioritize management decisions. As proposed, the State Board has provided incentives for jurisdictions to develop innovative approaches to regulatory compliance. Furthermore, the County of San Diego supports		Comment noted. Trash is a prevalent and priority pollutant across California. The Trash Amendments propose to provide both statewide consistency and flexibility to protect the beneficial uses of surface waters from trash impairments.

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	the use of priority land uses as a means to identify implementation areas for trash control measures. Still, additional local flexibility is needed so that local resources are used wisely to solve "real" problems, not perceived problems.		
45.2	Given the lack of justification that trash is a problem in all waters, the County of San Diego proposes the following approach for the Proposed Trash Amendments: 1. Establish the proposed narrative water quality objective. 2. Establish implementation procedures for the water quality objective that are triggered when the water quality objective is exceeded or the water body is found to be impaired by trash. 3. Specify that permit conditions consistent with the implementation procedures will be established in NPDES permits only when the water quality objective has been exceeded and the NPDES permit holder has been identified as the source. We feel this approach would be consistent with the approach that is utilized to regulate all other pollutants in the State and still provide for statewide consistency in addressing trash where it is identified as being a problem. We request that the Proposed Trash Amendments be modified to reflect this approach.		Please see Responses to Comments 10.7 and 44.1.

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45.3	The County of San Diego conservatively estimates that the proposed new requirements reflected in the Proposed Trash Amendments would impose a cost burden on local taxpayers in our County of between $2.7 and $4.95M. This cost is in addition to the billions of dollars in the region in unfunded mandates created by the Bacteria TMDL provisions in the recently adopted MS4 Permit (R9-2013-0001). Other public entity co permittees statewide would incur similar unfunded costs imposed by the policy. In order to consider supporting all of the requirements set forth in the new policy, the County of San Diego urges the State Water Resources Control Board to first identify a reliable funding source to reimburse local jurisdictions for the cost of the new requirements, as mandated by the California Constitution.		Please see Responses to Comments 10.4 and 29.4.
45.4	The County of San Diego recommends adding language to the Proposed Trash Amendments indicating the permittees are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2.		Please see Response to Comments 4.1 and 10.9.

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45.5	The County of San Diego recommends including language after Chapter IV.B.3.a of the ISWEBE Plan and Chapter III.L.2.a of the Ocean Plan that states: A MS4 Permittee may request that compliance requirements for trash be established through a watershed prioritization and planning process outlined in MS4 permit requirements. This prioritization process would allow for evaluation of the trash in the context of other watershed priorities and provide a mechanism for modifying or reducing the requirements for compliance in accordance with the procedures outlined in the MS4 permit and an approved watershed plan. Through this process, monitoring data could be utilized to demonstrate that trash controls are not necessary for all priority land uses.		Please see Response to Comment 11.9.
45.6	The County of San Diego recommends adding language to Chapter IV.B.3.a.(1) /IV.B.3.a.(2) of the ISWEBE Plan and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the Ocean Plan, stating that permittees must address catchment areas where the priority land uses are greater than 25% of the total catchment area.	(1) Track 1: Install, operate, and maintain full capture systems in their jurisdictions for all storm drains that captures runoff in catchment areas where from one or more of the priority land uses comprise >25% of the land area in the catchment in their jurisdictions; or	Please see Response to Comment 11.4.

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		(2) Track 2: Install, operate, and maintain any combination of full capture systems, other treatment controls, institutional controls, and/or multi-benefit projects within either the jurisdiction of the MS4 permittee or within the jurisdiction of the MS4 permittee and contiguous MS4s permittees. So long as such combination achieves the same performance results as compliance under track 1 would achieve for all storm drains that captures runoff in catchment areas where from one or more of the priority land uses comprise >25% of the land area within the catchment within such jurisdiction(s).	

Comment Letter	Comment	Recommended Language	Response
45.7	Modify language in Section III.L.2. (Ocean Plan) and IV.B.3 (ISWEBE Plan) by adding Section III.L.2.e and IV.B.3.e, respectively, as follows:	A regulated MS4 may determine that areas within priority land uses do not generate trash that accumulates in state waters (or in areas adjacent to state waters) in amounts that would either adversely affect beneficial uses. or cause nuisance. In the event that the regulated MS4 identifies such areas and is able to provide data supporting the finding. the permitting authority may waive the requirement for the MS4 to comply with Chapter III.L.2.a/IV.B.3.a with respect to the identified locations. The regulated MS4 shall submit documentation of the continued condition with annual reports as required under Section III.L.6/IV.B.7.	Please see Responses to Comments 10.1 and 10.7.
45.8	Modify the Chapter reference in Part (6) of the Priority Land Uses definition as such: ...comply under Chapter IV.B.3.a.1 and Chapter IV.B.3.a.2.		Please see Response to Comment 4.4.

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45.9	Modify the Chapter reference in Part (6) of the Priority Land Uses definition as such: ...comply under Chapter III.JL.2.a.1 and Chapter III.L.2.a.2.		Comment noted. This has been revised. See Ocean Plan Amendment and Part 1 ISEWBE Plan definition for "equivalent alternate land uses" within "priority land uses".
45.10	The County of San Diego recommends adding language to the Proposed Trash Amendments requiring a permitting authority to consider revisions to the final compliance date of the Proposed Trash Amendments if new priority land uses are added during the duration of the compliance period.		Please see Response to Comment 10.8.
45.11	The County of San Diego recommends the State Water Board revise the language in the Proposed Trash Amendments (Chapter IV.B.7.b and Chapter III.L.6.b of the ISWEBE Plan and Ocean Plan, respectively) to allow for more flexibility in determining Track 2 performance and to remove the requirement for receiving water trash monitoring.		Please see Response to Comment 4.6.
45.12	The County of San Diego recommends the removal of the standard of equivalency for Track 2 from the Proposed Trash Amendments. Instead, allow permittees to propose a readily achievable and practical way that will indicate compliance with the policy for drainages without full-capture devices.		Please see Response to Comment 16.3.

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45.13	The County of San Diego recommends including language in the Proposed Trash Amendments to clarify that existing trash controls can be considered as contributing to compliance with the Trash Amendments.		Please see Responses to Comments 10.1 and 10.7.
45.14	The County of San Diego recommends that language should be included in the Proposed Trash Amendments stating that if the requirements in the Proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully implemented.		Please see Response to Comment 10.10.
45.15	For the ISWEBE Plan, all references to Chapter IV.C.3, Chapter IV.C.3.a, or Chapter IV.C.3.b should be revised to Chapter IV.B.3, Chapter IV.B.3.a., and Chapter IV.B.3.b, respectively.		See Response to Comment 11.13.
45.16	The County of San Diego recommends excluding isolated rural communities that are not contiguous to urbanized communities from the requirements of the Proposed Trash Amendments by adding a footnote to the sentence in Chapter IV.B.3.a/Chapter III.L.2.a of the ISWEBE Plan and Ocean Plan, respectively stating:	Priority Land Uses contained within isolated rural communities are exempt from the requirements of Chapter IV.B.3.a.(1) and (2)/Chapter III.L.2.a.(1) and (2).	Trash is a priority pollutant across California impairing the beneficial uses of surface waters. This is not limited by community type, e.g., rural or urban. The State Water Board agrees that rural communities might contribute less trash than urban communities due to population size; however, the State Water Board does not consider the recommended language to be necessary. The implementation provisions of the proposed Trash Amendments are aimed to focus trash controls on five priority land uses. A rural community covered by a MS4 permit would comply with the prohibition of discharge via Track 1 or Track 2 to the extent that there are priority land uses in its jurisdiction.

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45.17	Alternatively, a pathway should be included that allows these isolated communities to opt out with local Regional Board approval. This could be accomplished by modifying language in Section IV.B.3 (ISWEBE Plan) and III.L.2. (Ocean Plan) by adding Section IV.B.3.e and III.L.2.e, respectively, as follows:	e. A regulated MS4 may determine that areas within priority land uses do not generate trash that accumulates in state waters (or in areas adjacent to state waters) in amounts that would either adversely affect beneficial uses. or cause nuisance. In the event that the regulated MS4 identifies such areas and is able to provide data supporting the finding. the permitting authority may waive the requirement for the MS4 to comply with Chapter IV.B.3.a/III.L.2.a with respect to the identified locations. The regulated MS4 shall submit documentation of the continued condition with annual reports as required under Section IV.B. 7/III.L.6.	Please see Responses to Comments 10.1 and 10.7.

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45.18	The County of San Diego recommends clarifying that the discharge prohibition is not applicable to all industrial dischargers by modifying Chapter IV.B.3.c/Chapter III.L.2.c of the ISWEBE Plan and Ocean Plan as follows:	Dischargers that are subject to NPDES permits for discharges of storm water associated with industrial activity (including construction activity) that relate to the manufacture of preproduction plastics. transporters of preproduction plastics. And manufacturers that use preproduction plastics in the manufacture of other products shall be required.	Please see Response to Comment 12.3.
46.1	The county is in full support of the comments provided by the California Stormwater Quality Association (CASQA) in their August 2014 letter and we strongly encourage the State Water Board to incorporate their suggestions into the final version of the Trash Amendments.		Comment noted. Please see Responses to Comments 10.1-10.12.
46.2	Concerned about our ability to fund installation of trash capture devices with the ten year timeframe. Request that the State Water Board develop at funding source for permittees.		Please see Response to Comment 10.4.

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47.1	The County does encourage the SWRCB to conduct a thorough CEQA review that evaluates the environmental justice aspects of the trash amendments.		California Environmental Quality Act (CEQA), the State Water Board's certified regulatory program, and regulations for implementing CEQA do not require an analysis of how the State Water Board's proposed project would create environmental impacts that are disproportionate to low income or minority populations (often referred to as an "environmental justice analysis"). However, the State Water Board does consider these issues where there is information on the record that there may be environmental impacts that disproportionately affect environmental justice communities. The project would apply to "priority land uses" throughout California, applicable without regard to income levels or population diversity, and there is no information on the record to support that the Trash Amendments would have a disproportionate effect on environmental justice communities.
47.2	The County encourages the SWRCB to support and enforce source controls statewide through existing NPDES permits, and to support statewide legislation or regulation of recognized problem materials such as cigarettes, single-use plastic bags, and Styrofoam food packaging. We feel that these types of source controls would be far more effective and efficient than requiring local agencies to construct and maintain expensive treatment best management practices (BMPs).		Please see Response to Comment 4.5.

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47.3	The County is also concerned about the effect the proposed trash amendments may have on rural communities. Rural towns have commercial areas that would fall under the proposed trash amendments. These rural communities have limited resources available to fund programs, and there is not a reasonable return on investment for these small communities to implement extensive trash controls. Based on their local planning processes, addressing issues such as the provision of safe and affordable drinking water or other local priorities may be the best use of their limited resources. The County therefore recommends that the State exempt rural areas from the trash amendments that are not directly contiguous to urbanized areas.		Please see Response to Comment 45.16.
47.4	The draft amendments provide for two tracks for achieving compliance. However, Track 1 appears to be the only viable option, as there is no effective means by which a community could verify that any selected combination of controls would achieve the same performance as full capture. Any community adopting Track 2 would be placing itself at risk of subjective compliance actions by the State or at risk of third party lawsuits.		Please see Response to Comment 16.3.

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	Recommend eliminating the monitoring requirement for Track 2, and substitute an annual plan demonstrating compliance with a State-approved implementation plan.		
47.5	The draft trash amendment claims that this change is necessary to promote consistency throughout the state.		Comment noted. With 73 water bodies on California's 2008-2010 section 303(d) list of impaired waters for trash or debris, statewide consistency is necessary. The proposed Trash Amendments will provide statewide constituency to protect aquatic life and public health beneficial uses, and reduce environmental issues associated with trash.
47.6	The existing NPDES permits already contain provisions for the control of trash.		Existing NPDES permits do have provisions for the control of trash; however, trash continues to be discharged impairing the beneficial uses of California's surface waters.
47.7	The draft amendments would require full capture systems, which are to be designed to capture all trash 5mm and larger in size. However we have seen no documentation verifying that this goal is achievable nor does this goal truly address the issue of micro-debris.		The Trash Amendments propose a dual alternative compliance approach or 'tracks' allowing for the wide range of trash control methods to be implemented by a permittee to reduce trash and comply with the prohibition of discharge for trash. Full capture systems are just one of the reasonably foreseeable means of compliance. The Trash Amendments address micro-debris in two main ways. First, by capturing and stopping the transport of trash before entering the storm drain systems, minimizing the amount of breakdown that occurs. Second, the Trash Amendments propose a prohibition of discharge for preproduction plastics to waters of the state. Together these will reduce the amount of micro-debris in the surface waters of California. Please see Response to Comment 6.13. (See Final Staff Report Section 4.1 and 4.4.)

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47.8	The staff report referred frequently to the findings of the National Resources Defense Council (NRDC) Report prepared by Kier Associates. However, the cost estimates provided in Appendix C of the staff report do not accurately reflect the findings of that report.		The State Water Board used the findings in the NRDC study to establish a baseline of current cost (before the implementation of the Trash Amendments), so the incremental cost from current expenditures could be determined. The NRDC study identified that the current average cost per capita per year was $10.71. The Economic Considerations analysis estimates that between $2.93 and $7.77 more per resident might need to be spent each year for the next ten years to implement the Trash Amendments. (See Final Staff Report Appendix C.)
47.9	Not all the communities in the NRDC survey have fully integrated the BMPs necessary to satisfy the proposed trash amendment		The NRDC study did not include every community regulated under Municipal Stormwater Program. The data from the NRDC study was used to establish a baseline of current expenditures based on population size of each community. The State Water Board then compared the average current expenditures with the incremental expenditures that would be necessary to comply with the proposed Trash Amendments. The State Water Board took into account those communities that are already implementing actions to comply and also those that would need to take necessary actions to comply with the proposed Trash Amendments.
47.10	Communities in San Diego and Los Angeles areas that are currently implementing trash BMPs spend from $23.42 to $71.22 per capita annually		The State Water Board used the information from the Los Angeles Region as a baseline for the level of expenditures required to comply with the proposed Trash Amendments. The cost information was adjusted based on the unique characteristics in the Los Angeles Region regarding population density and priority land uses areas. Table 7 in Appendix C (page C-18) shows that the cost on trash controls in the Los Angeles Region ranges, on average, from $7.79 to $29.84 per capita per year.
47.11	According to the NRDC report, the average per capita spending within small communities with fewer than 15,000 citizens was nearly double the per capita spending within large communities.		The State Water Board agrees. In the Economic Considerations section of the Draft Staff Report, the average per capita cost for communities outside Los Angeles Region (see table 6 page C-17) was separated and compared with the average per capita cost for communities within the Los Angeles Region (see Table 7 page C-18).

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47.12	The NRDC report also noted that the actual total cost is certainly higher than reported, as the study did not assess expenses incurred by counties or state agencies, nor did it include costs for monitoring and reporting.		Comment noted. On page Appendix C-10, a set of limitations and uncertainties of the analysis that were estimated using two separate methods reaching different (but similar) results were included in the Economic Considerations.
47.13	The staff report does not take into account that costs of compliance will not be spread across the entire population of a rural, Phase II community. Only drainage districts that have high-density areas will have to retrofit their storm drain systems, so only those affected property owners would bear the expense of a retrofit.		The economic analysis utilized two basic methods to estimate the incremental cost of compliance for permitted storm water discharge: the first method was based on cost of compliance per capita, and the second method was based on land cover. At statewide view, the economic analysis did not cover the specifics of each drainage district. Overall, the economic analysis estimated the incremental annual cost to comply with the requirements of the proposed Trash Amendments ranged from $4 to $10.67 per year per capita for MS4 Phase I NPDES permittees and from $7.77 to $7.91 per year per capita for smaller communities regulated under MS4 Phase II permits.
47.14	The staff report does not discuss how communities are supposed to fund the mandatory retrofit. Phase II communities would have a difficult time raising funds under existing Proposition 218 requirements. Additionally, the draft trash amendments do not consider the financial limitations of economically challenged communities.		The State Water Board disagrees that the Trash Amendments require mandatory retrofits. Please see Response to Comment 10.4.
47.15	Retrofitting existing high trash volume areas would be technically infeasible in many developed areas due to localized flooding issues: a. Roadway storm drain inlets are built to accommodate design flows without flooding the adjacent		The proposed Trash Amendments do not specify the need for retrofitting. The dual alternative compliance approach or 'tracks' allow for a wide range of trash control methods to be implemented by a permittee to reduce trash and comply with the prohibition of discharge of trash. Additionally, with proper operation and maintenance, full capture systems should not result in localized flooding.

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	roadways. The inexpensive retrofit options of installing trash racks, screens, or inserts would reduce the flow capacity of the storm drain system, leading to localized flooding and a threat to public safety; b. Existing, fully developed commercial or high-density residential neighborhoods will not have sufficient open space to install infiltration basins, detention basins, or trash nets.		
47.16	Some BMPs, such as the Gross Solids Removal Devices, have high vandalism rates that are not mentioned in the staff report.		The potential vandalism of full capture systems is discussed in the Aesthetics Section of Appendix B of the proposed Final Staff Report on pages B-2-4.
47.17	The County also recommends that the SWRCB investigate statewide funding sources for water quality controls. For example, pursuant to the California Health and Safety Code Section 25299.41, the state charges a special maintenance fee on underground storage tanks; this fee is due to sunset within the next year. The SWRCB should consider repurposing this special tax for purpose of providing financial assistance to communities for installation of permanent BMPs.		Comment noted. The State Water Board appreciates this suggestion; however, repurposing special maintenance fee on underground storage tanks is outside of the scope of these Trash Amendments.
48.1	The Dart Container Corporation of California's letter includes a number of reasons why they oppose regulatory source controls, specifically product bans. These objections include generally include		Please see General Response to Comment Letter 1 and Comment 1.3. Commenter's concerns relate to regulatory source controls and time extensions which have been removed from the proposed Final Trash Amendments. (Ocean Plan Amendment at removed III.L.5; Part I ISWEBE at removed IV.A.6) Based on the revisions and discussions in the

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	the following • Product bans are ineffective at reducing trash • Foam is environmentally and economically beneficial • The Trash Amendments encourage and rely on product bans. • The Trash Amendments fail to account for the substitution effect. • The Trash Amendments fail to account for the potential unintended environmental and economic consequences of bans. • Product bans violate laws such as equal protection and due process, the Clean Water Act and Porter Cologne. • The Trash Amendments exceed the state board's authority under the Water Code.		referenced responses, commenter's underlying arguments are not applicable to the Trash Amendments which will be considered for adoption by the State Water Board and they will not be responded to in detail.
48.2	Violates the California Environmental Quality Act. Bans can have significant environmental impacts. Yet the staff report fails to analyze these impacts, alternatives to Track 2 that do not encourage product bans, or mitigation measures.		Please see General Response to Comment Letter 1 and Responses to Comments 1.1 and 1.3.
48.3	Violates the Clean Water Act. By allowing MS4 permittees to rely on bans of polystyrene foam and other materials,, the trash amendments violate the "maximum extent practicable" standard that the Clean		Please see Responses to Comments 1.1, 1.2, 1.3, General Response to Comment Letter 1, 4.6, and 29.4. Commenter's primary objection concerning the application of the "maximum extent practicable standard" relates to product

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	Water Act imposes on MS4 permittees. The Trash Amendment's establishment of a new water quality objective for trash violates the antidegradation policy because basin plans contain water quality objectives that prohibit floatable, suspendable, and settleable material. To the extent that the trash amendments would allow such materials to enter the receiving waters as a result of ineffective regulatory source controls that the trash amendments encourage, the amendments relax the existing water quality objectives. The trash amendments also fail to require adequate monitoring of the effectiveness of Track 2.		bans. Based on discussion contained in the above-referenced responses to comments, commenter's underlying arguments are not applicable to the Trash Amendments which will be considered for adoption by the Board and they will not be responded to in detail. But see also Response to Comment 29.4. The Trash Amendments' establishment of a statewide narrative water quality objective does not violate the State or federal antidegradation policy. A water quality standards revision must comply with the state and federal antidegradation policy. The proposed Trash Amendments establish a specific statewide narrative water quality objective for "trash." The proposed statewide objective for trash is: "Trash shall not be present in ocean waters, along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance" and "Trash shall not be present in inland surface waters, enclosed bays, estuaries, and along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance." (Ocean Plan Amendment at II.C.5; Part I ISWEBE at III.A.) "Trash" is defined as "improperly discarded solid material from any production, manufacturing, or processing operation including, but not limited to, products, product packaging, or containers constructed of plastic, steel, aluminum, glass, paper, or other synthetic or natural materials." (Ocean Plan Amendment and Part I ISWEBE definition of "trash.") The proposed statewide objective for trash supplements the existing narrative water quality objectives pertaining to "floating materials," "suspended material," and "settleable material" and does not replace them. Nowhere do the Trash Amendments provide that the water quality objective for trash substitutes or takes the place of existing water quality objectives established for "floating materials," "suspended material," and "settleable material." Additionally, the basin plans for the North Coast, San Francisco Bay, Central Coast, Los Angeles, Central Valley

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			(Sacramento and San Joaquin Basins and Tulare Lake Basin), Santa Ana, Colorado River, Lahanton, San Diego Regional Water Boards, virtually all prohibit the presence of "floating materials," "suspended material," and "settleable material" in concentrations that would adversely affect beneficial uses or cause nuisance. The statewide trash objective utilizes the same standard. In any case, because the existing and proposed objectives are distinct, the Water Board's implementation and enforcement of the prohibition of discharge of trash to implement the statewide trash objective will not relax the existing water quality objectives pertaining to "floating materials," "suspended material," and "settleable material." The existing objectives for pertaining to "floating materials," "suspended material," and "settleable material" remain in effect. The Trash Amendments require adequate monitoring. The Amendments (Ocean Plan Amendment at III.L.5.b; Part I ISWEBE at IV.A.4.b) requires that permittees implementing Track 2 shall "develop and implement monitoring plans that demonstrate the effectiveness of the full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls, and compliance with full capture system equivalency". In addition, the proposed Final Trash Amendments include additional language to elaborate on how a municipality could demonstrate full capture system equivalency, including two examples. (See Ocean Plan Amendments and Part I ISWEBE definition for "full capture system equivalency.")
48.4	Violates the Water Code section 13241 because the staff report does not consider the costs of regulatory source controls such as product bans, which will place substantial economic burden on local business, individuals, and government agencies (including schools).		Please see General Response to Comment Letter 1 and Response to Comment 1.3. Commenter's concerns relate to regulatory source controls (product bans) and time extensions which have been removed from the proposed Final Trash Amendments. (Ocean Plan Amendment at III.L.5; Part I ISWEBE at IV.A.6.) Based on the revisions and discussions in the referenced responses, commenter's underlying arguments are not applicable to the Trash Amendments which will be considered for adoption by the Board and they will not be

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	Violates Water Code section 13242 because Bans of polystyrene foam are not "appropriate" and "necessary" and does not meet the requirement for effective compliance monitoring.		responded to in detail. Regarding Water Code Section 13241, that statute requires the Water Board to consider a number of factors when establishing a water quality objective, including "economic considerations." The Final Staff Report's discussion fulfills the requirements of section 13241. (See Final Staff Report at Section 9.) Specifically to the commenter's footnote 52 in their letter, which refers to footnote 9, which contains reference to EXHIBITS 5 and 6 of the commenter letter, the State Water Board considered the analysis of the cost of banning polystyrene food and beverage containers in California in regards to this comment. However, under state law the State Water Board does not conduct cost-benefit analysis and EXHIBITS 5 and 6 specifically relate to regulatory source controls (product bans) and time extensions which have been removed from the proposed Final Trash Amendments. As these elements have been removed, modifying the Economic Analysis in Appendix C is unnecessary. Regarding Commenter's Water Code Section 13242 objection, commenter asserts product bans are not necessary or appropriate and therefore violate the statute. Product bans are no longer a part of the Trash Amendments and are beyond the scope of the State Water Board's consideration of adopting same.
48.5	The proposed trash amendments improperly assert product regulatory authority. The State Board's mandate to protect water quality does not include general authority to regulate products or individual consumer choices or individual actions before a discharge occurs or before a particular product becomes		Regulatory source controls have been omitted from the final proposed Trash Amendments. Please see response to General Response to Comment Letter 1 and Responses to Comments 1.3 and 48.1. Additionally, with the Trash Amendments' continued inclusion of institutional controls, which include "ordinances," the State Water Board is not regulating individual consumer choices or

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	a "waste." By encouraging bans, the State Board is exceeding its authority.		individual actions. Each permittee may elect which particular type of trash nonstructural treatments controls to implement to control trash within its jurisdiction. (Ocean Plan Amendment at III.L.2; Part I ISWEBE at IV.A.3.) Institutional source controls may include street sweeping, sidewalk trash bins, collection of the trash, antilitter educational and outreach programs, and ordinances. The State Water Board is properly regulating the discharge of pollutants through the establishment of the prohibition and implementation elements related to the prohibition of trash. (Ocean Plan Amendment at III.I.6 and III.L.1-3; Part I ISWEBE at IV.A.1-4.)
48.6	Track 2 should explicitly disallow MS4 permittees from relying on measures that the data show are ineffective to reduce trash in the receiving waters, including polystyrene foam bans.		Please see response to General Response to Comment Letter 1 and Comment 1.3. Commenter's objection relates to product bans and, as explained in the referenced responses to comments, product bans are no longer a component of the Trash Amendments which will be considered for adoption by the Board and they will not be responded to in detail.
48.7	Track 2 should have a certification process for non-structural best management practices. Before MS4 permittees rely on such BMPs, the State Water Board should certify them as effective, based on substantial evidence developed in a public process with opportunity for comment.		The State Water Board agrees that both treatment and institutional controls must be effective at controlling and reducing trash. However, the State Water Board is only undertaking a certification process for full capture systems. Additionally, a permittee that elects to comply with the Trash Amendments under Track 2 are required to submit an implementation plan which must describe the combination of controls selected by the permittee and the rationale for the selection, how the combination of controls is designed to achieve full capture system equivalency, and how full capture system equivalency will be demonstrated. (Ocean Plan Amendment at III.L.4.a.1; Part I ISWEBE at IV.A.5.a.1.)

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48.8	Track 2 should be revised to include adequate monitoring to determine that such non-structural BMPs are effective and that trash is being reduced in the receiving waters.		See Responses to Comments 6.2 and 48.7. Additionally, monitoring for Track 2 controls focuses on accessing the effectiveness of trash controls and compliance with full capture system equivalency. Therefore, the permittee implementing the institutional controls outlined in the implementation plan must demonstrate the plan being implemented, or the total combination of controls, is effective at achieving full capture system equivalency. The State Water Board is supportive of the Proposition 84 Grant funded Tracking California's Trash Project, as State Water Board staff are on the technical advisory group, to focus on monitoring the effectiveness of institutional controls. The State Water Board sees this project as providing institutional trash monitoring guidance to support the flexibility provided in the monitoring and reporting provisions of the Trash Amendments.
48.9	The staff report fails to provide sufficient information regarding the cost effectiveness of any of the institutional controls it recommends.		Please see Response to Comment 29.4. Additionally, regarding Water Code Section 13241, that statute requires the Water Board to consider of a number of factors when establishing a water quality objective, including "economic considerations." Such consideration does not require consideration of cost effectiveness or cost benefit analysis concerning reasonably foreseeable methods of compliance. The Final Staff Report's discussion fulfills the requirements of Section 13241. (See Final Staff Report at Section 9.) In any case, the Economic Considerations in Appendix C provides a summary overview of the costs associated with

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			reasonably foreseeable means of compliance that permittees may select to be in compliance with the Trash Amendments. The economic analysis was conducted at the macro level to assess the estimated overall impact of the Trash Amendments and provides gross average estimates of the cost per capita and the cost per acre based on specific cost assumptions. The economic analysis set forth the costs associated to implement Track 1, to which each permittee subject to the dual approach may implement, complying with Track 2 requires the permittee to develop an approach or approaches to demonstrate full capture system equivalency (e.g., the trash load that would be reduced if full capture systems were installed, operated, and maintained for all storm drains that capture runoff from the relevant areas of land). Beyond this general assertion in the introductory text, the commenter has not elaborated on what part of the economic analysis is deficient, except to note that the costs of implementing a product ban were not considered. As noted in the General Response to Comment Letter 1 and the response to comment 1.3, product bans, and associated incentives have been removed from the amended policy removing any need to consider those costs.
49.1	The Port of Stockton is already doing many things to address stormwater quality, including trash reduction. The Port currently spends approximately $900,000 annually on its stormwater quality and surface water protection programs. The Port has no additional funds to spend on addressing trash and no additional financial resources are warranted since, because of the controls and programs already in place, trash is not a problem at the Port. If these Trash Amendments are adopted, the Port may have to reduce its efforts in other areas in order to focus on		Trash is a priority pollutant across California. While the State Water Board is supportive of the Port of Stockton's storm water quality and surface water protection programs, these programs should include trash as a priority pollutant. The State Water Board disagrees that efforts will need to be reduced from other programs in order to address the discharge of trash. There are numerous treatment and institutional controls for trash that also address other pollutants.

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	these unneeded requirements.		
49.2	The Trash Amendments will unnecessarily re-prioritize where the Port and other MS4 and industries are forced to focus their limited financial resources. While trash can be a severe localized problem, particularly at beaches that drain large watersheds, trash is not a problem for 98% of the state. Further, there are no waters in the Central Valley Region listed as impaired for trash. The Port believes that limited public dollars should not be focused on an issue that is not a problem everywhere. Where problems do not exist, the policy or statewide plan cannot be "deemed essential by the State Board for water quality control." Water Code §131452(c).		Please see Responses to Comments 10.6, 10.7, and 44.1.
49.3	Statewide consistency, while potentially a laudable goal, is not how our state water quality laws were envisioned. Instead, California was split into 9 distinct geographical regions, each of which may have differing water quality issues and priorities. The State Water Board should respect those differences and not superimpose "priorities," especially costly and unnecessary ones that usurp local watershed programs' priorities. Such an action by the State Water Board would be contrary to Water Code Section		Please see Responses to Comments 10.7 and 44.1.

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	132250), which encourages "coordinated regional planning and action for water quality control." (Emphasis added.) Furthermore, the proposed Trash Amendments, as drafted, fail to ensure statewide consistency because certain areas (parts of Los Angeles area under Trash TMDLs and combined sewer systems) are excluded from coverage. (See e.g., Trash Amendments, Draft Staff Report at pp. C-17, C-23, C-50.) Recommendation: For these reasons, the plan should be modified to either adopt the "No Project" alternative and continue to allow regional control over regulating trash, or to narrow the scope to just adopting a consistent statewide narrative water quality objective that would be implemented with current permits and with TMDLs, as needed, when impairments are demonstrated to exist.		
49.4	Little to no evidence was presented in the Trash Amendments that trash from construction and industrial sites represents more than a fraction of a percent of the trash statewide. Moreover, construction sites are mostly temporary and individually do not qualify as a long-term source of trash, even if trash were to leave a site. The Port has many tenants covered by the Construction and Industrial General Storm Water		Dischargers enrolled under the Construction General Permit (CGP) are already required to comply with a prohibition to discharge debris and trash from construction sites (State Board Action 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ. Prohibition III. D. page 21). The Trash Amendments are not intended to require additional trash control provisions for CGP permittees. The State Water Board believes that trash is a controllable pollutant for dischargers enrolled under the Industrial General Permit. Please see Responses to Comments 5.1, 5.2, and 6.4.

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	Permits and does not want to lose more tenants to another state that does not impose such stringent and seemingly unnecessary requirements on their businesses. Many of the Port's tenants have already suffered from citizen suits, trying to enforce the requirements of the industrial general permit. Adding explicit trash requirements may increase these suits where trash is found that could be alleged to have left that property. In addition, many of these sites do not have drain inlets, and cannot comply with the full capture track, thereby forcing them into additional work and monitoring when, again, there is no indication of a trash issue. Although the cost estimates for compliance for these sites seems relatively small (e.g., less than $4000 per facility)(Draft Staff Report at C-48), those cost estimates may not be accurate and many small companies may not be able to absorb this additional cost on top of the cost of all of the new requirements under the State Water Board's new industrial general permit set to be effective in July of2015. Recommendation: For these reasons, the Port urges, at the very least, the adoption of an option not including industrial and construction permittees, or any other permittee that can demonstrate no trash		

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	problem exists.		
49.5	The Trash Amendments seemed to lack information on the actual cost, impacts, and effectiveness of similar programs. The Los Angeles area trash controls under the various TMDLs have been in place for over a decade. The Port was disappointed not to see a clear analysis of the actual cost and impacts (both environmental and economic) of these programs, as compared to the estimates provided in the TMDLs, to determine if the initial estimates were accurate. In addition, there should have been some analysis of the effectiveness of the programs. For the hundreds of millions of dollars expended, has trash been completely eradicated from those areas, reduced slightly, or is no progress really noticeable? These are the types of analyses that need to be conducted prior to adopting another duplicative program. These analyses would also improve the impacts analysis presented as required under the California Environmental Quality Act ("CEQA") since the currently included analyses do not seem to capture all possible impacts, or their extent.		Under the requirements of Water Code sections 13170 and 13241, subdivision (d) the State Water Board is required to consider economics when establishing water quality objectives. Appendix C of the Draft Staff Report includes an extensive economic analysis that provides a consideration of potential costs for a suite of reasonably foreseeable measures to comply with the proposed Trash Amendments. This economic analysis utilized two basic methods to estimate the incremental cost of compliance for permitted storm water discharges: the first method was based on cost of compliance per capita, and the second method was based on land cover. There is a comparison of the cost for trash and debris TMDLs in the Los Angeles and the proposed final Trash Amendments on pages C19-21 of the proposed final Staff Report. For additional discussion on Water Code section 13241, please see Response to Comment 29.4.
49.6	The proposed Trash Amendment recommends the installation and operation of full capture devices that capture all debris (including natural		The State Water Board agrees that flooding is a potential hazard when filters or screens become blocked by trash and debris preventing the discharge of storm water into the drain. This would be of particular concern in areas susceptible to high

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	woody and leafy debris) down to a size of 5 mm or greater. (Draft Staff Report at p. 13, fn. 5.) Because these devices do not differentiate between the type of debris captured, they can easily become blocked by leaves and other vegetation blown off of trees during the Central Valley's strong winter storms, notwithstanding efforts to clean the inlets prior to storm events. This blockage will back up water that would otherwise go into the drainage system, and will cause localized flooding that could adversely impact Port or tenant buildings and infrastructure, and could impose financial risk to the Port for causing the flooding if claims are made for any damage. The Trash Amendments give this issue short shrift (Draft Staff Report at p.135) and conclude that the full capture devices should just be designed with an "automatic release mechanisms or retractable screens that allow flow-through during wet-weather," an "overflow/bypass structure," or to "allow for bypass when storm events exceed the design capacity." *(Jd.* at p. 136.) These bypasses thwart the entire reason for the devices in the first place. If the device is merely going to bypass and allow trash and other debris to pass through during wet weather events, that raises the question of the effectiveness of and		leaf-litter rates. This potential impact can be diminished through the use of inserts that are designed with automatic release mechanisms or retractable screens that allow flow-through during wet-weather, and by performing regular maintenance to prevent the buildup of trash and debris. The exposure of people and property to flooding hazards after mitigation is considered less than significant. The State Water Board recognizes that a full capture system may not be able to capture trash as well as when storm events exceed the design capacity. However, with proper and regular maintenance, full capture systems are highly efficient at trapping all particles that are 5 mm or greater.

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	need for this costly approach.		
50.1	In the Supporting Draft Report, Page 1; First Paragraph; second sentence: Preproduction plastic pellets are an integral part of the plastic product production process; and therefore, are not a waste and should not be defined as trash. To the extent that the State Water Board needs to regulate preproduction plastics, that regulation should occur through the Industrial General Permit (IGP) (including but not limited to expanding the IGP to include all industries that use plastics. But, it needs to be done separately from trash-related Plan Amendments. Recommendation: Suggest removing all references to preproduction plastic pellets from the trash amendments and creating a separately regulatory scheme therefore.		The Trash Amendments do not address the use of preproduction plastics in a production process, but only the discharge of preproduction plastics in to waters of the state. (Ocean Plan Amendment at III.I.6.e; Part I ISWEBE at IV.A.2.e.) At the point of discharge, the preproduction plastics become a waste subject to control under Porter Cologne. Regardless of the proposed Trash Amendments, all facilities with the potential to discharge preproduction plastics must still comply with permit requirements issued pursuant to Water Code § 13367(a) and the best management practices requirements in the Industrial Storm Water General Permit. The Industrial General Permit is the principal means of addressing the discharge of preproduction plastics and has made suitable clarifications in the section on prohibitions.
50.2	In the Supporting Draft Report, Page 1, first paragraph, third sentence: Improper sentence structure or incorrect premise. Appliances (as a sentence two specifically listed form of 'trash') may end in a waterway but not 'frequently' nor ever via the method stated. Recommendation: Suggest either removing appliances from the specifically listed types of trash or creating another sentence that recognizes that there are paths		The sentences flagged by the commenter says, " trash discarded on land frequently ends up in waterways and the ocean…" This sentence does not say or imply that appliances are washed into gutters and storm drains. Nonetheless, while large appliances might not be readily transported via storm drain, they are part of the mixture of trash found in the water bodies. No change is needed.

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	not associated with storm drains by which trash enters waterways.		
50.3	In the Supporting Draft Report, page 4, second full-paragraph, final sentence: Based on the statement made by this sentence, 'where runoff and storm water transport trash into these water ...', it is not apparent that Water Board Authority extends to appliances. Recommendation: Suggest removing appliances from the specifically listed forms of trash.		While large appliances might not be readily transported via storm drain, they are part of the mixture of trash found in the water bodies. In addition, the point of the sentence is to clarify that it is at the point of discharge into waters of the state that trash becomes subject to the Water Boards jurisdiction. Appliances discharged into waters of the state would constitute a waste discharge subject to the Water Board's authority. That some wastes are discharged through storm drains (e.g., point source) or some other mechanism (e.g. non-point source) does not affect the Board's jurisdiction. No changes to the document are needed.
50.4	In the Supporting Draft Report, Page 6, Second Paragraph: Asserts that trash, 'jeopardizes public health and safety' and poses 'harm and hindrance ..'Concur with the latter but, 'public health and safety' is a legal concept. As such, an assertion that it is in jeopardy needs a citation that demonstrates the magnitude of that jeopardy.		Trash impacts public health via a number of pathways that are discussed (with citations) in Staff Report Section 1.4 and Appendix A.
50.5	In the Supporting Draft Report, Page 6; numeric bullets: Please note that none of the bullets describe a trash related mechanism applicable to a product line component (aka: preproduction plastic pellets). Suggest that preproduction plastic pellets be removed from the definition of trash.		Preproduction plastics are covered under bullet 2. If preproduction plastics are improperly disposed, then they are considered trash that may be delivered by storm events via the storm drain system to receiving waters. Preproduction plastics will not be removed from the definition of trash.

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50.6	In the Supporting Draft Report, Page 6; Final Paragraph; second sentence: 'The main transport pathway of trash to receiving water bodies is through storm water transport.' This statement conflicts with the initial statement of Section 2.4.1 wherein other transport mechanisms also are recognized as being significant. This statement needs at least to be modified for internal consistency and to cite the references upon which it relies. Alternatively, it can be removed. CHECK APPENDIX A	Suggest adding 'select and implement either' into the last sentence -7 ' ...may require the MS4 to select and implement either Track 1 or Track 2 ...'	Both sections referenced by the commenter state that trash is predominantly transported through storm water transport. That other significant mechanisms also exist does not make this assertion invalid. In addition, the Water Board cannot divine what the commenter intends by "CHECK APPENDIX A." No change will be made to the Staff Report.
50.7	In the Supporting Draft Report, Page 11; Table 1.: An IGP facility cannot use a full capture device as later defined (1 00% to 5mm) to capture preproduction plastic pellets (-1 mm). Recommendation: Suggest regulating preproduction plastic pellets as a component of production not as trash.		If preproduction plastics are improperly disposed, then they are considered trash regardless of size. As noted in the footnote to table 1, full trash capture systems would only be allowed if a facility demonstrated an inability to comply with the outright prohibition contained within the applicable NPDES permit regulating the industrial or construction facility. (See also Ocean Plan Amendment at III.L.2.c; Part I ISWEBE at IV.A.3.c.) Additionally, please see response to Comment 42.10. No change will be made to the Staff Report.
50.8	In the Supporting Draft Report, Page 11; Section 2.2 Water Quality Objective: The Trash Amendments recognize that MS4 transport of trash is but one of multiple significant transport mechanisms (see Section 2.4.1). Therefore, compliance with the objective ('no trash accumulation ...') via implementation through MS4 Permits cannot be obtained. Note:		There are several pathways for the transport of trash to California's surface waters. The transport of trash via storm water is a large contributor; however, the State Water Board recognizes that it is not the sole contributor of trash. For this reason, the Trash Amendments are applicable to NPDES permits, WDRs, and Waivers of WDRs. The State Water Board understands the confusion in the beneficial uses table and have removed the "Any amount of trash impacts this beneficial use" from Table 14 of the proposed Final Staff Report.

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	The objective nomenclature modifies the 'no trash accumulation' by stating, 'in amounts that would either adversely affect beneficial uses, or cause nuisance.' However, Appendix A, Table 14 defines the amount of trash necessary to adversely affect beneficial uses and states, 'Any amount of trash impacts this beneficial use' for both the Water Contact Recreation and Non-Contact Water Recreation beneficial uses.		
50.9	In the Supporting Draft Report, Page 11, Section 2.2 Water Quality Objective: Need to define 'adjacent to'. Perhaps use normal high water line.		The meaning of “adjacent” is self-evident insofar as it is commonly understood to mean “next to” or “adjoining” to the water body. The term’s meaning is further informed by the context in which it appears in the narrative water quality objective as being present in amounts that adversely affect beneficial uses or cause nuisance. Further defining is not needed.
50.10	In the Supporting Draft Report, Page 12, Section 2.4.1 Permitted Storm Water Discharges; first sentence: see comment 7.		Please see response to Comment 50.7. No change will be made to the staff report.
50.11	In the Supporting Draft Report, Page 13, first full Paragraph, third sentence: 'MS4 storm water permittees that opt...plans to their respective Water Board.' Recommendation: For consistency with the List of Abbreviations and to avoid confusion, correct to either, ' .. Regional Water Board.' or 'Water Boards.'		The “Water Board” refers to either the State Water Board or the respective regional water board. The State Water Board and nine regional water boards are collectively known as the Water Boards. This abbreviation is included in the list of abbreviations in the proposed Final Staff Report. Additionally, the Water Board is synonymous to the permitting authority, which refers to either the State Water Board or regional water board, whichever issues the permit. No change will be made to the Staff Report.

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50.12	In the Supporting Draft Report, Page 13, Track Discussion: As discussed during the Sacramento stakeholder meeting, while it is recognized that quality Track 2 Plans need to be submitted, the compliance clock runs regardless of Regional Board approval. Suggest that Water Board be corrected Water Boards (see Comment 11) and the trash amendments either stipulate approval after 6-months or an appeal process involving the State Water Board.		Given that the implementation plans are due to the permitting authority within 18 months of the receipt of the Water Code section 13267 or section 13383 order or from the effective date of the implementing permit, and full compliance is not required for ten years thereafter, the State Water Board does not share commenter's concern about delays by the permitting authority in approving the implementation plans. (Ocean Plan Amendment at III.L.4.a; Part I ISWEBE at IV.A.5.a.)
50.13	In the Supporting Draft Report, Page 13; Last Paragraph: Needs clarification or deletion. The list provided (in the second sentence) includes only geographic areas controlled by entities that have the ability to install and maintain full capture devices within the drop inlets on their property. This concept is also true for Non-Traditional MS4s. Therefore, if one of the Water Boards determines that a geographic area is impairing water quality due to a lack of compliance with the trash amendments that Water Board (State or Regional) can Order the owner of that geographic area to comply.		Jurisdictions of Non-Traditional MS4s likely do not have priority land uses. For these permittees, a different set of land use types may require trash controls at the discretion of the permitting authority. Additionally, land uses or locations outside of the priority land uses may generate substantial amounts of trash. For those areas, the permitting authority has discretion to determine if such areas require trash controls. (Ocean Plan Amendment at III.L.2.d; Part 1 ISWEBE at IV.A.3.d.) Additionally, please see Response to Comment 6.6.
50.14	In the Supporting Draft Report, Page 13, last paragraph, last sentence: see Comment 11 regarding 'Water Board'.		Please see response to Comment 50.11.

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50.15	In the Supporting Draft Report, Page 13, last paragraph, last sentence: (Comment 13 notwithstanding) If the trash amendments allows one of the Water Boards to require an MS4 to adopt a Track on behalf of/instead of the responsible entity, the trash amendment must also dictate the need for financial restitution by that entity to the MS4 for implementation, maintenance etc. of the required Track.		The commenter appears to misunderstand application of the Trash Amendments. Regarding trash controls within the priority land uses within an MS4's jurisdiction, the MS4 may elect which track to undertake. (Ocean Plan Amendment at III.L.2.a; Part I ISWEBE at IV.A.3.a.) Financial restitution for its implementation is not required.
50.16	In the Supporting Draft Report, Page 13, last paragraph, last sentence: The current wording of the last sentence allows the Water Boards to select the Track that that the MS4 is required to implement (regardless of the Track the MS4 is implementing for itself). Recommendation: see recommended language.		The State Water Board disagrees as the sentence focuses on other specific land uses or locations (e.g., parks, stadia, or roads leading to landfills) determined to generate substantial amount of trash. The permittee would select the compliance track, not the permitting authority. (Ocean Plan Amendment at III.L.2.d; Part 1 ISWEBE at IV.A.3.d.) Please see Response to Comment 6.6.
50.17	In the Supporting Draft Report, page 14, final paragraph: Fix multiple 'Water Board' references to an accepted abbreviation.		Please see Response to Comment 50.11.
50.18	In the Supporting Draft Report, page 14; final paragraph: Does a permittee choosing the second option need to monitor? Is any reporting required for either option?		Please see Response to Comment 5.1 and 5.2.
50.19	In the Supporting Draft Report, page 15; Non-point Source Dischargers; first sentence: At the discretion of which 'Water Board'?		Please see response to Comment 50.11.

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50.20	In the Supporting Draft Report, page 15, Section 2.5 Time Schedule, first paragraph, last sentence: Which 'Water Board' can set compliance milestones?		Please see response to Comment 50.11.
50.21	In the Supporting Draft Report, Page 15; Section 2.5 Time Schedule; Third Paragraph; second sentence: Correct 'Water Board to either 'State Water Board' or 'Regional Water Board'.		Please see response to Comment 50.11.
50.22	In the Supporting Draft Report, same location as Comment 21: Why not save two years and just require that MS4 Phase 1, MS4 Phase 2 and Caltrans notify the applicable 'Water Board' of their selected Track within 6-months?		The permitting authority can be either the State Water Board or one of the nine regional water boards. Within the Water Code, the legal mechanism for the Water Boards to require MS4 permitees (including Caltrans) to notify the permitting authority of their selected track is to issue an order under Water Code section 13267 or 133383. The requirement to issue the order within eighteen months of the effective date of the Trash Amendment was crafted to provide sufficient time for the permitting authority to request additional action from the permittee outside the scope of the existing permit conditions. While shortening this time period is preferable, the State Water Board recognizes that additional time is necessary for the permitting authority. In that time, permittees can be thoughtful on their track selection and implementation plan development following the effective date of the Trash Amendments.
50.23	In the Supporting Draft Report, page 15, Section 2.5 Time Schedule, Third/Fourth Paragraph: There is a Caltrans conflict between these paragraphs. Paragraph 3 says a Water Board will issue a request to Caltrans so Caltrans can notify that Water Board of its selected Track while paragraph 4 requires that		The State Water Board disagrees with this comment. In Section 2.5 of the proposed Final Staff Report, the third paragraph primarily discusses the compliance schedule for MS4 Phase I and Phase II permits, which specifies the three month track selection period. The fourth paragraph focuses on Caltrans, which does not include a track selection. As Caltrans is a linear system, trash control through a Track 2 framework is the only feasible approach.

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	Caltrans use Track 2 via the State Water Board requesting an implementation plan.		
50.24	In the Supporting Draft Report, page 16; first full paragraph; first sentence: Which 'Water Board'?		Please see response to Comment 50.11.
50.25	In the Supporting Draft Report, page 16, Section 2.7 Monitoring and Reporting Requirements, first paragraph, first sentence: Potential for significant conflict between the monitoring and reporting required by the State Water Board and those required by the Regional Water Board. Suggest 'Water Boards' be replaced by 'Regional Water Board'.		There is no conflict in monitoring and reporting between the State Water Board and a regional water board. Please see Response to Comment 50.11.
50.26	In the Supporting Draft Report, page 16, Section 2.7 Monitoring and Reporting Requirements, first paragraph, second sentence: Empowers State Water Board or Regional Water Board staff to require any magnitude of effort regardless of the Section 4.10 Issue 10 option selected/approved by the State Water Resources Control Board or the Track chosen by the permittee. Recommend deletion of this sentence.		The State Water Board disagrees. The proposed Trash Amendments set up minimum monitoring and reporting requirements to provide an equal baseline across California. The opportunity exists for more stringent control and monitoring requirements. Please see Responses to Comments 4.6 and 6.2.

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50.27	In the Supporting Draft Report, page 16, Section 2.7 Monitoring and Reporting Requirements, second paragraph, second sentence: To avoid conflict between the intent of this paragraph and that which is stated in the first paragraph of this Section, 'minimum' needs to be deleted from this sentence.		There is no conflict; the minimum requirements are that which are required by the Trash Amendments. Track 1 includes the minimum reporting requirements and does not require monitoring, whereas Track 2 requires both.
50.28	In the Supporting Draft Report, page 16, Section 2.7 Monitoring and Reporting Requirements, Second Paragraph, last sentence: Clarify which 'Water Board'.		Please see response to Comment 50.11.
50.29	In the Supporting Draft Report, Page 16; Section 2.7 Monitoring and Reporting Requirements; Third Paragraph; third sentence: Clarify which 'Water Board'.		Please see response to Comment 50.11.
50.30	In the Supporting Draft Report, page 18 Section 2.12 Other Approvals Required to Implement the Trash Amendments: a) The California Ocean Protection Commission (OPC) has a dramatically different approach to trash reduction than that which is being proposed in the Amendments. While their 'approval' may not be necessary, better explanation of the interactions between the OPC's emphasis on source removal and the State Water Board's abandonment thereof should be documented. b) Track 2 has been offered by the State as a path		The State Water Board has engaged with Ocean Protection Council on the Trash Amendments, who is supportive of the Trash Amendments. On August 27, 2014, the Ocean Protection Council adopted a resolution supporting the adoption of the proposed Trash Amendments. Please find the Ocean Protection Council's Resolution at: http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20140827/Item4b_TrashPolicyResolution_Resolution_FINAL.pdf

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	by which a municipality could comply with the Amendments. It is impossible to believe that compliance with the Amendments or assessments of effectiveness can be achieved without significant disturbance of waterways and the areas adjacent thereto. Thus, it seems appropriate for the State Water Board to consult with the State and Federal Fish and Wildlife agencies to ensure that implementation of this Track will not endanger species or disrupt habitat.		
50.31	In the Supporting Draft Report, page 19, Public Process, second paragraph, last sentence: incorrect verb tense transition -7 transitioned, ' ...projected has transitioned from ..'		Comment noted and modified in the proposed Final Staff Report.
50.32	In the Supporting Draft Report, page 22, Section 3.1, first paragraph: All of the items listed as those comprising 90% of trash could be efficiently controlled via a statewide redemption value sufficient enough that only accidental releases would occur and those would be mitigated by collectors. The discussion of 'Trash in California' needs to be expanded beyond what municipalities are currently doing and the impacts thereof to include Statewide efforts (e.g. redemption values), the impacts thereof and how adaptation of those efforts could affect trash in California.		Comment noted. These are also the items that are found in the storm drains and enter the surface waters. While redemption value methods may provide one means of controlling these items, creating a statewide program is outside of the scope of these Trash Amendments.

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50.33	In the Supporting Draft Report, page 24; first full paragraph: The paragraph makes reference to the Land Uses bulleted prior to the paragraph and the first sentence states that the priority land uses proposed for the Trash Amendments are the 'Developed, High Intensity'. 'Developed, High Intensity' is characterized by 80-100 percent impermeable surfaces. The Glossary defines 'high density residential' as >1 0 units per acre while Sacramento County studies indicate an 80+% impermeability occurs at >20 units per acre (see Table D-1a in the comment letter).		The Staff Report acknowledges that there is a lack of statewide consistency in land use planning and GIS data from individual municipalities, “Developed, High Intensity” was assumed to be analogous proxy to the priority land uses of the proposed Trash Amendments: high density residential, industrial, commercial, mixed urban, and public transportation stations. (See Staff Report, Section 3.2.)
50.34	In the Supporting Draft Report, page 64, Definitions of Trash: The recommended Consideration (#2) is encompasses virtually everything associated with an operation but nothing one normally considers trash. The State should consider other definitions including but not limited to: "All improperly discarded materials or products, including, but not limited to, preproduction plastics, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials."		The definition of trash states the general types of materials that are considered trash. In the definition of trash, the clause ‘from any production, manufacturing or processing operation,’ seeks to differentiate between purely natural items such as leaves and pine needles (see response to comment 18.2) from other waste items. The definition does not say or imply that trash is limited to operations. Additionally, please see response to Comment 18.2.
50.35	In the Supporting Draft Report, page 67, Water Quality Objective: It is		Please see Response to Comment 4.1.

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	unclear if the proposed Water Quality Objective contained in Appendices D and E is that which was created from use of the recommended Consideration 4 or an adoption of Consideration 2. Because Appendix A, Table 14 states that 'any amount of trash' impacts the contact/noncontact water recreation beneficial uses, the proposed objective language is essentially a 'zero trash' objective. The Amendments are only attempting a treatment approach; and therefore, the objective will not be met via the Amendments.		
50.36	In the Supporting Draft Report, page 69, Section 4.4, Consideration 2; 'Non-permitted dischargers would either apply with prohibition of discharge or be subject to direct enforcement action'. What does it mean to 'apply with prohibition'? State needs to define what application process is necessary for currently unpermitted discharges.		This is a typographical error in the report. The sentence should read, “Non-permitted dischargers would either comply with the prohibition of discharge or be subject to direct enforcement”. (See Staff Report Section 4.4, Consideration 2.)

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50.37	In the Supporting Draft Report, Page 71, Section 4.5; Consideration 3: Concur with the recommendation of focusing on high trash generation rate areas but confused by the internal inconsistency of the report. As noted in Comment 33, 'developed high intensity' is 80+ percent impermeable surface (which equates to > 20 unit per acre. This Section acknowledges local differences but suggests 15-30 units per acre. However, the Appendix E Glossary defines high density as > 1 0 units per acre. There needs to be an explanation for the use of >1 0 units per acre to define 'high density residential'.		The definition of "high density residential" was constructed based on an example of the dwelling unit standards used in local general plans by the Governor's Office of Planning and Research in its 2003 General Plan Guidelines and feedback from stakeholders during the scoping process at the Focused Stakeholder Meetings. Ultimately, the definition used in the Trash Amendments is a policy decision and the State Water Board finds that 10 units per acre is a reasonable definition that balances implementation costs with environmental protection.
50.38	In the Supporting Draft Report, page 74, Section 4.6, Consideration 2 (and 4?): I am assuming that the full capture component of Consideration 4 (recommended) includes all that is discussed in Consideration 2.'The maintenance of such systems...' Municipalities do not have the authority to access private property and maintain devices.		See Response to Comment 42.3

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50.39	In the Supporting Draft Report, page 74, Section 4.6 Consideration 2, final paragraph: Because other depositional mechanisms exist beyond the MS4, the monitoring associated with Track 2, or casual observation, will appear to show non-compliance- which will result in litigation. Thus, while the full-capture option will cause an undue burden, it is the only option that can effectively demonstrate compliance.		There are multiple sources and transport mechanisms for trash to state waters. Storm water transport is a primary transport mechanism and the central focus of the Trash Amendments. For MS4 permittees, there are two compliance tracks proposed to provide flexibility to both permittees and permit writers. Both the implementation framework and minimum monitoring requirements have been crafted to be both attainable by permittees and achieve a reduction in trash in state water bodies. The revisions to the proposed final Trash Amendments also address this by providing, in the definition for full capture system equivalency, and two example approaches whereby compliance can be demonstrated, both of which can be successfully used despite potential contributions of trash from other sources. (See Ocean Plan Amendment and Part 1 ISWEBE definitions “full capture system equivalency”.)
50.40	In the Supporting Draft Report, page 75, Section 4.6, IGP/CGP: The Trash definition discussion within the report makes clear that the State Water Board is targeting particle sizes smaller than 5mm (pre-production plastics). However, this recommendation allows a facility to demonstrate compliance by installing a full capture system -which is defined as capturing particle sizes > 5mm. Recommendation: Please provide an explanation of how IGP facilities using production components that are smaller than 5mm can comply via Track 1.		The IGP has existing provisions consistent with Assembly Bill 258, which became effective January 1, 2008 adding Chapter 5.2 to Division 7 of the California Water Code, section 13367, entitled “Preproduction Plastic Debris Program.” These existing provisions focus on BMPs in facilities in California that manufacture, handle, or transport preproduction plastics and the raw materials used to produce plastic products. The Trash Amendments will not result in modifications of provisions specific for preproduction plastics in the IGP.

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50.41	In the Supporting Draft Report, page 79, Section 4.9: While titled, 'Should time extensions be provided for employing regulatory source controls?' only the banning of products is discussed within the Current Conditions nor is any data provided that indicates that product banning has reduced the volume of trash in the waterways. 'Source Controls' (extended producer responsibility, redemption values, Green Chemistry, etc.) are the most efficient and effective way to reduce the amount of trash in the environment. However, the above-listed types of source controls can only be effective when implemented on (at least) a statewide basis. The State Water Board recently released for discussion the Storm Water Strategy Initiative Concept Paper which promotes the reduction of pollutants through source control. The treatment-oriented Amendments should (at least) discuss the apparent discrepancy between that which the State Water Board is promoting as its strategic imitative and that which is being proposed via the Amendments.		Regulatory source controls have been removed from the proposed revised amendments. See also the General Response to Comment Letter 1 and response to Comment 1.2.

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50.42	In the Supporting Draft Report, page 82; 5): An MS4 can control the amount of trash discharged from the MS4 (as is required by '4)'). As the report recognizes, other significant trash depositional mechanism exist over which the MS4 has no control. Data collected from the receiving water(s) will be highly variable rendering 'previous year' comparisons meaningless. Furthermore as regards the potential source(s), the MS4 can only speculate. The State needs to explain the rationale for including this monitoring requirement.		The amount trash reduced relative to the previous year is an appropriate requirement as it provides critical data useful for tracking and ensuring reasonable progress towards full implementation. While the amount of trash generated and deposited each year, may be variable, the overall trend, as measured by year to year changes, should generally go down. Please also see Response to Comment 4.6.
50.43	In the Supporting Draft Report, page 83, second paragraph, first sentence: This sentence is disingenuous as it implies that the stakeholders had an open-forum to discuss the manner of compliance and that the sentences that follow convey what the stakeholders proposed. This could not be farther from the truth. The requirements of Track 1 and Track 2 were provided along with implementation timelines. Discussion included statewide source control measures, priority land-use definitions, implementation schedules and State expectations regarding the location of full capture devices relative to the priority land-uses. Recommendation: The State Water Board needs to explain the		See Response to Comment 10.12.

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	process through which all of the information provided (with the exception of the Track 1 and Track 2 requirements) was discarded (e.g. statewide source control) or erroneous (housing density, full capture in public easements only, etc.).		
50.44	In the Supporting Draft Report, page 84, fourth paragraph, first sentence: 'Litter' is inaccurate and needs to be changed to 'trash'		In this context of litter laws, litter is an appropriate word.
50.45	In the Supporting Draft Report, page 89 and following, Section 5.2: Institutional Controls are not capable of achieving 100-percent removal to >5mm for the prescribed storm event; and therefore, cannot be considered a viable option for compliance.		Comment noted. The State Water Board recognizes that institutional controls alone may not be capable of removing all trash >5 mm. Therefore, Track 2 allows for a combination of controls to achieve equivalent reductions to Track 1. (See Staff Report at 2.4.1.) It is the expectation of the State Water Board that MS4 permittees elect to install full capture systems where such installation is not cost-prohibitive. (Ocean Plan Amendment at III.L.2.a.2; Part 1 ISWEBE at IV.A.3.a.2.) Please see Response to Comment 6.3.
51.1	The greatest barrier that California communities will face in complying with any trash control requirements is lack of funds to pay for structural controls, maintenance of full trash capture devices, development of institutional controls, and monitoring/reporting. Proposition 218 has created a disincentive for municipalities to even attempt to raise local funds to pay for storm drainage infrastructure and maintenance, resulting in a maintenance backlog and staff		Please see Responses to Comments 10.4 and 29.4.

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	shortages in many communities. Recommendation (1): With the adoption of statewide trash amendments, the Board should direct the Division of Financial Assistance to make grant funding available to municipalities to support compliance. Recommendation (2): The Board should direct the Office of Chief Counsel to provide local agencies with an authoritative interpretation of A.B. 2403 that clarifies a municipality's ability to raise funds to pay for trash capture infrastructure and maintenance without a Proposition 218 election. Alternatively, the Board should undertake an urgent legislative campaign to further revise the Proposition 218 Omnibus Implementation Act Government Code section 53750-53756), to extend the exemption in A.B.2403 to storm drainage infrastructure improvements and maintenance.		
51.2	I question the ability of Track 1 compliance to attain either the narrative objective selected by staff or a zero trash objective. As Geoff Brosseau noted in his oral comments at State Board's July 16 trash workshop, storm drains are just one of several pathways trash takes to reach our waters. Recommendation: The Board should use the same load reduction-based compliance		The Trash Amendments proposed a narrative water quality objective for trash, which is not the same as a zero trash numeric water quality objective. The State Water Board understands that trash enters a water body via multiple pathways, and storm water is a dominate transport pathway. Trash is a controllable priority pollutant, especially in storm water. The fifteen existing trash and debris TMDLs in the Los Angeles Region have demonstrated that full capture systems are a proven and effective best management practice to remove trash from storm water. As proposed, Track 1 does have interim milestones; however, effectiveness monitoring of

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	standard for Track 1 as for Track 2, and include interim milestones/reviews to determine whether Track 1 is locally effective in abating nuisance or reducing trash in receiving waters. The trash that ends up in the storm drain system is by no means all of the trash that creates a nuisance or public health hazard in our waters. Direct dumping into creeks, on-land dumping of large items, homeless encampments, windblown trash – all are sources of trash that will never see a catch basin. I fail to understand how Track 1 will actually reduce trash to non-nuisance levels. Track 1 does nothing to encourage or incentivize multi-benefit projects, which are likely to be prioritized in any future Stormwater Strategy Initiative.		Track 1 would not be required with the proper operation of full capture systems. Please see Responses to Comments 6.1, 6.2, 6.5, 6.6, and 6.8.
51.3	Because land use patterns, storm profiles, and the nature of constructed storm drainage infrastructure vary widely across California, centralized certification of trash capture devices at State Board is likely to become unworkable, causing significant additional work for staff and confusion for device vendors. Recommendation: The Board should delegate certification of full capture devices to the regions, according to statewide criteria for functionality. For these reasons I believe it is critical for vendors to be		Comment noted. To provide statewide consistency, the Executive Director, or designee, of the State Water Board will be the certifier of full capture systems. Additionally please see Response to Comment 10.5.

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	able to work through the certification process with Regional Board staff, who are familiar with local precipitation patterns and the idiosyncrasies of local infrastructure. State Board could provide functional criteria and post a master list of device manufacturers and device models, noting the regions that have approved different devices.		
51.4	The Board should use the same load reduction-based compliance standard for Track 1 as for Track 2, and include interim milestones/reviews to determine whether Track 1 is locally effective in abating nuisance or reducing trash in receiving waters.		Track 1 establishes the performance based-standard for Track 2, as defined as full capture system equivalency, due to the demonstration of the effectiveness to reduce trash in the Los Angeles Region by local agencies complying with trash and debris TMDLs. While Track 1 has only minimum reporting requirements, there is a requirement for interim milestones to achieve final compliance. Please see Response to Comment 6.2 and 6.8.
52.1	With jurisdiction that allows for SED Supplemental Environmental Documents, you bypass the General Plan and Its Elements including any Framework Elements that are part of the execution, mitigation and monitoring of the planning documents along with the CEQA process.		CEQA provides that certain regulatory programs of state agencies may be certified by the Secretary for Natural Resources as being exempt from the requirements for preparing Environmental Impact Reports (EIR), Negative Declarations, and Initial Studies if the Secretary finds that the program meets certain criteria. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. The Secretary has certified the State Water Board regulatory program for adoption or approval of standards, rules, regulations, or plans to be used in the Basin/208 Planning program for the protection, maintenance, and enhancement of water quality in California as an exempt certified state regulatory program (Pub. Res. Code § 21080.5; Cal. Code Regs., tit.14, § 15251, subd. (g)).
52.2	Permitting, outfalls and ambient water quality criteria should be the issue. A program that operates in		The CWA and Porter-Cologne direct the Water Boards to regulate the discharge of pollutants into waters of the United States and waters of the State. Trash is considered a pollutant

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	gray areas of regulation is not acceptable. Trash management is part of the operations and maintenance of the CIRCULATION ELEMENT as it relates to transportation, required by law. The City of Los Angeles has not prepared a CIRCULATION ELEMENT, but a TRANSPORTATION ELEMENT adopted August 8, 1999, CF 97-1387 with a MOBILITY ELEMENT 2035 in the process. Pipelines are part of the CIRCULATION ELEMENT. Solid Resource Program is part of the SOLID WASTE INTEGRATED RESOURCES PLAN. Watersheds and landfills are involved, not surface waterbodies. CALRECYCLE is the agency with jurisdiction.		and where runoff and storm water transport trash into these waters, it is considered discharge of waste subject to Water Board authority.
52.3	There needs to be a dedicated funding source for the Trash Amendments.		Please see Response to Comment 10.4.
52.4	Low Impact Development does not take into consideration landslide, liquefaction, high groundwater, underground rivers or earthquake faults. Multi-benefit is not a term defined in law, to our knowledge, but just an interpretation.		A multi-benefit project is a project designed to achieve some or all of the benefits set forth in Section 10562, subdivision (d) of the Water Code. (See Ocean Plan Amendment and Part I ISWEBE definition for "multi-benefit project.")
52.5	There are no baseline or measurement measures. You are an appointed board, not an elected board. Citizens need elected representation for taxation issues. Reconsider this draft and apply only		The CWA and Porter-Cologne direct the Water Boards to regulate the discharge of pollutants into waters of the United States and waters of the State. Trash is considered a pollutant and where runoff and storm water transport trash into these waters, it is considered discharge of waste subject to Water Board authority.

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	to your jurisdiction and the law. We recommend NO PROJECT.		
53.1	The timeframe for obtaining certification is a concern. The Executive Officer approval process should have a rapid turnaround time to allow permittees to move forward with planning and installation within the time schedule granted. MCSTOPPP recommends that a more extensive list of certified devices, including the Bay Area Trash Demonstration Grant devices, should be prepared prior to the adoption of the proposed Trash Amendments. MCSTOPPP also recommends refining the full-capture device certification process to streamline the certification process as much as possible.		Please see Responses to Comments 4.3 and 10.5.
53.2	MCSTOPPP recommends that standards of equivalency be established prior to or with the adoption of the proposed Trash Amendments. MCSTOPPP feels that visual assessments of priority areas are the most appropriate for determining success of Track 2 control measures. Permittees should be allowed to propose the method of demonstrating performance in their plan.		The Trash Amendments provide Visual trash presence surveys, such as "Keep America Beautiful Visible Litter Survey" and the "SWAMP's Rapid Trash Assessment," provide a methodology for visual assessment. However, the equivalency monitoring must not be limited to just visual assessment by including a trash reduction quantification approach. Please see Responses to Comments 4.6 and 6.2.
53.3	MCSTOPPP objects to the requirement for stormwater permittees to conduct receiving		Please see Response to Comment 4.6.

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	water monitoring. As noted, other sources contribute trash to receiving waters and imposing this requirement on stormwater permittees will not provide an indication of effectiveness stormwater trash control programs. While stormwater permittees may want to conduct receiving water monitoring to demonstrate performance, it should not be mandated. Additionally, MCSTOPPP feels that visual assessments of priority areas are the most appropriate for determining success of Track 2 control measures.		
53.4	Track 1 and 2 language indicates that permittees must "capture runoff from one or more of the priority land uses in their jurisdictions." Does this mean permittees could install full-trash capture (or an equivalent combination) in only one of the five priority land use areas identified? Additionally, for compliance, would permittees have to install full-trash capture (or an equivalent combination) in 100% of catch basins in that priority land use? MCSTOPPP recommends clarifying the language to the proposed Trash Amendments to address these questions.		Please see Response to Comment 11.4.

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53.5	There are many instances in Phase II communities where some portion of the priority land use area is not in fact a high trash generating area. Rather than installing devices or institutional controls in areas where the return on the investment will be low, we strongly recommend that the Trash Amendments allow for flexibility by establishing a process through which permittees could petition their Regional Water Board to review the areas in quest ion and give them the authority to exempt such areas if they are found not to be high trash generating. The exemption could include an 'expiration date' or a requirement to revisit priority areas at some frequency in the event the trash situation in those areas worsens. The exemption process could include visual assessments of the priority areas as a first step in determining where and what controls to put in place.		Please see Response to Comment 12.2.

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53.6	The proposed Trash Amendments staff report states "treatment controls likely to be used for compliance with the proposed Trash Amendments may include installation of catch basins or inserts within existing catch basins." To support municipalities that are incorporating green infrastructure/Low Impact Development (LID) installations into their Capital Improvement Programs (as required in some cases by the Phase II permit), the proposed amendments and certified trash capture devices should specify that properly designed and built LID measures qualify as full-capture devices under Track 1. MCSTOPPP recommends that the State Water Board recognize the value of LID by including some LID measures as full-capture under Track 1.		The State Water Board agrees with this comment. The Storm Water Program at the Water Boards encourages the management of storm water as a resource. The main objective of treating storm water as a resource is to protect and restore those watershed processes that are critical to watershed health. Multi-benefit projects that infiltrate and treat storm water runoff are encouraged within MS4 Phase I and Phase II permits. Within Track 2, multi-benefit projects are a supported method of compliance to control trash. In addition to trash control, multi-benefit projects treat other storm water runoff priority pollutants. As a whole, multi-benefit projects prevent impacts from flooding, mitigate storm water pollution (such as trash), create open space, enhance fish and wildlife habitat, and improve water efficiency.
53.7	Please help permittees establish dedicated sources of non-competitive funding for trash capture. Prop 218 currently precludes stormwater entities from raising their fees for stormwater management (where fees even exist as the Phase II regulations came into effect after Prop 218 was passed). Even with the recent changes to Prop 218, catch basin inserts, the likely type of control device, would not be considered eligible for the water supply exception of resulting from		See Responses to Comments 4.7 and 10.4.

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	AB 2403. MCSTOPPP recommends that the State Water Board help develop innovative ways for funding trash control programs.		
53.8	MCSTOPPP recommends that the State Water Board keep Track 2 as an option in the proposed Amendments to provide flexibility to municipalities with flooding concerns and to provide a comprehensive approach to keeping our watersheds clean.		The State Water Board appreciates the support for Track 2 and proposes to keep Track 2 to provide a comprehensive approach and flexibility to permittee to determine the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation.
53.9	MCSTOPPP recommends that the State Water Board grant automatic time extensions for regulatory source controls that take effect prior to or within three years of the effective date of the proposed Trash Amendments.		Please see Responses to Comments General Response of Comment Letter 1, 1.3, and 4.5. Regulatory source controls and time extensions have been removed from the proposed Final Trash Amendments. (Ocean Plan Amendment at removed III.L.5; Part I ISWEBE at removed IV.A.6.)
53.10	Please expand the analysis provided in the Substitute Environmental Document (SED) to create a tiered CEQA document that will allow local agencies to satisfy project-specific CEQA requirements associated with the installation of full trash capture devices. If this is not possible, please consider providing a guidance to help simplify the analysis for local agencies.		The CEQA Guidelines describe that "tiering" refers to using the analysis of general matters contained in a broader environmental impact report (EIR) (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project (14 CCR 15152(a)). The State Water Board has done a large-scale analysis for the proposed Trash Amendments and developed detailed, site-specific analysis of implementation of full-capture devices or other means of meeting the requirements of the proposed project. It is anticipated that public agencies implementing project specific actions in compliance with the Trash Amendments will be required, in compliance with CEQA, to prepare future environmental documentation in connection with a project of a more limited geographical scale and would be

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			expected to tier from the State Water Board environmental analysis as appropriate. This subsequent CEQA documentation may take the form of an EIR, mitigated negative declaration, negative declaration, or possibly a statutory or categorical exemption, as appropriate.
54.1	Merced County supports the narrative water quality objective.		Comment noted. The State Water Board appreciates the support for the narrative water quality objective for trash.
54.2	Our primary concern is that the record supporting the Proposed Trash Amendments does not provide sufficient evidence that trash is a statewide problem that requires automatic implementation of all actions by all municipalities. The regulation of trash should be addressed in a manner consistent with other pollutants; that is, in which actions are required only after impairment has been defined or a water quality objective has been found to be exceeded, and that the regulated entity has contributed to that impairment or water quality objective exceedance (i.e. reasonable potential has been established). Given the lack of justification that trash is a problem in all waters, Merced County proposes the following approach for the Proposed Trash Amendments: 1. Establish the proposed narrative water quality objective. 2. Establish implementation procedures for the water quality objective that are triggered when the water quality		Please see Responses to Comments 10.7 and 44.1.

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	objective is exceeded or the water body is found to be impaired by trash. 3. Specify that permit conditions consistent with the implementation procedures will be established in NPDES permits only when the water quality objective has been exceed and the NPDES permit holder has been identified as the source.		
54.3	Merced County conservatively estimates that the proposed new requirements reflected in the Proposed Trash Amendments would impose a cost burden on local taxpayers in our County of $5M. This cost is in addition to the millions of dollars in the region in unfunded mandates created by the Bacteria TMDL provisions in the recently adopted MS4 Permit (20 13-0001-DWQ). Other public entity permittees statewide would incur similar unfunded requirements set forth in the new policy, Merced County urges the State Water Resources Control Board to first identify a reliable funding source to reimburse local jurisdictions for the cost of the new requirements, as mandated by the California Constitution.		Please see Responses to Comments 10.4 and 29.4.
54.4	Merced County recommends adding language to the Proposed Trash Amendments indicating the permittees are in compliance with		Please see Response to Comments 4.1 and 10.9.

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	the receiving water limitations so long as they are fully implementing Track 1 or Track 2.		
54.5	Merced County recommends including language after Chapter IV.B.3.a of the ISWEBE Plan and Chapter III.L.2.a of the Ocean Plan that states: A MS4 Permittee may request that compliance requirements for trash be established through a watershed prioritization and planning process outlined in MS4 permit requirements. This prioritization process would allow for evaluation of the trash in the context of other watershed priorities and provide a mechanism for modifying or reducing the requirements for compliance in accordance with the procedures outlined in the MS4 permit and an approved watershed plan. Through this process, monitoring data could be utilized to demonstrate that trash controls are not necessary for all priority land uses.		Please see Response to Comment 11.9. Additionally, the objective of monitoring trash to demonstrate effectiveness of the controls and compliance with full capture system equivalency. The priority land uses have been determined to be five land uses with high trash generation rates. With the "equivalent alternate land uses" provision, the Trash Amendments allow for an exchange of a priority land use for another land use with a comparative trash generation rate, which needs to be established though the reporting of quantification measures. However, the intent of monitoring and "equivalent alternate land uses" is not to select or unselect priority land uses for trash controls.
54.6	Merced County recommends adding language to Chapter IV.B.3.a.(1)/IV.B.3.a.(2) and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively stating that permittees must address catchment areas where the priority land uses are greater than 25% of the total catchment area.		Please see Response to Comment 11.4.

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54.7	As defined in the Proposed Trash Amendments, the predefined priority areas may not be appropriate for all jurisdictions, does not consider local knowledge of receiving water conditions and previous data collection efforts. As currently drafted, the Proposed Trash Amendments assume that there is a problem in the defined priority areas, effectively forcing a costly "one size fits all" approach onto the jurisdictions. Merced County supports the concept of prioritized land uses to address problem areas; however, the approach should allow for more local flexibility in this prioritization. Merced County and the other municipal separate. Recommendation: Merced County recommends including language after Chapter IV.B.3.a of the ISWEBE Plan and Chapter III.L.2.a of the Ocean Plan that states: A MS4 Permittee may request that compliance requirements for trash be established through a watershed prioritization and planning process outlined in MS4 permit requirements. This prioritization process would allow for evaluation of the trash in the context of other watershed priorities and provide a mechanism for modifying or reducing the requirements for compliance in accordance with the procedures outlined in the MS4 permit and an		Please see Response to Comment 10.7 and 15.2.

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	approved watershed plan. Through this process, monitoring data could be utilized to demonstrate that trash controls are not necessary for all priority land uses.		
54.8	Part (6) of the Priority Land Uses definition from the ISWEBE Plan allows permittees to issue a request to the Regional Water Quality Control Board to comply with Chapter IV.B.3.a.1 of the ISWEBE Plan using alternate land uses equivalent to the defined Priority Land Uses. However, as written, the Chapter reference for the ISWEBE Plan only allows the permittees to address the equivalent alternate land uses if utilizing Track 1. The reference should be changed to allow the permittees to address the equivalent alternate land uses via Track 1 or Track 2. Part (6) of the Priority Land Uses definition from the Ocean Plan allows permittees to issue a request to the Regional Water Quality Control Board to comply with Chapter IV.B.3.a.1 of the ISWEBE Plan using alternate land uses equivalent to the defined Priority Land Uses. However, as written, the Chapter reference for the Ocean Plan only allows the permittees to address the equivalent alternate land uses if utilizing Track 1. The reference should be changed to allow the permittees to address		Please see Response to Comment 4.4.

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	the equivalent alternate land uses via Track 1 or Track 2. In addition, the chapter reference is incorrect. The reference reads Chapter III.J .2.a.1, while it should read Chapter III.L.2 .a.1.		
54.9	Merced County recommends adding language to the Proposed Trash Amendments requiring a permitting authority to consider revision to the final compliance date of the Proposed Trash Amendments if new priority land uses are added during the duration of the compliance period.		Please see Response to Comment 10.8.
54.10	Recommendation: Merced County recommends the State Water Board revise the language in the Proposed Trash Amendments (Chapter IV.B.7.b and Chapter III.L.6.b of the ISWEBE Plan and Ocean Plan, respectively) to allow for more flexibility in determining Track 2 performance and to remove the requirement for receiving water trash monitoring.		Please see Response to Comment 4.6.
54.11	Merced County recommends the removal of the standard of equivalency for Track 2 from the Proposed Trash Amendments. Instead, allow permittees to propose a readily achievable and practical way that will indicate compliance with the policy for drainages without full-capture devices.		Please see Response to Comment 16.3.

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54.12	Merced County recommends that language should be included in the Proposed Trash Amendments stating that if the requirements in the Proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully implemented.		Please see Response to Comment 10.10.
54.13	There are several incorrect section references in the ISWEBE Plan. Recommendation: For the ISWEBE Plan, all references to Chapter IV.C.3 , Chapter IV.C.3.a, or Chapter IV.C.3.b should be revised to Chapter IV.B.3 , Chapter IV.B.3.a, and Chapter IV.B.3.b, respectively.		Please see Response to Comment 11.6.
54.14	The well-established Community Planning Groups in these rural areas have established priority issues through rigorous stakeholder planning processes. Rural towns have commercial areas that will be under the Trash Amendments. These rural communities have limited resources available to fund programs, and there is not a reasonable return on investment for these small communities to implement extensive trash controls. Based on their local planning processes, the threat of firestorms or other local priorities may be the best use of their limited resources. Recommendation: Merced County recommends exempting rural areas		Please see Responses to Comments 10.1 and 45.16.

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	from the Trash Amendments that are not directly contiguous to urbanized areas.		
55.1	Support the comments submitted by CASQA and BASMAA.		Comment noted. For Responses to BASMAA's comments please see Comments 4.1-4.7, and for Responses to CASQA's comments please see Comments 10.1-10.12.
56.1	First, the current monitoring requirements applied to jurisdictions which elect the Track 1 approach are currently not required to perform monthly or post-storm event or even annual monitoring of structural catch basements to demonstrate capture and removal rates. This is problematic on at least two fronts: (1) if MS4 permittees are not required to perform specified monitoring on the structural controls installed in catch basements, then these cities, the Regional and State Water Boards, and the citizens of these communities will not be able to determine whether the measures are actually working; (2) since "Track 2" compliance is based specifically on being able to demonstrate commensurate trash removal in a jurisdiction that "Track 1" devices could achieve, it is vital to have actual trash removal efficacy data against which to compare the Track 2 "institutional controls." The Water Boards' permitting process is generally a self-reporting and self-enforcing one, which PSSEP certainly supports. But in order to		Monitoring is a key component to assessing that the implemented trash controls are leading to the achievement of compliance with the prohibition of discharge and protecting the beneficial uses of California's surface waters. Additionally, monitoring should be utilized by permittees to provide for adaptive management decision making for implementing trash controls. With limited resources, the most effective combination of controls to control trash should be used. The Trash Amendments propose a tailored approach to provide flexibility to Water Board permit writers to design monitoring programs that reflect the compliance methods elected by permittees along with regional characteristics. Due to the cost of full capture systems, MS4 permittees complying under Track 1 would provide a report to the applicable Water Board demonstrating installation, operation, and maintenance of full capture systems on an annual basis. MS4 permittees complying under Track 2 would develop and implement annual monitoring plans to demonstrate effectiveness of trash controls and compliance with the full capture system equivalency. For statewide consistency, all Track 2 monitoring programs should be striving to answer the same fundamental questions, which may include receiving water monitoring. Please see Responses to Comments 4.6 and 6.2.

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	demonstrate compliance with the underlying "zero trash" goal contained in the proposed policy, as well as maintain credibility of the program itself, it seems incongruous that Track 1 carries little or no substantive monitoring obligations to demonstrate a jurisdiction's compliance with the standard.		
56.2	Second, and as applied to both Track 1 and Track 2 permittees, the current draft policy fails to include accepted, standard methodologies for measuring trash. Without having a consistent, statewide approach for measuring trash, varied and disparate trash reduction results will likely be reported from different parts of the state. It seems axiomatic that a statewide trash control policy should also have single, plenary approach to counting trash in all of the Regions. To be sure, there are a number of different methods of "counting trash" and a close review of trash surveys from around the country demonstrate that "how" one measures trash can affect the results. This dynamic was encountered by the San Francisco Regional Water Board over the past few years as it has grappled with trying to establish "baselines" against which to measure trash reductions after implementation of BMPs and the like. Fundamentally, any new pollution control standard that the		Please see Response to Comment 4.6.

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	State Water Board seeks to impose should also be coupled with appropriate monitoring standards and methodologies so that the Water Boards – and the public – can gauge the effectiveness of either the Track 1 or Track 2 controls.		
56.3	Under the current Track 1 proposal, it is unclear what standards apply to "maintain" structural controls once they've been installed. Indeed, the current maintenance requirement applied to Track 1 structural controls is that the permittee provide an annual report "demonstrating installation, operation, [and] maintenance." Yet it is left to either the MS4 permittee or the applicable Water Board to determine whether the maintenance reported is adequate. Nevertheless, the trash capture device manufacturers could provide invaluable assistance in helping the State Board staff develop a set of minimum maintenance standards that should be applicable across the state.		Please see Response to Comment 16.3.
56.4	While PSSEP takes no position on the appropriateness or advisability of individual cities and other jurisdictions adopting product bans on items such as plastic bags or polystyrene foam food containers, we do think it is inappropriate for the State Board to provide regulatory incentives for MS4 permittees to		Please see Response to Comment 4.5.

Comment Letter	Comment	Recommended Language	Response
	adopt these types of "institutional controls" simply as a means of avoiding the costly installation and maintenance of the so-called Track 1 structural controls. If individual cities and other MS4 permittees wish to adopt plastic bag and polystyrene foam food container bans, that is certainly their prerogative.		
56.5	PSSEP believes that the State Water Board could and should provide the leadership in getting the MS4 agencies, garbage franchise companies, and trash capture device manufacturers together to further explore whether and how this approach can be effectively used to help local governments more quickly pursue so-called "Track 1" compliance.		Comment noted. The State Water Board hopes that the Trash Amendments will lead to great partnerships between MS4 agencies, garbage franchise companies, and trash capture device manufacturers.
57.1	The Riverside County Permittees concur that Trash is a significant pollutant of concern in those surface waters where impairment by Trash have been identified. Those Trash impairments and the ongoing and effective programs being implemented to address them are discussed fully in the Draft Staff Report. But, the Proposed Trash Amendments would impose a statewide mandate that ignores local conditions and the most important identified pollutant impairments, and that requires MS4 permittees to		Please see Responses to Comments 10.7 and 44.1.

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	address Trash as a top priority pollutant category without regard to whether the surface waters are, in fact, impaired by Trash. As the Draft Staff Report reveals, there is no evidence in the record that, outside of the areas where surface waters are identified as impaired by Trash (representing only 2% of State surface waters), that warrants the additional requirements set forth in the Proposed Trash Amendments. It is notable that the Draft Staff Report does not suggest that Trash impairments in California are not adequately identified. While these conditions certainly pertain to such coastal waters, they are the exception in inland surface waters in much of southern California, especially Riverside County. In Riverside County most surface waters consist of dry washes that support terrestrial wildlife, not the aquatic habitat addressed in the Draft Staff Report. Even where water is present, wind, rather than runoff is likely to be the primary conveyance of Trash to these waters.		
57.2	If it is determined that statewide policy addressing Trash is needed, we encourage the State Board to set aside the proposed Trash Amendments in their entirety and re-consider this issue in light of the limited impairments described in this		Please see Responses to Comments 10.7 and 44.1.

Comment Letter	Comment	Recommended Language	Response
	letter and other comments submitted by MS4 permittees. For example, the Riverside County Permittees acknowledge that establishment of a statewide water quality objective and definition for "Trash" may have merit. We have reviewed and support comments on specific elements of the Proposed Trash Amendments submitted by Orange, San Diego, and San Bernardino Counties and encourage the State Board to consider their comments as relevant in the development of a revised approach to a statewide policy addressing Trash.		
57.3	The approaches in each of these Regions are tailored to address specific local Trash management needs and issues. The Draft Staff Report provides no evidence that the Proposed Trash Amendment would result in more or even equally effective management of Trash to address the impairment of surface waters than the existing Regional efforts. Even where Trash impairments do not exist, MS4 permittees have long implemented Trash source control programs, including those required by MS4 permits, to prevent impairments. These programs include municipal trash collection and disposal, street sweeping, deployment of public trash cans, public education, code enforcement, maintenance of MS4		Existing permits have long included these institutional measures for trash controls. However, trash in surface waters bodies continues to be a pollutant impairing beneficial uses. The State Water Board believes that trash is a controllable pollutant with an increase in trash control efforts.

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	facilities and other measures. We believe that these programs have been instrumental in preventing broader impairment of surface waters by Trash.		
57.4	Throughout the Draft Staff Report, it is stated that the proposed Trash Amendments are needed "to provide statewide consistency". However, no evidence is provided in the Draft Staff Report or its attachments to justify why statewide consistency is needed or to justify the approach in the Proposed Trash Amendments requiring MS4 permittees to undertake additional costly and environmentally impactful measures to address Trash where impairments have not been identified.		There is a lack of consistency in trash requirements statewide. Additionally, there is an increase in both 303(d) listing and TMDLs for trash. To reduce number of future 303(d) listings and address impairments of beneficial uses for trash, the State Water Boards have made the Trash Amendments a priority project.
57.5	The Riverside County Permittees believe that, with regard to the MS4 Programs in place in the County, the Proposed Trash Amendments would in fact be counter-productive in addressing surface water quality. As noted above, the key to the Riverside County Permittees' MS4 compliance efforts has been identifying and prioritizing pollutant categories impairing surface waters for source control and management, an intensely local effort performed in collaboration with the Regional Boards that issued the MS4 permits. The Proposed Trash Amendments would require diversion of resources		Please see Response to Comment 11.9.

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	from identification and management of those priority pollutants to address Trash, which has not been identified as creating impairments in any surface water in Riverside County and is not identified as a local pollutant of concern. An important feature of the most recently adopted MS4 permits has been an increased emphasis on watershed planning initiatives, because a watershed focus has been determined to be the most effective way to address urban pollutant sources. Through the MS4 permits, the Riverside County Permittees (and MS4 permittees in other counties) have spent considerable sums and many months and sometimes years to propose and have adopted watershed management plans that set the agenda for addressing the most important pollutants and their sources and set forth the specific efforts and BMPs that will be utilized.		
57.6	As described during the CASQA Trash webinar on July 29, 2014, Los Angeles County has spent $88 million implementing the types of trash exclusion devices contemplated in the proposed Trash Amendments. The Riverside County Permittees believe that our capital costs would be significant, constituting a dramatic increase in compliance costs where no impairments are identified. This is a		Please see Response to Comment 26.8.

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	major concern of the Riverside County Permittees.		
57.7	The Riverside County Permittees have concern over the definition of "Trash" in the Proposed Trash Amendments. First, the definition should specifically exclude materials that may be conveyed as a result of flooding events, including agricultural materials, building materials, fencing, and road and highway debris. As the State Board knows, despite the current extreme drought, the State (and including Riverside County) has in the recent past experienced significant flooding events, which typically will bring with them debris flows containing a wide variety of materials, including Trash. Second, the definition includes "natural materials" as a category of Trash. Given the significant amount of plant material that naturally enters the MS4 (through wind, autumn leaf fall and other means), it would be extremely difficult to determine if the "natural materials" were of a production, manufacturing, or processing operation, as required by the definition. Third, the Draft Staff Report suggests that old tires and appliances are Trash items and there is no exclusion in the "Trash" definition for large items that enter receiving waters from sources other than the MS4. It is appropriate to exclude such large items from the		Please see Responses to Comments 18.2 and 20.11.

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	definition related to water quality and continue to regulate their management and disposal under existing solid waste regulations, as they are not dissolved in, or readily conveyed by, surface waters other than during flood events. The presence of tires, appliances and other large items in the receiving waters is due to illegal dumping, which is addressed by existing code enforcement activities.		
58.1	I support the Board's position that Full Capture Systems, along with institutional controls, will play a valuable role in assisting municipalities comply with the forthcoming trash control measures.		The State Water Board appreciates the support on the proposed trash controls in the Trash Amendments.
58.2	Our firm manufactured the initial linear radial gross solids removal device for Caltrans' field and laboratory studies and it was one of the first certified as a Full Capture system by the LARWQB in 2004. We continue to manufacture these non-proprietary screens today for Caltrans and have had our screens installed by several other municipalities in California and in other states throughout the U.S. We have also broadened the initial Caltrans design to accommodate larger flows typical for urban and commercial areas. It is noted that manufacturers of the basin inserts, continuous deflection systems, and		The Final Staff Report references the Linear Radial – Configuration 1 (LR1 I-10) as specified in Bishop 2004 certification letter. No change to the Staff Report is needed.

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	netting systems have their names included in sections 5.1.2 through 5.1.4. For the benefit to municipalities seeking to locate a manufacturer of the linear radial device, I respectfully request that Roscoe Moss Company's name be included as a manufacturer in the Linear Radial Device section of the Final Draft.		
59.1	The Trash Amendments, as currently proposed, would require significant investment of capital and ongoing operational funds from local agencies to provide a much narrower benefit *(i.e.* removal of trash already entrained in urban runoff) than source control.		The measures that local agencies implement to comply with the Trash Amendment must lead to a reduction in trash. The Trash Amendments propose a dual track compliance approach to provide a wide-range of effective trash controls to be utilized by local agencies.
59.2	We applaud the State Water Board's apparent intention to include true source control as an integral part of the statewide storm water strategy that is currently under development. Inclusion of source control in the Trash Amendments as the primary mechanism for reducing the generation and discharge of trash is completely consistent with this strategy, and is further supported by a number policy and economic considerations.		The State Water Board appreciates the support for the Storm Water Strategic Initiative. Additionally, regulatory source controls have been omitted from the final proposed Trash Amendments, and please see Response to General Response to Comment Letter 1.

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59.3	The use of an asterisk throughout the document is obviously to reference a definition contained within the Glossary; but, this concept is not stated and there is no corresponding asterisk at the glossary.		The asterisk is used to designate a term as a defined term in the California Ocean Plan. All capital letters is used to designate a term as a defined term in the forthcoming ISWEBE Plan.
59.4	As was discussed during the 16 July 2014 workshop, there is no standardized path to compliance associated with Track 2. In addition, it does not appear that it is possible to achieve compliance via Track 2. If Track 1 is the only viable option for compliance, it becomes an unfunded mandate.		Please see Responses to Comments 6.2, 10.4, 16.3, and 29.4.
59.5	Please note that there are numerical sequencing and referencing discrepancies throughout Appendix E that need to be corrected and are not specifically' addressed below (e.g. Page E-1; "Draft text of ... Chapter III- Water. . ' v. 'Draft text of ...Chapter Implementation...').		Comment noted. These have been corrected in the proposed Final Staff Report.
59.6	The term "adjacent' is vague in the Water Quality Objective. Recommend defining 'adjacent areas' as the high-water line.		Please see Response to Comment 50.9.
59.7	The MS4 entity does not have the authority to install, operate, and maintain full capture systems on private property. Specific "within the MS4 system" instead of "for all storm drains".		Please see Responses to Comments 11.4 and 25.1.

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59.8	Track 2 compliance cannot obtain the objective in the Amendments include no method by which Track 1 equivalence can be demonstrated. In absence of a compliance methodology, 'equivalence' becomes subjective and will need to be defined by the courts.		Please see Responses to Comments 4.1, 4.6, 6.2, and16.3.
59.9	1) Assuming this Section is actually referencing Chapter IV. B.3.a(1) and Chapter IV.B.3.a(2): A permittee may have selected Track 1 and the land use or location (while within the municipality's regulatory jurisdiction) may not drain through the MS4 (e.g. a nonpoint source park or facility that private drains directly into surface water); and, the MS4 does not have the legal right to install, operate or maintain devices on private property. 2) 'substantial' is vague and open to subjective interpretation. Suggest the use 'comparative trash generation rate' as discussed in the Glossary.		Please see Responses to Comments 11.4 and 25.1. The State Water Board does not agree that changing 'substantial' is necessary.
59.10	The State and Federal governments own properties that these proposed Trash Amendments define as priority land uses. However, with the exception of properties controlled by The Department, there is no mechanism for compliance or recognition that the MS4 into which those locations may discharge has no authority by which it can obtain compliance.		Comment noted. If these state and federal properties have a NPDES permit, then they will be subject to the Trash Amendments.

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59.11	Have interim milestones, but not specific.		Please see Response to Comment 38.6.
59.12	As was suggested during the Sacramento Stakeholder meeting (4/8/13), we would encourage the State to partner with a broad stakeholder group to evaluate/implement source control prior to implementing treatment via the Trash Amendments. If unwilling to be a partner, we would encourage the State to consider developing/adding language that recognizes (via time extensions and/or milestone adjustments) local jurisdictions that can demonstrate more global/statewide source removal efforts.		Comment noted. With the Trash Amendments, the State Water Board supports treatment and institutional controls and multi-benefit projects that control trash and achieve compliance with the prohibition of discharge for trash.
59.13	The lack of monitoring for Track 1 is inconsistent statewide application of the State's intent. It is unclear whether Track 2 full capture require monitoring.		Please see Response to Comment 56.1.
59.14	Trash assessments in receiving waters will create highly variable data that precludes yearly comparisons and an evaluation of the causal deposition mechanism will be purely speculative.		Comment noted. The proposed final Trash Amendments removed the requirement for receiving water monitoring. Monitoring must demonstrate the effectiveness of controls and compliance with full capture system equivalency. However, quantifying the amount of the trash in the receiving water is an important component to measuring success of control to improve the condition of the receiving water body over time. Please see Response to Comment 6.2.

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59.15	As a magnitude of effort consideration , the unincorporated area of Sacramento County has nearly 50,000 drop inlets in areas with priority uses*. State should consider deleting, 'Prior to installation' from the definition; or, provide pre-certification of types of devices/features for specified ranges of flow and/or allow certification (sign/stamp) by a Civil Engineer licensed in the State of California.		The State Water Board appreciates the complexity of tasks that permittees must undertake to install treatment controls. The intention of the certification process is to ensure that the general design of a full capture system effectively captures trash 5 mm or greater during the one-year one-hour storm event. The State Water Board intends for resources to be efficiently directed towards effective treatment controls that capture and remove trash. The State Water Board disagrees that "prior to installation" would penalize a community, as resources should be directed to treatment controls proven to be effective at capturing trash. Additionally, it is not the State Water Board's expectation that each device that is to be inserted will need to be certified. This would be highly infeasible. The certification process is for the general design of a full capture system, not for each individual system in a drop inlet, unless each system is entirely unique. Certified full capture systems are specified in Section 2.8 and Section 5 of the proposed Final Staff Report.
59.16	The associated staff report discusses prioritizing implementation by high trash generation rates and associates those rates to land-uses. With regards to residential-use, > 8O-percent impervious and 15-30 units per acre is used. The State needs either to continue the use of> 20 units per acre or explain the transformation from approximately 20-units per acre to >10 units per acre.		Comment noted. Please see Responses to Comments 26.3 and 44.19.
59.17	The Equivalent Alternate land use sentence is awkward and unnecessary. An MS4 does not need permission from the permitting authority to exceed a requirement of		The definition of 'equivalent alternate land use' has been revised for clarity. (See Ocean Plan Amendment and Part I ISWEBE definition for "equivalent alternate land uses.")

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	its permit.		
59.18	This description of tasks necessary to establish a comparative trash generation rate creates a framework of comparative activities and removes subjectivity but should not be constrained to the permitting authority. The State should define comparative trash generation rate in the Glossary and use it to replace ambiguous terms like 'substantial'.		Please see Response to Comments 6.6 and 12.2. Additionally, the State Water Board disagrees that "comparative" is ambiguous and do not consider "substantial" is a necessary change.
59.19	While elegant in its brevity, the current definition of TRASH could be legally construed to include virtually nothing; or, nearly every solid from plastic to sand. Ex: One could argue that a tossed burger wrapper is not 'Trash' in that it was not improperly discarded from a production, manufacturing or processing operation. In addition, the use of the word 'discarded' (to throw away) allows accidental releases or unrecoverable production-related materials (discharged during an accident) to be exempted. EX: The 'trash' ripped from Board Member Moore by the wind would not have been 'trash' because he did not 'discard' it - as much as it was taken from him.		The definition of trash states the general type of materials that are considered trash. Additionally, please see Response to Comments 18.1 and 50.34.
60.1	A Statewide approach is necessary when considering regulatory source control measures.		Comment noted. The Trash Amendments propose to provide a statewide framework and consistency to reduce trash in California's surface waters.

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60.2	State-level direction on standardizing trash quantification is also needed. Trash monitoring data is being used in a number of NPDES permits. However, there are currently no standards for measuring and counting trash, which leads to difficulty in interpreting trash data in general. The District recommends standardizing trash quantification at the state level to create consistency throughout the state. The District also agrees with CASQA's comment that the demonstration of effectiveness should not be limited to monitoring Best Management Practices (BMPs) performance. Permittees should be allowed to propose the method by which they demonstrate performance in their plan, such as through rigorous visual assessments.		Please see Response to Comment 4.6.
60.3	With this in mind, we support jurisdictional accountability throughout the watershed and we encourage the State Water Board and the applicable permitting authorities to incorporate these concepts throughout the proposed Trash Amendments and correlated permits. The District requests that the State Water Board include language in the Trash Amendments that makes it clear that a permittee is not liable for any discharges from MS4 facilities that the permittee does		A permittee is responsible for the discharges covered under the MS4 permit.

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	not own or operate.		
60.4	In a spirit of transparency, the District respectfully requests that the State Water Board extend the comment period by a minimum of 30 days and provide an additional workshop(s) in the Southern California area prior to adopting the Trash Amendments. Given the breadth of comments and concerns expressed by stakeholders at the July 16, 2014 workshop, the District requests that, when the revised draft of the Trash Amendments is released for public review, the entire document, not just the changed text, be open for further comment to allow stakeholders to consider the revised proposal in its entirety.		The Trash Amendments have been in development since 2010 with extensive stakeholders input from the multi-year efforts of the Public Advisory Group and the Focused Stakeholder Meetings in the spring of 2013. The State Water Board has considered the comments from all stakeholders at the public workshop on July 16, 2014, public hearing on August 5, 2014, and the 76 comment letters. Additionally, the State Water Board has accommodated one on one stakeholder requested meetings to discuss concerns and questions on the Trash Amendments. The proposed Final Staff Report and proposed final Trash Amendments would be only recirculated in the event there are new significant environmental impacts. Since there are no new significant environmental impacts, the State Water Board is not providing a written comment period for the revisions made to the proposed Final Trash Amendments and proposed Final Staff Report. The public may provide oral comments at the meeting at which the State Water board will consider adoption the proposed final Trash Amendments and approving the SED. (See Final Staff Report Section 2.14.)
60.5	The State Water Board should include the requirement for a baseline investigation that would assess and identify localized areas of high trash generation within their jurisdictions as a first step in the proposed regulations. The Trash Amendments have identified priority land uses that could be used to guide permittees. However, without a baseline that is specific to a local region/jurisdiction, it is unclear whether those land uses actually generate trash. The amendment should allow permittees the flexibility to customize their high priority areas		Please see Response to Comment 6.2.

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	based upon knowledge of local sources. This would allow limited resources to more accurately target local priority efforts. Additional time in the compliance schedule, to allow for baseline investigations, is also warranted.		
60.6	Providing alternative compliance tracks allows permittees the flexibility to select the appropriate approach. The District supports the State Water Board's efforts to incorporate flexibility in the Trash Amendments by including compliance track options. Track 2 incorporates a combination of strategies to address trash through implementing source control and other measures, in addition to installing full-capture systems where appropriate. This approach supports the watershed approach in the San Diego Regional Board's 2013 Municipal MS4 Permit. In addition, the installation of a network of full-capture systems through Track 1 may not be technically feasible for all permittees due to issues such as the physical constraints of the MS4 system that may limit or prohibit the ability to install these systems and could generate secondary issues, such as flooding. However, the District requests that the State Water Board provide clarification on how technical feasibility (or infeasibility) may be defined.		Please see Response to Comment 6.3.

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60.7	Compliance Expectations for Track 2. Although the District supports providing the compliance track options, there is concern that the dual alternative compliance track approach may lead to disjointed localized efforts. Permittees electing to implement Track 1 would be in compliance with implementation requirements if a network of full-capture systems were installed in the storm drains of priority land uses. However, the Trash Amendments do not identify whether these Track 1 permittees would be in violation of the trash prohibition of discharge if trash was found in their jurisdictions despite full implementation, or what may happen if this trash ends up ·in another downstream permittee's jurisdiction. Permittees need to know the compliance expectations prior to making a decision on a track option. To this end, clarification is requested on what constitutes a violation and how violations will be handled.		Please see Response to Comment 16.3.
60.8	Additionally, the Trash Amendments require that Track 2 achieve the same performance as Track 1; however, no guidance is provided on what will be considered an acceptable implementation plan, or how equivalency should be demonstrated. At present, there is no information on what efforts will be		Please see Response to Comment 6.2.

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	considered "equivalent" to full trash capture~. Compliance with Track 1 involves a quantitative assessment (i.e., number of full-capture systems), while compliance with Track 2 involves a qualitative assessment (i.e., effectiveness of control measures). Given the disparate nature of the compliance analysis for each track, the District is concerned that there isn't a standard for determining the equivalence of the two tracks and that potential liabilities may be assigned inconsistently depending on the track chosen. Permittees incur financial and compliance risks in choosing a track which has no guidelines for determining compliance, or by placing themselves in a situation where the guidelines would be subject to ongoing interpretation. We strongly recommend that clear guidance for the implementation plans and standards of equivalency be established prior to -- or with -- the adoption of the Trash Amendments. Clearly, establishing these expectations is essential to inform a permittee's choice of track.		
60.9	Monitoring requirements for both compliance tracks should be revised. Permittees should be allowed to propose the method for demonstrating performance in their plans. However, the District recommends		Please see Response to Comment 4.6.

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	the inclusion of general monitoring and reporting requirements in the Trash Amendments that would be uniform, regardless of the track selected. Elements of monitoring for both tracks should be the ability to demonstrate the effectiveness of the overall program and ascertain variations in the amount of trash discharged from the MS4, over time. In addition, receiving water monitoring should not be required since other sources contribute trash. While stormwater permittees may elect to conduct receiving water monitoring to demonstrate performance, it should not be mandated.		
60.10	The Trash Amendments, as currently drafted, would also require each permittee to develop and implement separate monitoring plans. The District recommends including language to provide permittees the flexibility to be able to collaborate with other agencies to develop watershed monitoring plans that could include both jurisdictional and watershed elements. This approach supports the San Diego Regional Board's watershed approach for the 2013 Municipal MS4 Permit, as well as current efforts by permittees to develop monitoring and assessment plans for watershed management areas in the region.		The Trash Amendments do not preclude collaboration of permittees within the same watershed. The Trash Amendments set the minimum framework for monitoring and reporting for Track 1 and Track 2 and crafted to provide flexibility to both permittees and permitting authority. The specifics of monitoring are at the discretion of the permitting authority as long as monitoring under Track 2 demonstrates the effectiveness of controls and compliance with the performance standard. This framework supports the San Diego's Water Board's watershed approach to include jurisdictional and watershed elements. (See Ocean Plan Amendments III.L.2.a.2 and Part I ISWEBE IV.A.3.a.2.)

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60.11	The Trash Amendments should limit the liability of MS4 permittees for trash originating from other regulated and non-regulated sources. The District supports CASQA's recommendation that the State Water Board require other regulated entities to implement the proposed Trash Amendments through a regulatory process external to the MS4 permits; and that the State Water Board establish non-point sources programs to control non-regulated sources of trash. The State Water Board should also include provisions to require implementation of the Trash Amendments, not only through inclusion in an MS4 Permit, but through other NPDES Permits, Waste Discharge Requirements, and Waiver Provisions.		Although the implementation provisions for compliance with the prohibition of discharge focus on trash discharge via storm water, it is well recognized that trash is transported to surface waters via both point and non-point sources. The Trash Amendments propose to implement the water quality objective for trash through a conditional prohibition of discharge of trash directly into waters of the state or where trash may ultimately be deposited into waters of the state. The prohibition of discharge applies to both permitted and non-permitted dischargers. Permitted dischargers would comply with the prohibition as outlined with the plan of implementation when such implementation plan is incorporated into the dischargers' NPDES permits. Dischargers with non-NPDES WDRs and waivers of WDRs that contain specific requirements for the control of trash shall be determined to be in compliance with the prohibition of discharge if the dischargers are in full compliance with such requirements. Under the original language, a discharger subject to an existing non-NPDES WDR or waiver of WDR could have been potentially in compliance with the requirements of the WDR, or Waiver of WDR, yet simultaneously out of compliance with prohibition of discharge included in the proposed Trash Amendments. Non-permitted dischargers must comply with the prohibition of discharge or be subject to direct enforcement action. Please see Response to Comment 6.5. (See Ocean Plan Amendment III.I.6 and Part I ISWEBE IV.A.2.)
60.12	Clarification on the definition of trash. The District requests that the State Water Board clarify the definition of "trash" under the Trash Amendments. The current definition in the Trash Amendments is somewhat vague, specifically regarding what is not included (such as green waste). This may lead to a broad interpretation across the state		Please see Responses to Comments 3.2 and 18.2. Additionally, please see Section 4 Issue 1 in the Final Staff Report.

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	by local regional boards. A clear definition of trash could provide consistency for permittees throughout the state.		
61.1	Rather than imposing new burdens on public transportation agencies that are not justified by the record, we ask the State Board to allow time for its own General Permit program to be implemented by BART and other public transportation operators in the Non-Traditional Permittee category, before concluding that additional regulation is necessary.		Trash is a prevalent and controllable priority pollutant across California. One of the main transport mechanisms of trash to receiving waters is through the storm water systems. The Trash Amendments focus on trash discharge reduction by requiring that NPDES storm water permits (specifically MS4 Phase I and Phase II Permits, Caltrans Permit, CGP, and IGP) contain provisions that require permittees to comply with the prohibition of discharge. These provisions focus on trash control in the locations with high trash generation rates in order to maximize the value of limited resources spent on addressing the discharge of trash into state waters. As a Non-Traditional Phase II MS4 permittee, the appropriate Water Board may require the Bay Area Rapid Transit (BART) and other similar Non-Traditional Small MS4 permittees to adopt Track 1 or Track 2 control measures over such land uses or locations. (See Final Staff Report Section 2.4.)
61.2	BART respectfully requests clarification from the State Board as to the scope of the term public transportation stations. To the extent that self-contained heavy rail transit stations are considered "public transportation stations" as defined, BART objects on the grounds that there is no evidence in the record to support the regulation of such stations as priority land uses generating significant amounts of trash. The State Board also indicates that the Proposed Trash Amendments will apply to "MS4 Phase I and Phase II NPDES		BART is a Non-Traditional Small MS4s that lacks jurisdictional authority over priority land uses. After reaching that determination in consultation with the applicable MS4, the appropriate Water Board may require the BART and other similar Non-Traditional Small MS4 permittees to adopt Track 1 or Track 2 control measures over such land uses or locations. (See Final Staff Report Section 2.4.)

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	permittees with regulatory authority over land uses." Although BART is a Non-Traditional Phase II Permittee, it does not have regulatory authority over land uses. The Draft Staff Report focuses on municipalities, suggesting that Proposed Trash Amendments are intended to apply to municipal operators of bus services. We request that the State Board clarify whether the Proposed Trash Amendments to apply to rail transit agencies operating self-contained station facilities, such as BART.		
61.3	The inclusion of public transportation stations in the scope of priority land uses is not supported by anything in these studies. The Draft Staff Report indicates that the purpose of identifying priority land uses is to "allow MS4s to allocate trash-control resources to the developed areas that generate the highest sources of trash" but provides no evidence that public transportation stations generate trash at rates comparable to residential, commercial or industrial land uses. In the absence of such evidence, there is no support in the record for a determination that public transportation stations should be included among trash priority land uses. Moreover, while there may be significant uncontrolled trash generation at other types of transportation facilities, BART		The intention of public transportation stations is bus stations and stops. These areas do generate trash, especially food container products and cigarettes. It is commendable that BART has existing institutional controls for trash. As BART is a non-traditional MS4 permittee, the permitting authority has the authority to determine and require additional trash control measure for BART to address the areas and locations that do have the potential to cause or contribute to impairments of beneficial uses for trash.

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	already has institutional controls in place which distinguish it from uncontrolled facilities.		
61.4	The studies cited by the Draft Staff Report do not support the inclusion of self-contained rail stations among priority land uses for purposes of the Proposed Trash Amendments.		Please see Response to Comment 61.8.
61.5	In light of BART's existing, effective trash control practices, as well as the lack of support in the cited studies, the is no basis in the record for including BART stations in the priority land use category as posing a risk of trash impairment to water bodies.		Please see Response to Comment 10.7.
61.6	BART recommends that the State Board establish a set of presumptions and standards such that, if specified trash controls are implemented pursuant to Track 2, the State Board and Regional Water Quality Control Boards would conclude that the results are equivalent to Track 1.		Please see Response to Comment 16.3.
61.7	The Proposed Trash Amendments require permittees to conduct monitoring and submit reports that indicate the effectiveness of the controls. However, the Proposed Trash Amendments and Draft Staff Report provide no guidance as to how such monitoring and reporting should be conducted, including how		Please see Response to Comment 4.6.

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	Track 2 permittees would determine the efficacy of their controls and any associated decrease in discharged trash. The State Board indicates that the required monitoring and reporting should be tailored to the type of compliance. BART agrees, and suggests that the State Board provide more specificity as to how Track 2 permittees should evaluate effectiveness. In particular, permittees choosing Track 2, which is inherently qualitative, should not be required to quantify the amount of trash discharged.		
61.8	While an SED may be prepared in lieu of a CEQA document under the State Board's certified regulatory program, the State Board remains bound by the broad policy goals and substantive standards of CEQA. The SED's primary purpose is to serve as an informational document, but the State Board has insufficiently explained why it relies so heavily on Southern California specific analyses for statewide impacts. In addition, it is not clear that incorporation by reference is appropriate here. The CEQA Guidelines indicate that incorporation by reference should be used for general background information, not for actual impacts analysis.		The only statewide impact of the proposed Trash Amendments is the reduction of trash in the state's water bodies. The localized potential impacts of implementation projects will be similar in nature and have been discussed in the draft Substitute Environmental Document (draft SED). The only section that incorporates the Los Angeles Water Board Environmental Impact Report by reference is the air quality analysis, and the draft SED explains that since the South Coast Air Basin has poorer air quality than other areas of the state, using the Southern California analysis would encompass the maximum possible impact of the proposed project. Although Section 15150(d) states that incorporation by reference is "most appropriate" for providing general background, this language is not limiting and Section 15150(e) specifically cites examples of materials to be incorporated by reference that specifically includes environmental setting information and specific effects analysis.
62.1	Entities with solid waste franchise authority are required to comply at		Comment noted. Municipalities should continue to create partnerships with solid waste franchise authority to reduce

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	no cost to the permittee.		trash.
62.2	Permittee is not responsible for trash generated by State and/or federal agencies.		Comment noted. State and federal agencies would be required to comply through their respective MS4 permit.
62.3	Extend the time frame to select a track from 3 months to 6 months.		Within eighteen month of the effective date of the Trash Amendments, the permitting authority shall either modify, re-issue, or adopt the applicable MS4 permit to add the Trash Provisions or issue an order pursuant to Water Code section 13267 or 13383. The permittee would have three months to provide written notice of the selection of the Track 1 or Track 2. If Track 2 is selected, then the permittee must also submit an implementation plan within eighteen months of the effective date of the implementing permit or the receipt of the order (whichever date is earlier). (Ocean Plan Amendment III.L.4.a.1; Part I ISWEBE IV.A.5.a.1.) The three month time frame to select a track was provided in order to allow for the maximum amount of time for implementation plan development. If six months were to be granted, then that would reduce the period for implementation plan development to 15 months. The State Water Boards do not think this change is necessary as the permittees have sufficient time to select a track and time for the implementation plan should the maximum amount of time.
62.4	The "one size fits all" statewide approach may not make sense with areas of low level density and development. For low development areas, a threshold (such as >25% of the catchment area has a priority land use) makes sense.		Please see Response to Comment 11.4 and 15.2.
63.1	SCVURPPP member agencies have concerns with the amendments as drafted because they would potentially require municipalities in		The Trash Amendments were crafted with the intention to be compatible with the efforts for trash control under the MRP and to not redirect limited resources for redundant efforts. The State Water Board worked with San Francisco Bay Water

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	the Bay Area to inefficiently redirect limited public resources away from activities currently aligned with trash reduction provisions in the MRP. For that reason, we support the recommendations proposed in the comment letter submitted by the Bay Area Stormwater Agencies Association (BASMAA) regarding the proposed amendments.		Board staff to craft and ensure that Track 2 language would be compatible with existing and future San Francisco Bay Municipal Regional Stormwater Permit (MRP) conditions. As the trash control provisions exist in the MRP, they represent an example of a Track 2 approach that the State Water Board intends to see incorporated into other MS4 Phase I permits across California, specifically with the combination of treatment and institutional controls and mapping for trash generation areas. Additionally, please see Response to Comment 4.2 and the rest of the Response to Comment Letter 4.
63.2	Provide consistency between the proposed narrative Water Quality Objective and trash discharge prohibitions by revising the prohibitions to include language that qualify that the trash discharges being prohibited and controlled by the specified implementation requirements, is the trash "in amounts that cause impairment of beneficial uses or conditions of nuisance in receiving waters"		Please see Response to Comments 4.1 and 10.9.
63.3	Provide an alternative (i.e., Track 3) to allow for compliance to be achieved via continued implementation the trash-specific provisions in the MRP.		Please see Response to Comment 4.2.
63.4	Effectively provide "certification" for all devices previously "approved" by SF Bay Regional Board staff as full capture systems that are installed or in the process of being installed in the Bay Area.		Please see Response to Comment 4.3.

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64.1	We urge the Board to determine that the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit (MRP) currently meets or exceeds State Board requirements with respect to delineation of high trash generation areas, annual reporting requirements, and the trash load reduction timeline. We ask that you include language in the amendments formalizing this determination and clarifying Regional Board authority to implement stronger restrictions and timelines.		Please see Response to Comment 7.3.
64.2	We urge the State Board to confirm the Regional Board's authority for implementing the load reduction timeline detailed in the MRP. Permittees have submitted their Long-Term Trash Load Reduction Plans, which detail strategies for achieving zero trash loading by 2022. Regional stakeholders are committed to helping permittees reach this goal and create cleaner, healthier waterways for Bay Area residents and wildlife.	Trash* shall not accumulate in ocean waters, along shorelines or within those areas of the normal high water mark of inland waters in amounts that adversely affect beneficial uses or cause nuisance	The State Water Board supports the San Francisco Bay Water Board's authority to implement trash load reductions as detailed in the MRP and sees those requirements substantially equivalent with Track 2. Additionally the East Contra Coast Municipal Storm Water Permit issued by the Central Valley Water Board has similar requirements to the MRP, which are substantially equivalent to Track 2. To reduce redundancy, the proposed final Trash Amendments were modified to clarify this intention in the time schedule section. MRP and East Contra Costa Municipal Storm Water permittees are exempt from electing Track 1 or Track 2 as the permit requires trash controls that are substantially equivalent to Track 2. In addition, the submission of an implementation plan does not apply to the above permittees if the respective regional water board determines that the submitted implementation plan is equivalent to the implementation plan required by the Trash Amendments. (Ocean Plan Amendment and Part I ISWEBE Footnote 2; Ocean Plan Amendment III.L.4.a.1; Part I ISWEBE IV.A.5.a.1.) Additionally, the Trash Amendments specify that full compliance must occur within ten years of the effective date of

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			the first implementing permit, and the final compliance date may not be later than fifteen years from the effective date of the Trash Amendments. (Ocean Plan Amendment III.L.4.a.2-5; Part I ISWEBE IV.A.5.a.2-5.) The compliance deadlines in the MRP and East Contra Costa Municipal Storm Water Permit are 2022 and 2023, respectively. As those compliance deadlines would occur within fifteen years of the effective date of the Trash Amendments and the MRP and East Contra Costa Municipal Storm Water Permits are substantially equivalent to Track 2, the MRP and East Contra Costa Municipal Storm Water permittees are expected to achieve their final compliance deadlines without the need for additional time to compliance. The pertinent permitting authority may establish an earlier full compliance deadline than that specified in Track 2 time schedule (See Ocean Plan Amendment and Part I ISWEBE Footnote 2.)
65.1	We object to any such time extensions on the ground that regulatory sources controls are not effective to reduce litter in the ocean, inland surface waters, enclosed bays, or estuaries (collectively "water bodies"). Source controls such as plastic bag bans or fees are an ineffective method of litter control, and are merely symbolic. We agree with staff that product bans and product fees do nothing more than "remove a specific type of item from the waste stream." We do not agree and we object to the assertion that granting time extensions "would not have an adverse effect on the environment."		Regulatory source controls have been omitted from the final proposed Trash Amendments. Please see Responses to the General Response to Comment Letter 1 and to Comments 1.3 and 4.5. Commenter's concerns relate to regulatory source controls and time extensions which have been removed from the proposed Final Trash Amendments. (Ocean Plan Amendment at removed III.L.5; Part I ISWEBE at removed IV.A.6) Based on the revisions and discussions in the referenced responses, commenter's underlying arguments are not applicable to the Trash Amendments which will be considered for adoption by the Board and they will not be responded to in detail.
65.2	Based on CEQA Guidelines § 15250, we object to the proposed		Regulatory source controls have been omitted from the final proposed Trash Amendments. Please see the General

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	Trash Amendment as deferral of MS4 compliance would have a significant negative impact on the environment. Further such adverse effects would not be offset by any significant environmental benefits from a plastic bag ban or fee. CEQA Guidelines § 15250 states: "A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible." (Note: The CEQA Guidelines are binding.) Clearly, avoiding the significant negative environmental impact of time extensions for MS4 compliance is feasible simply by not permitting such extensions.		Response to Comment Letter 1 with regard to a plastic bag ban and regulatory source controls. Regarding the environmental impacts of granting a time extension, CEQA requires an analysis of potential environmental impacts based on the baseline conditions at the time the environmental analysis begins. Since the impacts of trash on the environment are currently occurring and are ongoing, granting a time extension does not change this baseline condition and; therefore, does not cause any new impacts on the environment. That being said, the time extension provisions have been removed from the proposed final Trash Amendments.
65.3	We object on the ground that the Staff Report contains no analysis whatsoever of the negative environmental impacts of the proposed time extensions. The Board cannot make an informed decision without such an analysis. At the very least, an SED or EIR must show a significant benefit from source controls such as a plastic bag ban or fee that would offset the significant negative impact of time extensions. Such a showing must be based on substantial evidence. (CEQA Guidelines § 15384.)		Please see Responses to the General Response to Comment Letter 1 and to Comments 1.3 and 65.2. Commenter's concerns relate to regulatory source controls and time extensions which have been removed from the proposed Final Trash Amendments. (Ocean Plan Amendment at removed III.L.5; Part I ISWEBE at removed IV.A.6) Based on the revisions and discussions in the referenced responses, commenter's underlying arguments are not applicable to the Trash Amendments which will be considered for adoption by the Board and they will not be responded to in detail.

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66.1	Solano County would like to follow the Track 1, with a 100% trash capture on all storm drains. However, without storm drains to service, the County could be forced into Track 2. The way the policy is written, Solano County would likely already be in compliance, as we have full capture system for storm drains (or, because there are no storm drains, there are no capture systems to put in place). However, at the workshop a representative from the State Board stated that this may instead force Solano County to follow Track 2, which appears to be an unreasonable approach. In the Draft Policy it states: "Under the proposed Trash Amendments, MS4 Phase I and Phase II NPDES permittees with regulatory authority over land uses can comply with the prohibition of discharge of trash under a dual alternative compliance approach or 'Tracks'" (p. 12). This states that Phase II MS4s have the option of compliance with Track 1 or Track 2, and Solano County should be no exception, even though the policies appear to be misapplied. Due to vagueness in the definition of "catch basins" in the 2012 Phase II MS4 Permit, the County has been working with San Francisco and Central Valley Regional Water Quality Control Boards to define "catch basins" to direct monitoring		The State Water Board appreciates the challenges for the definition of "catch basins". The State Water Board is not going to make an exception for Solano County in the proposed Trash Amendments. However, in the next Phase II MS4 Permit that incorporated the Trash Amendments, the State Water Board will work with both the San Francisco Bay and Central Valley Water Boards to craft implementation provisions that address the Solano County specifics. Most likely, since the Trash Amendments build on Track 1 setting the performance standard, then this standard will be very minimal for small MS4s with no curb and gutter MS4 system.

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	and compliance efforts for the MS4 Permit. Both Regional Water Boards have verbally or in writing agreed to define "catch basins" within Solano County as the spots in the County's MS4 system where open roadside ditches drop into streams, rivers, and receiving waters. Monitoring and testing will occur at these locations within the County. Recommendation: The County recommends that compliance with the final Trash Policy be kept consistent with Regional Boards' determination of "catch basins" within Solano County. The County should be able to direct full trash capture to the identified "catch basins" to obtain Track 1 compliance. This necessitates regional consideration and variability within the Draft Policy to identify MS4s that do not fit into the Phase I large MS4 storm and gutter system. Smaller MS4s with no curb and gutter system should be able to comply with Track 1, full trash capture, without undue difficulty of compliance.		
66.2	The State Water Board will be taking responsibility for the certification process for full capture systems going forward. Solano County asks that certification allows for reasonable methods of compliance for Solano County. For example, the County may not be able to use		The State Water Board will be taking the responsibility for the certification process of full capture systems, which is focused on the general design criteria and not each individual installation. The State Water Board will take into consideration the certification process from Solano County and other small MS4s with no curb and gutter MS4 system. (See Ocean Plan Amendment and Part I ISWEBE definition for "full capture system.")

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	established catch basin and/or trash net systems for compliance, as the County cannot tie into a curb/gutter/drain system. However in the interest of full capture, the County would be able to establish trash capture devices at the previously mentioned “catch basins” in Solano County, or where the storm ditch system goes into a body of water. Recommendation: The County recommends that the State Water Board take regional systems into consideration when certifying trash capture devices to allow for reasonable compliance for unusual conveyance systems such as Solano County. While statewide consistency is mentioned, if consistency creates unattainable trash capture compliance for small MS4s with no curb and gutter MS4 system, the Policy creates unfair difficulty for low-risk MS4s such as Solano County.		
66.3	If Solano County was forced into Track 2, the requirement for baseline and project-long monitoring would be difficult or impossible for Solano County because there are no drains to monitor. The only ‘drains’ in Solano County are ditches, culverts, and bio-swales on the sides of the road, which do not have a single entry point for monitoring and may be subject to dumping along their stretch. For an obviously rural and	Track 1: Install, operate and maintain full capture systems <u>within the MS4 system</u> ~~for all storm drains~~ that captures runoff from one or more of the priority land uses in their jurisdictions:	Please see Responses to Comments 11.4 and 66.1.

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	low trash-generating area like Solano County, it seems the difficulty of complying with Track 2 requirements would outweigh the marginal gains.		
66.4	One of the biggest concerns for Solano County is how the State Water Board will classify Solano County's stormwater system of roadside ditches in the Draft Trash Policy. The State Water Board made the determination to place Solano County under the Phase II Small MS4 permit despite the fact that Solano County has no separate sewer system, and there is an imperative that this should not create logistical and financial hardships for Solano County in complying with the Draft Trash Policy. We ask that the State Board make more detailed requirements for rural municipalities without sewer or drain systems for their commercial/industrial areas, including an equivalent Track 1 route.		The State Water Board does not intend to define Solano County's roadside ditches with the Trash Amendments. However the State Water Board will address the specifics in the next implementing Phase II MS4 permit. The intention is that the implementation provision necessary to be in compliance with the prohibition of discharge are focused on curb, gutter catch basins and priority land uses. Thus Solano County's implementation provision requirements would be based on trash load in catch basins in priority land uses. Please see Responses to Comments 45.16 and 66.1.
66.5	Solano County has concerns about the lack of definition for the priority land use areas (commercial, industrial, and transportation hub). The State Water Board needs to provide definitions for each area before implementing the policy for consistency across municipalities. Solano County appreciates that	A permitting authority may determine that specific land uses or locations (e.g. parks, stadia, schools, campuses, or roads leading to landfills) <u>have a Trash generation rate that is comparable to</u>	Please see Response to Comments 66.1 and 66.4.

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	priority land use areas will be identified not by zoning code but by actual land use. As seen in the attached spreadsheet, Solano County has considerable acreage that would be zoned for commercial, industrial, etc. land uses. However when you examine the actual areas, most of the land is on the outskirts of incorporated cities and has little developed commercial, industrial, etc. land use. This brings up the question of sizing to identify priority land use areas. There should be numerical sizing criteria for identifying priority land uses for commercial and industrial land use, as there is for high-density residential (30 units per acre). For example, although there is a zoned commercial area, it may have one or two commercial facilities per acre. While this is a 'commercial' area, it is not a high trash-generating area – similar to how not all residential areas are high trash-generating. By identifying a number of facilities per square foot, we can more accurately identify high trash-generating areas and avoid wasting resources on isolated commercial and industrial sites with little trash generation and foot traffic.	other priority land uses. ~~generate substantial amounts of Trash*.~~ In the event that the permitting authority makes that determination, the permitting authority may require the MS4 to comply with Chapter IV.B 3 a (1.) or Chapter IV.B.3.a (2.) (As the case may be) with respect to such land uses or locations if the land uses or locations drain into the MS4 system such that the permittee is able to cost effectively continue sole-implementation of its chosen Track.	

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66.6	If Solano County is forced into Track 2 requirements, we see an opportunity for prioritizing areas based on the initial monitoring requirement. Due to financial constrains (see next Concern), we believe that the Draft Trash Policy would be more effective if permittees could use the initial monitoring data to identify high- and low-trash generating areas, and direct resources accordingly. The current Draft Trash Policy allows for Permittees to identify high-trash generating areas and direct resources accordingly. However with finite resources, there is no way for MS4s to identify lower-trash generating areas and de-prioritize accordingly. This creates an issue of being unable to move resources to higher-risk areas, and/or disproportionally applying too many resources to lower-risk areas. The only option is for MS4s to expend more resources at higher-generating areas, while still having to expend the same resources for all other land uses regardless of risk, which would not be a reasonable approach. This creates the problem that MS4s will be unlikely to want to identify high-generating areas, as this will only necessitate unnecessary expenditure be spent on this trash program when funds are already limited. The Board must allow for	The permitting authority may determine that specific land uses, locations or activities, (e.g. State or Federally owned properties or railroads), are priority land uses or have a comparative trash generation rate to land uses specified in the Chapter. Such areas or facilities may include (but are not limited to) high uses campgrounds, picnic areas, beach recreation areas, parks not subject to an MS4 permit or marinas. In the event that the permitting authority makes this determination, an MS4 receiving flows from the designated land use may refer that facility to the permitting authority and/ or the U.S. EPA for regulatory oversight. Upon referral, the MS4 will not be held responsible for trash that accumulates in surface waters, along shorelines or adjacent areas from these facilities.	Please see Response to Comments 10.1 and 10.7.

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	more flexibility for MS4s to have the ability to move funds away from low-risk area. Recommendation: The County recommends that if the initial monitoring results show an area to have little to no trash and/or little to no risk for trash impairment, Permittees should be able to present the evidence to the Board and opt out of Draft Trash Policy requirements in low-generating areas going forward. This would conserve limited resources while allowing Permittees to focus efforts and funds on high-generating areas for trash.		
66.7	Solano County is committed to protecting and improving water quality, but has many concerns with appropriate funding levels when comparing risk levels. As with many MS4 policies statewide, the Draft Trash Policy is targeted at larger MS4s with higher trash outputs and higher pollution risks than Solano County. Solano County has a few very small areas which may qualify as priority land uses, and these areas are largely on the outskirts of incorporated cities and are lower-risk than the high density commercial and industrial areas in cities. Additionally, there are no trash-impaired water bodies within Solano County, which shows the relatively small risk that trash currently poses to beneficial use within the County.		Please see Response to Comment 10.4.

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	As with many policies, Solano County would have to comply with onerous requirements with no regard for relative trash risk. So, although Solano County is likely a very small contributor to trash in the watershed, it would still need to comply with costly regulations. Additionally, the fact that Solano County is so small and rural – placing it at a lower trash risk – is precisely why it may not be able to comply with the more straightforward and cost-effective Track 1. So rather than being rewarded for having a lower trash risk in the County, we will be burdened with higher relative costs to comply. We ask that the policy be amended to account for all MS4s in its logistics and its financial impact. Lastly, there are no current funding mechanisms to help permittees to obtain compliance. Prop 218 precludes stormwater entities from raising their fees for stormwater management. As such there are no ways for MS4s to recoup costs for compliance. Recommendations: The County recommends that non-competitive funding opportunities be made available to all MS4s for compliance with the Draft Trash Policy. Additionally the County recommends that a sized approach to compliance be adopted, with lower-risk, unusual MS4s like Solano County not being penalized for their		

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	systems with relatively onerous, restrictive, and expensive costs for compliance.		
67.1	We oppose the suggestion of local ordinances banning products as an effective means to combat litter. We urge the Board to reject this punitive option. Combating litter in public spaces, including waterways, demands attention to the source or root cause of the problem, which is irresponsible behavior. Banning products will negatively impact consumers, manufacturers, their employees and local economies, with little certainty that this type of measure will change behavior and prevent littering. This sends a very chilling message to existing product manufacturers and those contemplating expanding or siting operations in the state.		Please see General Response to Comment Letter 1 and Comment 1.3. Commenter's concerns relate to regulatory source controls and time extensions which have been removed from the proposed Final Trash Amendments. (Ocean Plan Amendment at removed III.L.5; Part I ISWEBE at removed IV.A.6) Based on the revisions and discussions in the referenced responses, commenter's underlying arguments are not applicable to the Trash Amendments which will be considered for adoption by the Board and they will not be responded to in detail.
67.2	We support the use of best management practices (BMPs) described as litter education, expanded recycling and placing additional trash cans in public spaces. We do not support mandatory producer take-back programs which place the full burden on manufacturers with unknown costs and unfettered authority to regulators. Recommendation: We urge the board to reject this option. This creates a state program financed by business, regardless of		Please see General Response to Comment Letter 1 and Comment 1.3. Commenter's concerns relate to regulatory source controls and time extensions which have been removed from the proposed Final Trash Amendments. (Ocean Plan Amendment at removed III.L.5; Part I ISWEBE at removed IV.A.6)

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	affordability and cost-benefit. Again, such a mandate does not address the root cause of the litter problem.		
68.1	The use of an asterisk throughout the document appears to be a reference to a definition contained within the Glossary but, this intension is not stated in the Amendment or its supporting documents. In addition, there are no corresponding asterisks in the Glossary.		The asterisk is used to designate a term as a defined term in the California Ocean Plan. All capital letters is used to designate a term as a defined term in the forthcoming ISWEBE Plan.
68.2	As was discussed at the July 16th workshop, there is no clear path to demonstrate compliance with Track 2 nor does it appear that it is possible to achieve full compliance via Track 2 based on research perform under the Municipal Regional Permit. If Track 1 is the only viable option for compliance, it becomes an unfunded mandate.		Please see Responses to Comments 6.2, 10.4, 16.3, and 29.4.
68.3	The presence of other significant trash deposition mechanisms suggest that a more global and cost-effective solution to trash accumulation is the path of 'true source control" as demonstrated by the Brake Pad Partnership and other similar methods such as extended manufacturer product responsibility, and redemption values.		Please see Response to Comment 4.5.

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68.4	The State should consider replacing ambiguous terms like 'substantial' with 'Comparative Trash Generation Rate' when defining alternative priority land uses.		Please see Response to Comment 59.18.
68.5	Define 'adjacent areas' in the Water Quality Objective.		Please see Response to Comment 50.9.
68.6	Include entities that have NPDES permits or WDRs but may not operate a defined MS4 system or be regulated as an industrial discharger such as special districts overseeing the collection of trash.		Please see Response to Comment 10.6
68.7	Under the Prohibition of discharge for Pre-Production Plastics (PPP), please clarify if this section assigns discrete responsibilities for this prohibition to the manufacturers and/or users of PPP's or do these requirements fall under the responsibility of the local jurisdiction (MS4)?		Please see Response to Comment 12.3.
68.8	The fact an entity has 'regulatory authority' over a land use does not entitle that entity to install, operate or maintain a device on that private property.		Please see Responses to Comments 11.4 and 25.1.

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68.9	Track 2 compliance is not obtainable. Its efficacy and its comparability to Track 1 may be left up to the subjective future interpretation of equivalence by the courts. As such, Track 2 is not a viable option as written. Rather, objective criteria for the measurement of "performance results" of Track 2 should be explicitly delineated by the Amendment.		Please see Responses to Comments 4.6, 6.2, and 16.3.
68.10	A permittee may select Track 1 and identified a land use or location that may lie within the municipality's boundaries, however those discharges may not drain through the MS4's system to the receiving water (e.g. a nonpoint source park or facility that private drains directly into surface water). Therefore the permittee cannot be responsible for those discharges. In addition, the term "substantial' is vague and open to subjective interpretation. Trash generation rate for these newly-identified sources should be comparable to land uses listed by the Amendment.		Please see Responses to Comments 11.4, 25.1, and 59.9.
68.11	The State and Federal governments own properties that these proposed amendments define as priority land uses. However, with the exception of properties controlled by The California Department of Transportation (Department)		Comment noted. If these state and federal properties have a NPDES permit, then they will be subject to the Trash Amendments.

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	regulated under the provision of this Policy, a permittee has limited authority to require compliance at State or Federal facilities.		
68.12	It is important to recognize that prior to installation of any infrastructure, MS4 permittees must perform a plethora of tasks (including but not limited to mapping of priority land uses and the systems that drains those geographic areas, modeling hydraulics and hydrology (H&H) needed to support the infrastructure changes in a manner that reduces the potential for flooding, obtaining State certification of the selected full capture devices, securing financing, adopting governing ordinances, creating bid documents and contracting). Therefore, the MS4 may obtain an 'average of ten percent installed every year.' over the first five years, but it is unlikely that an MS4 could achieve that goal within the first two years of adoption of the Trash Amendment. The Glossary defines a Full Capture System as a system meeting certain specifications and which, prior to installation, has been individually approved by the Executive Director (or designee) after review of all relevant supporting documentation. Inclusion of, 'prior to installation' penalizes communities that have been proactive and installed trash capture devices that meet the Full		The State Water Board appreciates the complexity of tasks that permittees must undertake to install treatment controls. The intention of the certification process is to ensure that the general design of a full capture system effectively captures trash 5 mm or greater during the one-year one-hour storm event. The State Water Board intends for resources to be efficiently directed towards effective treatment controls to capture and remove trash. The State Water Board disagrees that “prior to installation” would penalize a community, as resources should be directed to treatment controls proven to be effective for capturing trash. Additionally, it is not the expectation that each device that is to be inserted will need to be certified. This would be highly infeasible. The certification process is for the general design of a full capture system, not for each individual system installation in a drop inlet.

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	Capture System specifications. In addition, State Board staff has suggested drop inlet type devices as (at least) one method of full capture compliance. The unincorporated area of Sacramento County has nearly 50,000 drop inlets within priority use areas. While not all 50,000 would immediately be submitted for Certification, the State should anticipate receiving 1 O's of thousands of submittals (or more) per year from across the State. The language should be modified to allow post-installation certification. If post-installation is not allowed, there needs to be language crafted that extends the compliance dates and absolves an MS4* from milestone compliance schedules if the State is unable to provide Certification in a timely (60-days) manner.		
68.13	As recognized during the July 16th (2014) workshop, 'source control' at the local level is limited to the banning of single-use products. This may only result in a transformation of the constituents within trash and not the desired reduction of trash. Statewide source controls that encourage waste/trash reduction (including but not limited to redemption value, legislation regarding extended manufacture product responsibility/product reformulation) could achieve that which neither Track 1 nor Track 2		Please see Response to Comment 4.5.

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	can which is the removal of trash from our environment. We encourage the State to partner with a broad stakeholder group to evaluate and implement true-source control prior to implementing the Trash Amendments. We encourage the State to consider developing/adding language that recognizes (via time extensions and/or milestone adjustments) local jurisdictions that can demonstrate more global and/or statewide true-source removal efforts.		
68.14	Although the State made clear during stakeholder meetings and the July 16th (2014) workshop there will be no monitoring required for those choosing Track 1, both the draft report associated with the Trash Amendments and the language used within this Section allow for inconsistent statewide application of the State's intent.		Please see Response to Comment 56.1.
68.15	While the State made-clear during the July 16, 2014 workshop that there will be no monitoring required for those geographic areas within a Track 2 community that are "fully-captured", both the draft report associated with the Trash Amendments and the language used within this section allow for inconsistent statewide application of the State's intent.		Please see Response to Comment 56.1.

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68.16	The permittee can only be responsible for discharges from the MS4*. Therefore, delete 7.b. (5) as it is superfluous in light of 7.b. (4)- which requires the MS4* to report changes in the amount of trash discharged from its system. In addition, Trash assessments in receiving waters will generate highly variable data that precludes yearly comparisons and an evaluation of causal deposition mechanisms will be speculative.		Please see Response to Comment 4.6.
68.17	It is unclear if each full capture system must be certified 'prior to each installation' or if so long as it receives an overall technical certification by the State that it meets the specifications of a full capture system. This penalizes communities that have been proactive with regards to trash capture and provides no discernable benefit. In addition, State Board staff has suggested drop inlet type devices as (at least) one method of full capture compliance. Delete: 'Prior to installation' from the definition; or, add language that allows pre-certification by the Executive Director or designee of the State Water Board of full capture devices and/or features for a range of flows or allow certification (sign/stamp) by a Civil Engineer licensed in the State of California.		The intention is for certification is for the overall technical specifications of the full capture systems, and not the certification of each individual full capture system installation. Additionally, please see Responses to Comments 59.15 and 68.12.

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68.18	As currently constructed, the reference to 'it' and 'its' may be misinterpreted as to referring to the applicable permitting authority. Instead the language should be clarified by using the term "MS4" in its place. It should be made clear under the language of this section that the MS4 should be allowed to substitute alternative land uses for the listed land uses on a one-for-one basis if they are found to generate higher rates of trash. The second sentence description of tasks necessary to establish a 'Comparative Trash* Generation Rate' establishes a framework of comparative activities, removes subjectivity and should not be at the discretion of the permitting authority to approve or reject.		Please see Response to Comment 59.18. Additionally, the reference to “it” and “its” has been adjusted to “MS4 permittee” and “MS4 permittee's,” respectively, in the proposed Trash Amendments. (See Ocean Plan Amendment and Part I ISWEBE definition of “alternate equivalent land uses” within the definition of “priority land uses.”)
68.19	The current definition of trash is far reaching. It can be legally construed to include virtually every solid material from common trash to sand.		Please see Responses to Comments 18.2 and 59.19.
68.20	The retrofitting existing drainage systems with full capture devices that include both drain inlet screening or inline devices may result in adverse effects on the hydraulic capacities of those systems that could result in significant localized flooding and unsafe roadway conditions. The Substitute Environmental Document page 135 Section 6.8.2 of the staff		Properly designed systems will have bypass mechanisms that should prevent localized flooding in most areas. Installation of devices in areas where snow accumulation occurs may be an issue and will need to be taken into consideration when designing, operating, and maintaining the device. See Final Staff Report sections 5.1.1-5.1.3 (pp 93-96).

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	report, does not adequately address this issue. The document indicates that proper maintenance is adequate mitigation for the issue of 'clogged devices' that may cause flooding, mainly due to trash accumulation and leaf litter and therefore this is a less than significant impact. In areas with ice and snow accumulation, ongoing maintenance of drain inlet capture devices will not mitigate clogging devices due to ice and snow. In these higher elevations, clogged devices may exacerbate driver safety issues, cause flooding and additional erosion due to flooding, and restrict access to the storm drain system for maintaining flows in the winter. The only solution for communities subjected to these conditions is to install vortex devices within their mainlines which is more expensive and difficult to access under snow load conditions. The requirements of the Trash Amendment should take into consideration winter weather conditions and be seasonally relaxed to accommodate them.		
69.1	The Agency supports the recommendation to allow institutional controls, such as product bans, to be used in combination with structural controls to meet the prohibition of trash discharge. Our Agency adopted a single use bag ban ordinance in 2012 on behalf of all the		Please see Response to Comment 4.5.

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	cities in Alameda County. The ban is proving to be an effective method to dramatically reduce this source of litter that finds its way into our waterways, and reduce waste.		
70.1	An enforceable statewide trash policy will have annual numeric reduction criteria with specific deadlines to ensure enforcement of the policy is feasible and effective. In addition, a statewide trash policy should have mandatory monitoring and reporting requirements to determine actual reduction rates. The proposed Trash Amendments do not require monitoring and reporting of reduction rates under Track 1. Neither track states numeric annual reduction criteria. Both tracks should require numeric monitoring and reporting. This ensures a uniform, efficient, and reliable system that holds permittees equally accountable. Permittees will adopt additional source and institutional controls to meet these monitoring and reporting requirements ensuring swift compliance.		Please see Response to Comment 6.2.
70.2	To remedy this expensive problem, the Board should adopt numeric annual reduction criteria: the most efficient, enforceable policy possible keeping in mind limited staff resources.		Please see Response to Comment 6.1.
70.3	To address the threat to our		Please see Response to Comment 4.5.

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	waterways, Surfrider recommends incentivizing source controls that will help the Board attain its own goals of ridding pollution from our waters. The Board can influence municipalities through the Trash Amendments in two ways: First, it can incentivize source controls such as plastic bag bans by allowing extended time for compliance to municipalities who enact such a source control measure. Second, the Board should adopt a policy that incentivizes source controls under both Track 1 and Track 2. Surfrider supports incentivizing source controls, such as plastic bag bans, by allowing municipal permittees compliance time extensions for each source control it implements, limiting the time extension to three years.		
70.4	High-traffic beaches and parks represent a significant amount of trash that enters the water. Beaches and parks are frequently located near water resources such as rivers and oceans resulting in pollution "hotspots." Surfrider urges the Board to remove discretionary language and require local water boards to identify non-point source polluters such as beaches, and adopt issue waste discharge requirements ("WDRs"). Surfrider recommends specifically addressing beaches as trash hotspots. We further recommend requiring permittees to		Please see Response to Comment 6.5.

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	conduct trash hotspot surveys to determine areas where trash is being directly discharged into a body of water.		
70.5	A ten to fifteen year compliance deadline far exceeds the time frame necessary to implement these measures to eliminate trash from our waters. Trash pollution, especially plastic pollution, is an urgent problem that poses serious risks to public health and the environment. The State Board should act firmly and swiftly to deal with this statewide problem. Therefore, Surfrider recommends reducing the compliance deadline to five years.		The State Water Board agrees that trash poses serious risks to public health and the environment. To allow for statewide consistency and provide sufficient time for permittees to successfully achieve the prohibition of discharge, the Trash Amendments propose a ten year compliance deadline for both Track 1 and Track 2, which allows for implementation of trash controls to occur over at least two permit cycles. This provides the ability to use the second permit cycle to build on the first permit and allow for adaptive management. (See Ocean Plan Amendment III.L.4.a.2-3 and Part I ISWEBE IV.A.5.a.2-3.)
70.6	If the Board refuses to adopt a "zero trash" policy, we urge the Board, at minimum to change the language from "trash shall not accumulate in ocean waters" to "ocean waters shall not contain trash."		Please see Response to Comment 6.1.
71.1	A more comprehensive policy would require full catch systems while simultaneously encouraging source reduction efforts, such as plastic bag bans, and educational outreach to reduce the amount of trash generated all together. Allowing a permittee to choose Track 1 without requiring an actual showing of trash reduction through monitoring reports discourages permittees from implementing more holistic methods of trash reduction.		Please see Response to Comment 6.10.

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71.2	The State Water Board should hold municipalities accountable by compelling them to calculate the current amount of trash they release into the water, and then develop a method for calculating their trash reductions annually. Numerical goals should be set for each permittee to ensure enforceable compliance and swift success at eliminating trash from our water.		Please see Response to Comment 6.2.
72.1	The amendments will certainly have an impact at preproduction plastic pellet transfer sites that include transload facilities and other tracks where UPRR has leased property to customers for transload of preproduction plastic pellets. Given the number of these facilities in the state, the regulations will impose a significant cost on those facilities to comply.		The State Water Board finds that preproduction plastics are not acceptable in surface waters, as clearly stated with a prohibition of the discharge for preproduction plastics. Preproduction plastic pellet transfer sites, such as transload facilities, should implement strict BMPs. If the Water Boards finds a gross discharge of preproduction plastic pellets at such as transfer site, then the Water Boards will work with Union Pacific Railroad via an information transfer to determine the party for enforcement action.
72.2	Union Pacific's main concern however is with the broad definition of trash and the prohibition of trash in discharge. The definition seems to capture the entire railroad regardless of the process or activity conducted on land used for industrial purposes. This broad definition and the trash prohibition would set up an impossible standard for the railroad to meet – it would be infeasible to install full capture systems or monitor other compliance options along		As Union Pacific Railroad does not have NDPES permit the conditions of Track 1 and Track 2 are not applicable. The State Water Board does not expect that Union Pacific will need to install full capture systems or monitor every mile of track for trash. However, if there is a gross discharge of trash the Water Boards will first provide a notice to request more information instead of a violation.

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	every mile of track in this state 24 hours per day.		
73.1	EPA recommends that the TCAs explicitly call for adaptive management based on monitoring the effectiveness of controls and modifying control strategies as necessary to attain the water quality objective. EPA recommends that receiving water monitoring pursuant to both Track 1 and Track 2 focus both on the volume of trash and the type of trash present, to allow for adaptive management, including potential development of source control strategies.		The State Water Board agrees that monitoring is a key component to assessing that the implemented trash controls are leading to the achievement of compliance with the prohibition of discharge and protecting the beneficial uses of California's surface waters. Additionally, the State Water Board agrees that monitoring should be utilized by permittees to provide for adaptive management decision making for implementing trash controls. With limited resources, the most effective combination of controls to control trash should be used to determine compliance with the permit terms for the prohibition of discharge of trash. The narrative water quality objective for trash is implemented through the prohibition of discharge of trash. (Ocean Plan Amendment at III.I.6; Part I ISWEBE at IV.A.1.) The Trash Amendments propose a tailored approach to provide flexibility to Water Board permit writers to design monitoring programs that reflect the compliance methods elected by permittees along with regional characteristics. Due to the cost and efficacy of full capture systems, the State Water Board does not believe that the type of monitoring proposed by EPA is necessary for MS4 permittees complying under Track 1. Instead, MS4s complying under Track 1 would provide a report to the applicable Water Board demonstrating installation, operation, and maintenance of full capture systems on an annual basis. MS4 permittees complying under Track 2 must develop and implement annual monitoring plans to demonstrate the effectiveness of the controls and compliance with full capture system equivalency. (Ocean Plan Amendment at III.L.5; ISWEBE Part I at IV.A.6.) This monitoring requirement is intended to establish an adaptive management program similar to what EPA is suggesting. For statewide consistency, all Track 2 monitoring programs should be striving to answer the same fundamental questions, which may include receiving

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			water monitoring. However, other approaches could also be used to determine the efficacy of the control programs. The proposed Final Trash Amendments, in the definition of full capture equivalency, provide for two examples of how trash control could be assessed, only one of which requires monitoring within the receiving water. Please see Response to Comment 6.2.
73.2	EPA recommends that the Monitoring and Reporting provisions of the TCAs explicitly require that permittees complying via both Track 1 and Track 2, and Caltrans, submit a monitoring plan for review and approval, including an opportunity for public review. To conserve staff resources, a provision could be included for the plans and reports to be deemed approved if the permitting authority doesn't provide comments within a defined timeframe (e.g. 60 or 90 days). EPA recommends that the TCAs include specific expectations for the monitoring plans as included for the monitoring reports, such as the type of data to be collected (i.e. volume, type, etc.) to ensure entities in same area complying under Track 1 and 2 will collect complementary data. Additionally, EPA recommends that the state should specify how data will be compiled and stored to provide consistency across Regional Boards.		The Trash Amendments are amendments to statewide water quality controls plans to provide the framework for the trash control provisions to be incorporated as permit terms into NPDES permits, WDRs, and waivers of WDRs. The Trash Amendments aim to achieve the balance between prescriptiveness and flexibility for Water Boards permit writers. Upon insertion of the trash provisions into the permits, the permittee shall be required to develop monitoring plans that "demonstrate the effectiveness of [Track 2] and compliance with full capture system equivalency." Monitoring reports must be submitted on an annual basis. The permittee shall be required to comply with such permit terms. Additionally, the Trash Amendments specify that the "following monitoring and reporting provisions are the minimum requirements that must be included within the implementing permits." (Ocean Plan Amendment III.L.5; Part I ISWEBE IV.A.6.) That is to say that the permitting authority may determine additional monitoring and reporting requirements are appropriate. It may be appropriate for these comments to be directed to the pertinent water board as it modifies or adopts a permit to incorporate the trash provisions. State Water Board is not inclined to include permitting authority review and approval and/or a public process for the adequacy of the monitoring plan within the terms of the Trash Amendments.

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73.3	The first of the priority land use definitions, high-density residential, is defined as all land uses with at least 10 developed dwellings/acre. This would generally exclude a residential neighborhood made up of solely single family homes. A residential neighborhood of single family homes may generate a high volume of trash, especially if there is a commercial district or a bus stop in the nearby vicinity.		The priority land uses are based on lessons learned and extensive data collected from permittees with existing trash controls implemented in accordance to a Trash TMDL or permit conditions. The priority land uses include five categories of land uses that generate high amounts of trash. (Ocean Plan Amendment and Part I ISWEBE at definitions for "priority land uses".) The State Water Board recognizes that other land uses may generate higher rates of trash, for example, in some cities solely single family homes may generate high amounts of trash. To allow for these occurrences, the Trash Amendments include a provision for a MS4 permittee to focus on "equivalent alternate land uses" under both Track 1 and Track 2. (Ocean Plan Amendment and Part I ISWEBE at definitions for "alternate equivalent land uses".) Quantification measures such as street sweeping, mapping, and visual trash presence surveys can be used to prioritize these land uses for Track 1 or Track 2 controls. The aim of the Trash Amendments is to address the areas with the highest trash generation rates not all land uses. This can be accomplished with the five priority land uses and provision of "alternative equivalent land uses."
73.4	The definitions of Industrial and Commercial land uses stipulate that the "primary" activities on developed parcels must be commercial or industrial. The implication is that the majority of the land must be commercial or industrial in order to trigger MS4 trash controls. The presence of a high trash generating commercial or industrial activity should trigger trash controls regardless of whether such activity is the primary land use in a given area.		Few areas exist where trash is not generated. However, a focus of the Trash Amendments is to control trash in areas with high trash generation rates. The industrial and commercial definitions were crafted to focus trash controls on land uses where the majority of the catch basin includes industrial and commercial uses. The State Water Board recognizes that other land uses may generate higher rates of trash. The permitting authority has the discretion to include specific land uses and locations determined to generate substantial amounts of trash and require additional trash controls outside of priority land use locations. (Ocean Plan Amendment at III.L.2.d; Part I ISWEBE at IV.A.3.d.) Please see also Responses to Comments 6.6 and 73.3.

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73.5	The use of the term "predominate" in the Mixed Urban definition implies that the listed land uses must make up the majority of the area under consideration. If the mixed uses present generate high volumes of trash, that area should be subject to controls, regardless of whether or not these uses make up a majority of the land area.		Please see Responses to Comments 11.4, 73.3, and 73.4.
73.6	Commercial and industrial enterprises which generate trash, as well as public transportation stations, have trash impacts beyond the immediate areas in which these land uses are located. Trash controls should be implemented in areas (including low and medium density residential areas) which are located adjacent or in close proximity to commercial or industrial activities that result in trash generation, and in areas adjacent or in close proximity to public transportation stations.		Please see Response to Comments 73.3 and 73.4.
73.7	Concerns with land use definitions also apply to the "significant trash generating areas" under the jurisdiction of Caltrans. Caltrans must address highway on- and off-ramps located "in high density residential, commercial and industrial land uses." EPA recommends that in order to cover high trash generating areas, Caltrans should implement controls if land uses which generate		The wide variety of sites, locations and surrounding land uses make it infeasible for the State Water Board to determine a priority where the most likely areas of trash generation will be within Caltrans facilities. For this reason, the Trash Amendments requires Caltrans to, include in its implementation plan a description of the locations of its significant trash generating areas. State Water Board agrees that it is likely that significant trash generating areas will likely be adjacent to highway on-and off-ramps, and likely more within urban areas than non-urban areas. However, the State Water Board is unaware of studies of sufficient reliability that would support

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	trash are present adjacent or in close proximity to on/off-ramps.		more prescriptive requirements. The Trash Amendments will require Caltrans to implement trash controls if the adjacent land uses to highway on-and off-ramps are determined in consultation with the permitting authority to be significant trash generating areas. To the extent these areas overlap priority land uses, the amendment allow coordination with a MS4 Phase I or Phase II permittee's control programs. That accommodation may be utilized to address the areas of concern pointed out in this comment and further revision to the Trash Amendments is not warranted.
73.8	EPA recommends that the TCAs be revised to also provide the opportunity for members of the public to request to the regional permitting authority that specific land uses or locations be added for trash control coverage under permits issued to MS4s and Caltrans.		Actions required by the amendment will be incorporated into waste discharge requirements, which are adopted through a public process. Members of the public will be able to request to the permitting authority add specific land uses or locations for trash control coverage under permits issued to MS4s and Caltrans. Local knowledge is an important component to identifying specific areas that generate high amounts of trash and members of the public can aid the permitting authority in determining specific land uses or locations that need additional trash controls.
73.9	The TCAs' details focus on NPDES permits and are less explicit about expectations for implementation in areas covered by WDR and Waivers of WDRs. We recommend the TCAs specifically reference the "Policy for Implementation and Enforcement of the Non-point Source Pollution Control Program" and provide clearer direction for how compliance in these areas will be achieved. For example, we suggest considering more explicit requirements to identify and address sources of trash that are not subject to NPDES permits.		Although the implementation provisions for compliance with the prohibition of discharge focus on trash discharge via storm water, it is well recognized that trash is transported to surface waters via both point and non-point sources. Statewide, nonpoint source discharges of trash cause less of an impact to state water than point sources. However, at the local or regional level nonpoint sources can be a substantial source of trash. These areas may include high usage campgrounds, picnic areas, beach recreation areas, and marinas, which can be subject to WDRs or conditional waivers of WDRs. These types of areas would be assessed by the Water Boards to determine if trash controls are necessary. The Trash Amendments specify that that a water board may require dischargers without NPDES permits, WDRs, or waivers of WDRs to implement "any appropriate trash controls in areas or

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	Priorities for non-permitted high trash areas (e.g., beaches) could also be identified in the updated Nonpoint Source Management Plan currently being developed by the State. As noted in a previous comment, EPA recommends the use of adaptive management based on findings on the effectiveness of NPDES controls, including the results of receiving water monitoring. As monitoring identifies trash in receiving waters, MS4 permittees may identify sources of trash that are not under their jurisdiction which could be addressed by WDRs and waivers of WDRs.		facilities that generate trash." Such areas may include "high usage campgrounds, picnic areas, beach recreations areas, parks not subject to an MS4 permit, or marinas," as well as other areas. (Ocean Plan Amendment at III.L.3; Part I ISWEBE at IV.A.4.) For such areas determined to require trash controls within a WDR or waiver of a WDR, management practices could include enforcement of litter laws, education, recycling programs, more or better trash receptacles, and/or more frequent servicing of trash receptacles or similar controls that achieve trash control. This approach is recommended as it targets regional regulation of the discharge of trash from locations with high trash generating rates. Many of the items in this comment would be appropriately directed to the State Water Board's consideration of adopting a revised Nonpoint Source Management Plan. Additionally, receiving water monitoring may be a necessary component to assess compliance with the prohibition of trash and trash control effectiveness, as well as highlight additional locations where trash controls are necessary. However, receiving water monitoring is not a required component with monitoring for Track 2 or Caltrans to provide flexibility to permittees to development a strategy to demonstrate the effectiveness of trash controls and compliance with full capture system equivalency. See also Response to Comment 7.12 for further discussion on receiving water monitoring.
73.10	We suggest that the TCAs specify the regulatory vehicle(s) to be used to ensure compliance with the prohibition of preproduction plastic not covered by the IGP. We urge the State to utilize all available tools to ensure that industries that use or transport preproduction plastics are addressed in a holistic manner that prevents the discharge of these materials. Additionally, the TCAs		The prohibition of discharge on preproduction plastics is intended to build upon the existing efforts in the IGP. There are a number of locations that are outside of coverage of the IGP, such as railroad transload stations. These locations would be subject to the outright prohibition of discharge of preproduction plastics contained the amendment. The prohibition of discharge on preproduction plastic is intended to provide a clear enforcement mechanism for the Water Boards if there is a discharge of preproduction plastics to areas outside of the coverage of the IGP. Additionally, regardless of the proposed Trash Amendments, all facilities with the potential to discharge

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	could be expanded to provide for increased coordination among industries and MS4 permittees to identify preproduction plastic users which are lacking required permits. EPA recommends specifying any expectations for new or revised language in the existing IGP or construction general permit (CGP), or new requirements on industrial/construction facilities which are already required to control trash.		preproduction plastics would still continue to comply with the "Preproduction Plastic Debris Program" under Water Code section 13367(a) and the requirements in the IGP (Order No. 2014-0057-DWQ) to comply with the prohibition concerning preproduction plastics. Additional text has been added to the prohibition language in Ocean Plan Amendment III.I.6.e and Part 1 ISWEBE IV.A.2.e to provide clarity on this point.
73.11	EPA recommends the policy be more specific for termination of permit coverage related to the IGP and CGP: "Termination of permit coverage for industrial and construction storm water dischargers shall be conditioned upon the proper operation and maintenance of all controls." There are various circumstances under which construction or industrial permit coverage may be terminated, and the policy may need different requirements depending on the circumstances. For construction facilities, the language appears to indicate a requirement for post-construction controls for trash collection be installed and maintained. If this is the case, the policy should provide additional detail on the specifics and permitting mechanisms for ensuring compliance. For industrial facilities, the TCAs could state that all trash		When a facility or site wants to terminate coverage from the IGP or CGP, a Notice of Termination must be submitted to the permitting authority. For the Notice of Termination to be approved by the permitting authority, a set of conditions need to be met by the permittee as outlined in the respective permit. For example, Section II.D.1.d of the CGP (2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ), states that one condition for a construction site to be considered complete is when "construction materials and waste have been disposed properly." The intent within the proposed Trash Amendments is to add trash controls to the list of conditions the permittee or discharger must complete in order to be terminated from coverage from under the IGP or CGP. State Water Board staff agrees with U.S. EPA's suggestions for termination language to be further specified, however the proper place for this detail is within the IGP and CGP. Re-opening the IGP and CGP is beyond the scope of this project.

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	must be properly disposed of and the site secured before coverage may be terminated.		
73.12	We recognize that in the Los Angeles Region extensive trash control measures are being implemented throughout MS4s, that there has been significant progress implementing these controls, and it is our view that these required controls should not be modified by the TCAs. However, as noted previously in these comments, we recommend that the TCAs be modified to require receiving water monitoring to determine if the water quality objective is being achieved, and to explicitly call for adaptive management based on the effectiveness of NPDES permits controls, including the identification of trash sources that may or may not be under the jurisdiction of permittees. These recommended modifications to the TCAs apply across the State, including the Los Angeles Region.		The Los Angeles Water Board has led the way with effective trash management strategies with the Los Angeles River Watershed Trash TMDL and the other 14 trash and debris TMDLs. Since the adoption of the trash and debris TMDLs, significant trash reduction and trash control has occurred in the Los Angeles Region. State Water Board staff finds the trash control efforts by permittees in the Los Angeles Region to be commendable. These effective strategies demonstrate that trash control is both necessary and achievable statewide. The State Water Board staff has evaluated the efforts of the existing trash and debris TMDLs in order to develop the proposed Trash Amendments. In the evaluation process, the State Water Board consulted with the Los Angeles Water Board about the present day status of the trash and debris TMDLs and the proposed Trash Amendments. Based on this consultation, the proposed amendment does not propose changes to the Los Angeles Water Boards TMDLs. However, as trash and debris TMDLs are nearing the end of compliance, the proposed amendment directs the Los Angeles water board to hold a public meeting to consider the scope of existing TMDLs and to assess the progress, feasibility, and available resources of the trash control effort. (Ocean Plan Amendment at III.L.1.b; Part I ISWEBE at IV.A.1.b.) For the rest of the state, the proposed revisions to the Trash Amendments include a requirement for dischargers to either install full capture across their systems, or demonstrate full capture equivalency of other control programs. This requires dischargers to evaluate trash generation and control rates and demonstrate that control is equivalent to what would be achieved if full capture devices were installed. This effectively an adaptive management program. However, the State Water Board disagrees that receiving water monitoring is the only way to assess effectiveness. (See Response to Comment 73.1.)

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			Also, as noted in the Staff Report section 1.5, The main transport pathway of trash to receiving water bodies is through storm water transport. Capturing trash in the storm drain system should capture most trash the priority land use areas, which are where most trash is generated. However, it is not the intent of the State Water Board to require MS4s to bear full responsibility for trash from all sources and thus MS4s are not required to account for trash from other sources. Instead, the Trash Amendments provides in Section 3 that Permitting Authority may require dischargers other than MS4s to implement any appropriate trash controls in areas or facilities that may generate trash.
73.13	For the San Francisco Bay Region, we recommend the State reconsider how the TCAs will impact the implementation of existing trash provisions and compliance schedules, and ensure that coverage under the TCAs is as protective as it would be under the San Francisco Bay Regional Water Quality Control Board's current approach for trash control under its Municipal Regional Permit.		Please see Response to Comment 7.3.

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73.14	We recommend further clarity be provided on the intersection between the time schedules in the TCAs and the State's Compliance Schedule Policy [SB #2008-0025]. We further recommend that the TCAs better describe the requirements, set forth at 40 C.F.R. §122.47, for including a compliance schedule in an NPDES permit, such as justifications for the specific need for and length of the compliance schedule allowed and interim milestones (per annum) for any compliance schedule longer than 1 year.		The State Water Board's Policy for Compliance Schedules in NPDES Permits (at http://www.swrcb.ca.gov/board_decisions/adopted_orders/resolutions/2008/rs2008_0025.pdf) applies to NPDES permits adopted by the Water Boards that must comply with Clean Water Act section 301(b)(1)(C). (See Resolve Clause, No. 2.) The Compliance Schedule Policy applies to traditional point source discharges and not municipal storm water discharges. Additionally, the Water Board's Compliance Schedule Policy does not specifically apply to compliance schedules for prohibitions. (See Whereas Clause No. 11.) The Trash Amendments' compliance schedules pertain to an NPDES permittee's requirement to comply with the prohibition of discharge of trash. (Ocean Plan Amendment at III.L.4 and III.L.5; Part I, ISWEBE at IV.A.5 and IV.A.6.) The Water Boards have authority to include compliance schedules in an NPDES permit when the State's water quality standards or regulation include a provision that authorizes such schedules in an NPDES permit. Consistent with the above authorities, the Trash Amendments set forth the time schedule requirements applicable to NPDES permits regulating the MS4 permittees. When a water board modifies, re-issues, or adopts an applicable permit, the Trash Amendments require the water board to include the time schedule requirements contained in the Trash Amendments, including, where applicable, those pertaining to a permittee providing notice of whether it will comply Track 1 or Track 2, submission of the implementation plan, demonstrating interim achievements or milestones towards full compliance, and submission of monitoring plans and annual monitoring reports. Water Code section 13263, subdivision (a), requires a water board to prescribe such requirements in permits as necessary to implement any relevant water quality control plan. (See also Water Code § 13377.)

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74.1	Indeed, this sensible finding to treat campuses individually on a case-by-case basis dependent on the amount of trash generated is included in the proposed regulations under Section L.2.d. which states: "d. A permitting authority* may determine that specific land uses or locations (e.g., parks, stadia, schools, campuses, or roads leading to landfills) generate substantial amounts of Trash*. In the event that the permitting authority* makes that determination, the permitting authority* may require the MS4* to comply with Chapter III.L.2.a. or Chapter III.L.2.b. (as the case may be) with respect to such land uses or locations." The University appreciates the SWRCB's flexibility in determining applicability of the proposed amendments to our campuses on a case-by-case basis as needed to focus limited resources on significant concerns related to littering and trash generation.		The campuses that are designated permittees under the Phase II MS4 permit would have trash controls in the next implementing permit following the adoption of the Trash Amendments. Some Non-Traditional Small MS4 permittees, such as campuses, may be outside or lack jurisdictional authority over priority land uses. After reaching that determination in consultation with the applicable MS4, the appropriate Water Board may require the MS4 to adopt Track 1 or Track 2 control measures over such land uses or locations.
75.1	The Program recommends adding language to the Proposed Trash Amendments indicating the permittees are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2.		Please see Response to Comments 4.1 and 10.9.
75.2	The Los Angeles Regional Water Quality Control Board should be allowed to include permit provisions consistent with the Proposed Trash		Please see Response to Comment 10.10.

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	Amendments in areas where TMDLs exist if they desire without needing to reconsider the applicable TMDL(s).		
75.3	The Ventura MS4 Permit required permittees to develop a prioritization scheme for implementation of trash controls. The Trash Amendments should recognize and allow for established prioritization schemes to be utilized in lieu of the proposed scheme if they have already been approved by the Regional Water Board or required in a permit without the need to provide additional documentation.		Please see Response to Comment 11.9.
75.4	Part (6) of the Priority Land Uses definition from the ISWEBE Plan allows permittees to issue a request to the Los Angeles Regional Water Quality Control Board to comply with Chapter IV.B.3.a.1 of the ISWEBE Plan using alternate land uses equivalent to the defined Priority Land Uses. However, as written, the Chapter reference for the ISWEBE Plan only allows the permittees to address the equivalent alternate land uses if utilizing Track 1. The reference should be changed to allow the permittees to address the equivalent alternate land uses via Track 1 or Track 2. In addition, the chapter reference is incorrect. The reference reads Chapter III.J.2.a.1, while it should read Chapter III.L.2.a.1.		Please see Response to Comment 4.4 and 11.13.

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75.5	The Program recommends the State Water Board revise the language in the Proposed Trash Amendments (Chapter IV.B.7.b and Chapter III.L.6.b of the ISWEBE Plan and Ocean Plan) respectively, to allow for more flexibility in determining Track 2 performance and to remove the requirement for receiving water trash monitoring.		Please see Response to Comment 4.6.
75.6	The Program recommends that a more extensive list of certified devices be prepared prior to the adoption of the Proposed Trash Amendments. The Program also recommends refining the full-capture device certification process to streamline the certification process as much as possible.		Please see Response to Comment 10.5.
75.7	The Program recommends including language in the Proposed Trash Amendments to clarify that existing trash controls can be considered when determining compliance with the Trash Amendments.		Please see Response to Comment 10.7.
75.8	The Program recommends the State Board add additional language to clarify the intent of the Proposed Trash Amendments with respect to the development of future TMDLs. The Program recommends adding language to the Proposed Trash Amendments stating that, if the		Please see Response to Comment 10.10.

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	requirements in the Proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully met.		
75.9	As funding has been an ongoing challenge, we are looking forward to the State Board's assistance with the development of funding sources for Permittees to comply with the Trash Amendments.		Please see Response to Comment 10.4.
76.1	The proposed Trash Amendments would apply to waters within the jurisdiction of the Los Angeles RWQCB with trash TMDLs because the Ocean Plan amendments L.1.b.(2) and ISWEBE amendments B.1.b.(2) direct the RWQCB to force MS4 permittees to focus trash control efforts on high trash generation areas (HTGA) rather than all land uses. This would constitute a backsliding from the TMDL and NPDES permit requirements. Recommendation: That the land uses not included as HTGA be given additional time in the Time Schedule in Table 1 page 11 to comply with water quality objectives rather than eliminating them from consideration as sources of trash.		The commenter is incorrect as to the applicability of the proposed Trash Amendments. As noted in the applicability section (III.L.1 of the Ocean Plan and IV.A.1 of the ISWEBE Plan) the Trash Amendments does not apply to those waters within the jurisdiction of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) for which trash Total Maximum Daily Loads (TMDLs) are in effect prior to the effective date of these Trash Provisions. See Response to Comment 42.4 for additional discussion of backsliding. An objective of the Trash Amendments is to focus limited resources on the areas and locations that generate high amounts of trash and are thus the most significant contributor to impairments of the beneficial uses. If land uses, areas, or locations that are outside of the defined priority land uses and do generate significant amounts of trash the amendment provides two separate mechanisms to address this. First, in the definition of high priority land uses, an MS4 permittee with regulatory authority over priority land uses* may issue a request to the applicable permitting authority that the MS4 permittee be allowed to substitute a land use with an alternate land use within the MS4 permittee's jurisdiction that generates rates of trash that is equivalent to or greater than the priority land use being substituted. Second, in the "Other Dischargers" section of the proposed amendment (section L.3 of the Ocean Plan and Section IV.A.4 of the ISWEBE Plan) the permitting

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			authority may require dischargers who are not subject to the Track 1 and 2 requirements to implement any appropriate Trash controls in areas or facilities that may generate Trash.
76.2	There is little value of including the City of Cupertino as a reference of studies to determine sources of trash and generation rates because the City along with the City of San Jose is only one of over 70 municipalities that were required to submit similar reports. Delete City of Cupertino as a reference. (Section 1.5, page 6)		The State Water Board does not agree that this change is necessary. While there are always challenges to monitoring, the BASMAA Baseline Trash Generation Rate Project did aid to establish a baseline to demonstrate progress towards trash loads reduction and categorize jurisdictions to high, medium, and low trash generating area. This work has continued to be further refined by current projects, like the Prop 84 Grant Tracking California's Trash, and has allowed for adaptive management with the next iteration of the MRP Permit.
76.3	Add a footnote to Table 1 and the Policy Amendments stating that municipalities may require and oversee the installation, operation and maintenance of full capture systems, other treatment controls and institutional controls on private property. (Table 1 page 11)		See Response to Comment 42.3.
76.4	The focus can be on high trash generation areas as long as the definition includes low density residential land uses.		A central element of the proposed Trash Amendments is a land-use based compliance approach to focus trash controls to the areas with high trash generation rates. While not specified as a priority land use, low density residential land uses could be included as an "alternate equivalent land use." See also Response to Comment 76.1.
76.5	The objective must also include "or cause a contamination or hazard to public health". The following objects have been found in storm water runoff that are threats to public health: hypodermic needles and syringes, loaded diapers, condoms, broken glass, broken fluorescent bulbs and sharp metal objects.		The State Water Board agrees that some trash can "cause a contamination or hazard to public health." Protection of public health is an intrinsic component of several beneficial uses. These uses and the potential hazard to human health are discussed thoroughly in section 1.4 and Appendix A (esp. Table 14). Thus the revised objective states that trash may not be present in amounts that "adversely affect beneficial uses."

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76.6	The discussion on page 66 must include a legal analysis explaining why the numeric objective of "Zero Trash" should not be established as the water quality objective. Add a footnote to the water quality objective in the Trash Amendments stating that: To achieve statewide consistency in the application of this objective the State Board intends to develop guidance to the regional boards for determining "acceptable" levels of trash in creeks, flood control drainage systems, wetlands, estuaries and the ocean that do not constitute a nuisance, adversely affect beneficial water uses and/or cause a contamination.		As noted in Section 4.2, and elaborated in comments 4.1 and 6.1, a "zero trash" numeric objective is not appropriate at this time as a statewide water quality objective. Determining the specific quantity of trash that constitutes a nuisance in any given water body is not feasible as within a statewide amendment. Instead, the definition of full capture equivalency has been added to the amendment. This serves essentially the same purpose as the guidance requested by the commenter.
76.7	The staff report needs to recognize that some of the Full Capture Devices and institutional controls i.e. street sweeping provide multiple water quality benefits in addition to controlling trash. Gross solids in storm water runoff are composed of vegetation, sediment and trash. Monitoring studies conducted in Los Angeles have found that trash is only about 10% of the mass and 25% of the volume of the gross solids and those conducted in the Bay Area found that trash is about 4% of the mass and 17% of the volume. Capture of vegetation would reduce		The State Water Board agrees that there are multiple benefits to certain controls including street sweeping. A discussion of multi-benefit projects is found in the staff report in Section 5.4. Additional changes recommended by the commenter are beyond the scope of this project, which is to address the impacts of trash. Other contaminants, such as gross solids are addressed through existing water quality control plan elements or may be addressed at a later date if the Board determines such action is warranted.

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	the nutrient load and capture of sediments would reduce the load of pollutants associated with sediments. Capture of gross solids would reduce the accumulation of sediments at outlets to receiving waters. (Page 13)		
76.8	There are a number of issues regarding Full Capture Systems that need to be addressed in the staff report and policy amendments including: · Certification process is inconsistent with Section 13360(a) of the California Water Code · Certification limits the ability to implement the State Board's Decision and EPA Guidance on use of the iterative process for achieving compliance with water quality standards and discharge prohibitions · Design flow criteria significantly underestimates the peak flows for small catchments · Required minimal level maintenance must be specified and documented · Effectiveness of "full and partial capture systems" was based on incomplete or incorrect information · Loss of certification of a device only addresses future installation and does not address devices already installed that were recognized as achieving compliance with NPDES permits		The State Water Board disagrees that the certification process is inconsistent with Section 13360(a) of the California Water Code for several reasons, including: The statute provides that no "waste discharge requirement" or "other order" or "decree" may specify the manner in which the permittee must comply with that requirement. The State Water Board is will consider adopting the Trash Amendments which are water quality control plans and not waste discharge requirements, orders, or decrees. Additionally, the Trash Amendments do not specify the design, location, or type of construction in which the permittee must achieve compliance with the trash provisions (upon insertion into the permittee's permit). The Trash Amendments provide two tracks, either of which a permittee may elect to comply with the prohibition of discharge. Within Track 2, a permittee may select any combination of a wide range of treatment and institutional controls that can be implemented in a wide range of land use or location types. Water Code section 13360, subdivision (a) has no bearing on the certification process for full capture devices. With that in mind, the certification does not constitute a limit to the iterative process for compliance, as it expands due to lessons learned from existing trash control across California. Please see Responses to Comments 4.6, 73.1, 76.12, 76.18, and 76.42.

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76.9	Municipalities that select institutional controls such as street sweeping, storm drain cleaning, enforcement, etc. under Track 2 should be given a time schedule of two budget cycles or three years from the date of the proposed Trash Amendments to implement these control measures. Two budget cycles would allow sufficient time for contracting these services or obtaining equipment and staff to perform the operation. Other institutional controls such as ordinances should require 5 years at the most to be fully implemented. The 10-year compliance time frame in Track 1 and 2 must be limited to installation of large capacity Full Capture Devices serving large areas and providing the most cost effective life cycle benefits and trash removal efficiencies. Planning, design and obtaining funding for these larger more efficient systems requires more time than installation of devices in individual storm drain inlets.		Please see Response to Comment 42.12.
76.10	The following land uses should be added as “priority land uses” in MS4 Phase I and II Permits: business parks, sport complexes, amusement parks, regional transit parking lots and flea markets.		Comment noted. These are specific land uses or locations that a permitting authority may determine to generate substantial amounts for trash and require compliance under Track 1 or Track 2, as determined by the permitting authority. See also Response to Comment 42.2.

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76.11	The SWRCB must provide clear and definitive guidance on what constitutes a minimal level inspection, operation and maintenance program including the elements of the annual monitoring program. Recommend that the Installation, Inspection and Operation and Maintenance Programs be adopted as minimum level of effort under Monitoring and Reporting and be included as Appendices to the Trash Amendments. That the demonstration of the reduction in trash discharged from previous years be determined by measuring the mass and volume of trash actually removed by the control measure and/or discharged from the MS4.		The monitoring and reporting provisions in the proposed Trash Amendments are minimum requirements that must be included with the implementing permits. As there will be many unique implementation approaches, the monitoring and reporting approach has been written to provide maximum flexibility to demonstrate compliance with the prohibition of discharge for trash. Many of the recommendations made by the commenter are more appropriate for site specific permits (e.g. inspection after storm events of >0.25 may be too infrequent for southern California municipalities or too frequent for Northern California municipalities). See also Response to Comment 4.6. With regards to the recommendation to determine the mass and volume of trash, the proposed Trash Amendments have been revised to provide greater clarity about how a permittee should demonstrate full capture equivalency. One included method is to determine, as recommended by the commenter, the amount of trash removed by the control methods. Other alternatives may also be appropriate as noted in the definition of full capture system equivalency. See also Response to Comment 73.1.

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76.12	The Los Angeles RWQCB has certified/recognized 8 devices and the San Francisco Bay RWQCB staff certified 35 devices as Trash Full Capture Systems. A number of vendors have developed devices that are similar to those that have been certified by the LARWQCB and it is not clear from the LARWQCB's web site whether these additional devices have been reviewed to determine compliance with the Regional Board's August 2004 Procedures and Requirements for Certification of BMPs for Trash Control. A number of studies have been conducted in Los Angeles, San Diego and Bay Areas and by Caltrans that raise significant questions on whether many of the devices certified by the Los Angeles and San Francisco Bay RWQCBs actually meet the full capture system definition and whether the definition is actually achieving significant reductions in trash discharged. 1. The Staff Report should identify the devices that have been certified/recognized by the LARWQCB. The devices certified by the San Francisco Bay RWQCB should not be listed or recognized in the Policy Amendments as meeting the definition of a full capture device. 2. The process and definition/criteria for certification of a device must be updated in the Trash Amendments		For statewide consistency, the State Water Board would take responsibility for the certification process for full capture systems, but those full capture systems previously certified by the Los Angeles Water Board would remain certified for use by permittees as a compliance method. In addition, the State Board finds that is unreasonable to expect municipalities to remove and replace full capture systems that have been identified as effective by the Regional Board in Appendix I of the Bay Area-wide Trash Capture Demonstration Project, Final Project Report (May 8, 2014). As such, devices identified in this report and already installed are considered to satisfy the requirements of the Trash Provisions. Certification of new devices would follow a similar process established by the Los Angeles Water Board with certification approvals directed to the State Water Board. The State Water Board does not think it is necessary to convene a panel of experts to discuss full capture systems. See also Response to Comments 76.19. The commenter asserts that many of the systems certified by the Los Angeles and San Francisco Bay Water Boards fail to meet the performance requirements for full capture certification. However, the commenter does not support those assertions with verifiable data or provides references that contradict the assertion. Specifically, the commenter asserts that the Los Angeles Area Studies and monitoring misreported the efficacy of catch basin inserts but provides no data to substantiate that claim. The commenter asserts that the Los Angeles Water Board certified ineffective gross solids removal devices and references two reports as support. However, the first report concluded (as noted within the comment letter) that, "The device generally met the requirement that litter items with dimensions larger than 0.25" (5mm) are retained within the device." The other report identified as supporting this assertion was for a an "Inline screen – configuration 3, which is different device than the Inclined Screen – Configuration 1 (IS1 SR-170) that was certified by the Los Angeles Water Board and is not relevant. With regards to the San Francisco Estuary

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	(see comment #19). 3. The devices that have been certified/recognized by the Regional Boards should be critically reviewed to determine whether they meet the updated criteria and a revised list must be published. 4. The SWRCB should convene a panel of experts with experience in the selection, design, construction, operation, monitoring and maintenance of trash capture devices to assist in updating the definition/criteria for certification of a device and determination whether existing devices comply with the updated criteria. Suggestions for this panel include: Lesley Estes – City of Oakland, Dr. Gary Minton - consultant, Ed Othmer – URS Corp, Dr. Bob Pitt-consultant, Gary Lippner – DWR and formerly with Caltrans, representatives from City of Sunnyvale or San Jose that have actually performed maintenance of devices. 5. The SWRCB needs to develop a strategy to address those areas that are now served by devices that were once considered to be Trash Full Capture Devices, but no longer comply with the revised definition		Partnership, the State Water Board disagrees that requiring regular cleaning and maintenance establishes a "major problem with the devices, and notes that while the commenter claims that the Partnership withheld critical information about the reliability and performance of full capture systems, the commenter does not provide any support to this assertion. Finally, the State Water Board agrees that the San Diego study determined that several alternative trash capture devices did not perform sufficiently to meet performance objectives identified in the study. However the purpose of the study was not to support full capture system certification, but to determine performance and cost effectiveness at a specific location to inform decision makers the most cost effective approach to consider for City-wide implementation. This is exactly the type of considered implementation envisioned by the proposed Trash Amendments.
76.13	1. Correct Consideration 3 On page 71 to reflect actually was found in the Los Angeles area. 2. Define Low Density residential as <8 units/acre and High Density		Comment noted. The State Water Board took this consideration 3 to reflect the Los Angeles area. The intention of the Trash Amendments is to focus trash controls on a subset of areas with a MS4 that generates high amounts of trash. Based on the feedback from the Focused Stakeholder

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	Residential as >8 units/acre and mobile home developments.		Meetings, the State Water Board does not consider it is necessary to modify the units per acre for high density residential. However, if the permitting authority determines that certain areas of low density residential are generating substantial amounts of trash, the proposed Ocean Plan Amendment in section III.L.2.d (IV.A.3.d of Part I ISWEBE) allows the permitting authority to require Track 1 or Track 2 compliance in those areas. Alternatively, low density residential land uses could be included as an "alternate equivalent land use" as identified in the definitions to the Trash Amendments.
76.14	List the items of trash in section 4.1.2, page 65, Appendix A.1, page A-1, Appendix A.II, page A-11.		The State Water Board agrees with this list of trash found in storm water runoff and have added this list to Appendix A of the Staff Report. These items of trash fall under the definition of trash, and thus will not be explicitly stated in the definition.
76.15	Low density residential land uses contribute significant trash loadings on an annual basis and should not be excluded from implementation of trash control measures and should be considered as a "priority land use".		A central element of the proposed Trash Amendments is a land-use based compliance approach to focus trash controls to areas with high trash generation rates. As discussed in Section 4.5 of the Staff Report, the State Water Board finds that priority land uses should include commercial, industrial and high density residential land uses. While not specified as a priority land use, if the permitting authority determines that certain areas of low density residential are generating substantial amounts of trash, the Ocean Plan Amendment in section III.L.2.d (IV.A.3.d of Part I ISWEBE) allows the permitting authority to require Track 1 or Track 2 compliance in those areas. Alternatively, low density residential land uses could be included as an "alternate equivalent land use" as identified in the definitions to the Trash Amendments.

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76.16	That the staff report qualify the statements on page 71 and A-16 by indicating that there are concerns regarding the value of trash generation rates developed by BASMAA because of the sample collection locations were not representative of actual land uses, questionable effectiveness of the sampling devices to capture representative samples of trash in storm water runoff and sample collection protocols.		The State Water Board does not agree that this change is necessary. While there are always challenges to monitoring, the BASMAA Baseline Trash Generation Rate Project did aid to establish a baseline to demonstrate progress towards trash loads reduction and categorize jurisdictions to high, medium, and low trash generating area. This work has continued to be further refined by current projects, like the Prop 84 Grant Tracking California's Trash, and has allowed for adaptive management with the next iteration of the MRP Permit.
76.17	The Reasonable Foreseeable Methods of Compliance (pg. 83-86) should be completely rewritten to provide a correct description of storm drainage systems and the structural devices and institutional controls used to control the discharges of trash.		The commenter asserts that the description of the storm drain system is insufficient but does not specify in what way the description is insufficient in identifying the reasonably foreseeable means of compliance. See also response to comment 76.18. The State Water Board agrees that the Santa Clara Valley Urban Runoff Pollution Prevention Program's Trash BMP Tool Box provide a good discussion of treatment and institutional controls; however, State Water Board staff does not agree the Reasonable Foreseeable Methods of Compliance needs to be modified.

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76.18	Incorporate changes to the Treatment Control - Storm Drainage System section for Caltrans (page 83 Section 5.1). The flow criteria included in the definition of terms in the Trash Amendments specify that storm intensities shall be determined based on the NOAA's National Weather Service Point Precipitation Frequency Estimates (http://hdsc.nws.noaa.gov); that a 5-minute intensity shall be used for devices that are installed in storm drain inlets; and, that the intensity determined using the actual calculated Tc be used for sizing large capacity devices serving large catchments.		The State Water Board does not recommend changes, as the purpose of 5.1 of the Staff Report is not to document or establish minimum engineering requirements for storm drain systems, but simply to disclose in a largely qualitative way the reasonably foreseeable methods of compliance and some of the considerations that system designers may address. The commenters proposed addition does not substantively change the reasonably foreseeable means of compliance. In addition, definition of full capture systems does not preclude the use of NOAA's Point Precipitation Frequency Estimates recommended by the commenter.
76.19	Require that all devices installed in storm drain inlets be sized based on the peak 5-minute rainfall intensity determined by NOAA's Point Precipitation Frequency Estimates and that large capacity full capture devices be sized using the catchments Tc and NOAA's Point Precipitation Frequency Estimates. · Prohibit the use of on-line trash control devices that allow peak flows to circulate or low through the trash storage area unless they are cleaned out after each storm event; or specify that trash control devices shall retain trash in an "off line" configuration where peak flows are bypassed upstream of the devices trash		The purpose of 5.1 of the Staff Report is not to document or establish minimum engineering requirements for storm drain systems, but simply to disclose in a largely qualitative way the reasonably foreseeable methods of compliance and some of the considerations that system designers may address. Please see Response to Comment 76.18.

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	storage area · Label storm drain inlets that require confined space entry for maintenance or replacement "Danger Permit Required - Confine Space Entry Do Not Enter" and provide confined space entry training and certification for installation and maintenance personnel. Capture residual solids and water used to power wash screens and the inlet and dispose in sanitary sewer or regulated disposal site · Coordination of inspections and mosquito abatement with mosquito abatement agencies		
76.20	The reference to hooded outlets should be deleted since it has not been cited by either Regional Board to be effective. Hooded or elbowed catch basins are used in San Francisco in their combined sewer system to control odors, but are not considered to be effective trash capture devices. San Francisco has placed oil in their catch basins to control mosquitoes. New York has reported high levels of replacement of hoods when damaged during vacuum truck cleaning operations. (Section 5.1.2, page 85)		The U.S. EPA's website recognizes that hooded outlets prevent floatable materials and trash from entering the storm drain system. Please refer to the available website at: http://water.epa.gov/polwaste/npdes/swbmp/Catch-Basin-Inserts.cfm
76.21	Add a new subsection specific to curb inlet screens and include the suggested text that details experiences with use of curb inlet screens. (Section 5.1.2 page 85)		The State Water Board does not agree that the addition is necessary to the Staff Report. The purpose of section 5 is to identify reasonably foreseeable alternatives. However, this range of alternatives need not be exhaustive. In addition, based on the assessment of the commenter that the proposed

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			control mechanism may not be effective, this may not be a reasonably foreseeable means of compliance.
76.22	A new section should describe the various types of drop inlet devices and outlet connector pipe screen. (Section 5.1.2 page 85)		The State Water Board does not agree that the addition is necessary to the Staff Report. See Response to Comment 76.17 and 76.21.
76.23	The following addition at the end of the first paragraph (Section 5.1.3 page 86)– The City of San Jose analyzed the relative capital and operation/maintenance cost of small devices (connector pipe screens and automatic retractable screens at the curb) and the hydrodynamic separator capturing trash from an area of 1000 acres, over 10 and 20-year time frames, accounting for repair and replacement of small units and increases in labor costs. The City found that small devices were more economical in the first decade, but the cost advantage disappears in the second decade.		This has been revised in the proposed Final Staff Report.
76.24	Fresh Creek Technologies, Inc.'s End of Pipe Netting Trash Trap® was installed at Hamilton Bowl and the Regional Board's April 29, 2004 letter certified the device as a full capture system. It is not clear if that certification also applies to the two other models listed in this section. (Section 5.1.4 page 87)		All of the certifications by the Los Angeles Water Board are listed on this website: http://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/full_capture_certification.shtml

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76.25	Additional information on Street Sweeping needs to be included in Section 5.2.2.		The State Water Board agrees that permittees will need to perform verification monitoring to ensure that street sweeping, in combination with other Track 2 implementation measures meet full capture system equivalency. It may indeed be beneficial for a permittee to conduct the type of study recommended to ensure cost effective implementation of institutional controls. However, the Trash Amendments are concerned with overall trash capture and establishment of full capture system equivalency, which may not necessarily require the types of studies of individual institutional controls recommended by the commenter. Therefore, the State Water Board does not agree that the addition is necessary to the Staff Report.
76.26	That the SWRCB increase funding for BASMAA's Prop 84 study and expand the scope of that study to include: § Effectiveness and costs of using the Captive Hydrology street cleaners used in Europe and in the United States to clean airport pavements § Modification of existing sweepers or development of a new model of sweeper that would prevent the gutter brushes from propelling trash into storm drain inlets and causing damage to curb inlet retractable screens § Determination of the actual amount and percent of trash that is included in debris removed by street sweepers		Increasing funding for BASMAA's study is beyond the scope of these proposed Trash Amendments.
76.27	Section 5.3, page 93 is unclear.		The focus of the section is on the installation, and operation and/or maintenance activities associated with the reasonably foreseeable methods of compliance with the proposed Trash

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			Amendments. The State Water Board does not agree there is a lack of clarity.
76.28	The need to implement confined space entry requirements during installation, maintenance and replacement should be determined for each device that is certified as a full capture system.		Confined space entry requirements are established by the U.S. Occupational Safety and Health Administration (OSHA). More information can be found at the following website: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=9797&p_table=STANDARDS. A description of the safety requirements for the operation and maintenance of various trash control structures is beyond the scope of these Trash Amendments.
76.29	Contact Contech Engineered Solutions representative for information on the installation of CDS devices because it is significantly different than for installation of the GSRD.		A detailed description of site specific installation requirements is beyond the scope of this programmatic analysis. However, the State Water Board has had communications with Contech Engineered Solutions. In addition, Contech Engineered Solutions provided a comment letter on these Trash Amendments, which did not include recommendations for changes to this section. Please see Comment Letter 43.
76.30	The section on maintenance of treatment controls should list the types of equipment required to maintain the various types of devices and implement various institutional control measures.		The State Water Board does not agree that the additional is necessary to the Staff Report. The type of equipment required to maintain the various types of devices will not affect the potential environmental impacts of the Trash Amendments.
76.31	A section needs to be added that addresses the impacts to public health of full capture systems.		Potential impacts to human health from structural controls and suitable mitigation measures are discussed in section 6.7 Hazards and hazardous materials.
76.32	The section on catch basin clean frequency (page 107) should include information and indicate that the frequency of catch basin cleaning will be vary significantly depending on a catchments gross solids loadings, rainfall events and blockage of screens/filter media .		The assumptions about cleaning frequency were estimates used to evaluate potential environmental impacts with regards air emissions. The change proposed by the commenter would double the proposed emissions, which would not be sufficient to exceed any identified thresholds of significance. The State Water Board does not agree that the addition is necessary to the Staff Report.

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76.33	Change street sweeper vehicles to vacuum trucks. (page 107)		The proposed Final Staff Report has been revised.
76.34	Adjusting the screen size to prevent clogging would violate definition of a Trash Full Capture Device that specifies a 5mm – (0.197-inch) mesh size. Recommendation: delete "and adjusting screen size to prevent clogging." (pg. 107(		The proposed Final Staff Report has been revised.
76.35	That the SWRCB staff find better information on the actual experience with the maintenance of netting systems. (page 110)		The referenced section is only supposed to describe the potential air quality impacts of identified alternatives for compliance and is not supposed to be a full description of maintenance requirements of netting systems.
76.36	The cleanout of vortex devices i.e. the CDS device provides the very least exposure to hazardous material to the public and maintenance workers of all devices that have been discussed in the staff report. The CDS devices are cleaned using vacuum trucks that suck out the trash and transport it in a closed chamber of the vacuum truck for disposal at a regulated disposal site. Conversely almost all of the other devices result in maintenance workers coming in direct contact with the gross solids. Gross solids captured in trash nets and GSRD unless enclosed in a structure are exposed to vectors and rodents that can transmit health hazards to the general public. Recommendation: The above		The State Water Board does not agree that the addition is necessary to the Staff Report. While the State Water Board agrees that worker safety is of paramount importance, the purpose of this section is identify potential impacts to the environment and the public at large from reasonably foreseeable means of compliance. Worker health and safety issues should be considered by the permittees during selection of structural and/or institutional controls.

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	information be included to page 132.		
76.37	These three devices are distinctively different in their design, operation and function and need to be better described in section 5 of the staff report. The storm drain inlet screens (trash deflectors) are placed in the curb face and are designed to prevent trash from entering the inlet, but leave trash in the street. Some are designed with retractable screens to prevent flooding when trash and vegetation block the screening mechanism. Storm drain inlet screens would not be effective with grate inlets. Storm drain inserts are devices installed in the inlet and are designed to capture trash within the inlet. Connector pipe screens are placed immediately ahead of the connector pipe and are designed to prevent trash from flowing into the pipe connecting the inlet to the main storm drain. Storm drain inlet screens are often used in combination with inserts and connector pipe screens to reduce the amount of trash that must be removed from the inlet, but require more frequent street cleaning and have been associated with flooding. Storm drain inlet inserts and connector pipe screens are prone to blockage with trash, vegetation and sediment resulting in the scouring of previously captured solids (Figures 2-8). The San Diego Storm Drain		The purpose of section 5.1 of the Staff Report is not to document or establish minimum engineering requirements for storm drain systems, but simply to disclose, in a largely qualitative way, the reasonably foreseeable methods of compliance and some of the considerations that system designers may address. The commenters proposed addition does not substantively change the reasonably foreseeable means of compliance. Further, potential street flooding due to clogged filters or screens is addressed in section 6.8.2. Therefore, no changes to the Staff Report are necessary.

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	Inlet Study (ref 10) found that clogging of insert filter material/fabric/screens was a contributing factor for bypass of these devices. The adverse impacts can be partially mitigated by increasing the frequency of inspections and maintenance. Recommendation: That the above information be included in this section (page 135).		
76.38	The CDS devices are designed to safely bypass peak flows in excess of the units design capacity to prevent any threat of flooding while continuing to treat that portion of the runoff less than the design capacity. Trash is retained offline in the sump and separation chamber and it is physically impossible to bypass previously captured trash. Units have been constructed with collapsible weirs in areas where there is minimum hydraulic head required for operation of the unit. If trash or sediments were to accumulate in the separation chamber above the screen peak flows would simply be carried safely over the weir. This can be mitigated by periodic inspections to determine depth of solids in the sump and maintenance of the device when 85% of the sump is filled. Recommendation: Incorporate the above information in this section. (page 136)		Section 6.8.2 discusses the need for overflow/bypass structures and regular maintenance of vortex separation systems to prevent flooding. No changes to the Staff Report are necessary.

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76.39	The sound levels of vacuum trucks and street sweepers under full operation should be included in Table 10. Proposed control measures including increased street sweeping in residential areas as an alternative to the installation of full capture devices; as a result of the installation of storm drain inlet screens at the curb face; and, as an enhanced institutional control measure will increase the frequency and duration of noise impacts to a community. The impacts of noise from vacuum trucks will also increase as a result of the increase in frequency of maintenance of storm drain inlet inserts and inlets with connector pipe screens. These impacts could be mitigated by selecting larger capacity full capture devices that can be sited at more remote locations. (page 140, 147, 148)		Table 10 in Section 6.10 of the Staff Report is a list of common noise sources to give the reader an idea of the range of noises people may be subjected to. It is not a comprehensive list. Vacuum truck and street sweeper noise generation is expected to be similar to a diesel truck at 15 m (85dBA). The Staff Report acknowledges the increase in ambient noise levels due to increased street sweeping and the use of vacuum trucks. However, the Staff Report concludes that employing noise abatement measures and with the short duration of noise generation in any one area, noise impacts are expected to be less than significant. No changes to the staff report are necessary.
76.40	The installation and maintenance of most of the storm drain inlet inserts and connector pipe screens and the Canada screen require compliance with Calusa confined space entry requirements. A key element of that program requires advance notification of first responders of the planned entry so they can be prepared to respond to any incidents. This could have an impact on the ability of these agencies to		The Staff Report discusses coordination with police and fire services during construction and maintenance operations where street closures are involved (Staff Report Section 6.10). CalOSHA confined space entry requirements could be coordinated at the same time. Since municipalities are already subject to CalOSHA requirements for maintenance of their existing storm water systems, no new impacts on emergency services are expected due to the Trash Amendments. In addition to an institutional control for trash, street sweeping will continue to be considered a BMP for other storm water pollutants. Impacts for street sweeping over baseline conditions are expected to be less than significant since they

Comment Letter	Comment	Recommended Language	Response
	respond to other emergencies. Some devices lie trash nets, GSRD and CDS do not require implementation of confined entry procedures and would not impact police and fire services. The impacts of increased street sweeping cannot be easily mitigated by changing the timing of the sweeping. The use of parking restrictions to increase the effectiveness of sweepers is a key control when effective sweeping can be performed. Sweeping must also be conducted at a frequency to remove trash that has collected in the gutter before it is carried into storm drain inlets by natural or vehicle caused winds. Recommendation: Incorporate the above information in this section. (Section 6.11.2 and pages 149 and 151).		are not expected to interfere with emergency services. No changes to the staff report are necessary.
76.41	The frequency of cleaning vortex systems depends on the accumulation of trash and depends on the catchments gross solids generation rates. The CDS device should be inspected after the first significant storm of the season and then periodically inspected during the rainy season and cleaned when the sump is 85% full. The frequency of cleaning of inlets with storm drain inlet inserts and connector pipe screens must be significantly increased as recommended in		The State Water Board agrees that proper operation of full capture systems will require the period cleaning, and this cleaning should be in done in concert with rain storms. If a full capture system is full with trash, the additional storm water and trash will either bypass the full capture system or cause flooding. Localized flooding risks should be minimized with timely full capture system inspections and cleanings.

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	Comment #32 if they are to be even marginally effective. The risk of increased street flooding is greater with storm drain inlet screens installed at the curb face when the screens are clogged with trash, sediment and vegetation (see Comment #21). Storm drain inlet inserts are less likely to cause flooding in the streets if they are designed with adequate bypass capacity: however, the City of South San Francisco in the 2012-2013 annual report reported that the West Coast Storm connector pipe screen caused flooding even when cleaned and maintained during storm events. (Section 6.12.2, page 152 and 157)		
76.42	The statement that the State Board does not direct compliance measures agencies choose or mitigation measures they apply is misleading because the Regional Boards have certified specific full capture devices and stated that compliance with NPDES permits is achieved through the installation and maintenance of the devices. LID controls and multi-benefit projects must be designed to meet the trash trapping and retention standard and have the hydraulic flow capacity required of full capture devices in order to be considered as equivalent.		The statement is not misleading. While the Los Angeles Water Board has certified, and the proposed amendment will certify systems as satisfying the requirements of the trash provisions, the State Water Board does not specify which systems a permittee must install. In addition, permittees have a broad range of alternatives through track 2, such as institutional controls, low impact development measures, or multi-benefit projects to employ to meet the standards specified. These alternatives do not require certification, but instead a demonstration of full capture system equivalency. The commenters suggestion that the State Water Board follow the lead of the guidance on establishing waste load allocations is noted, but as the commenter mentions, is not a requirement that need be met by the Trash Amendments. However, the specific elements outlined by the commenter (e.g. require iterative implementation and monitoring of BMPs to ensure compliance with water quality objectives) is essentially equivalent to what is require in the monitoring section of the

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			Trash Amendment and within the newly added language on demonstration of full capture system equivalency. In addition, Section III.L.5 of the Ocean Plan Amendment (Section IV.A.6 of Part I ISWEBE) requires the permittee to annually report to the permitting authority demonstrating installation, operation, maintenance of either Track 1 or Track 2 controls. Please see Responses to Comments 4.6 and 6.2.
76.43	1. The State Board at the public hearings should seek out reasons for the two different approaches, identify the constraints in developing and implementation of trash reduction programs and determine which approach can be more quickly implemented and include review should include an assessment of the State's staff resources required to implement different regulatory approaches. 2. Accelerate the Time Schedule for Track 2		Through the Public Advisory Group, Focused Stakeholder Meetings, public workshop, and public hearing, the State Water Board has extensively collaborated and discussed with stakeholders the two different approaches and implementation programs. The dual alternative "compliance track" approach will provide flexibility to permittees to determine the most effective means of controlling trash while taking into consideration particular site conditions, types of trash, and the available resources for maintenance and operation. While a reduced time schedule would potentially provide results more readily, a ten year time schedule for both Track 1 and Track 2 will provide consistent and sufficient time for permittees to successfully achieve the prohibition of discharge and control trash discharges. See also Responses to Comments 10.12 and 42.12.
76.44	The Water Boards are also required to protect uses from "contamination" in addition to pollution and nuisance. Recommendation: Add "and contamination" after nuisance in Appendix A.1.		The State Water Board agrees that contamination is a consequence of pollution and nuisance.
76.45	Trash-Related Impacts to Public Health Beneficial Uses – (table 14, page A-8) Broken glass, sharp metal and hypodermic needles/syringes should be added to the health and safety hazards.		These hazards are part of safety hazards in Table 14 in Appendix A of the proposed Final Staff Report.

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76.46	Trash can have adverse impacts on the environment even before it enters waters of the state. Trash is present throughout a watershed in parking lots, streets, sidewalks, parks and other public areas and has community drawbacks. Quality-of-life issues related to environmental blight (including the presence of trash) are rooted in the "broken window" theory, postulated in the 1940s. The presence of trash is a sign of neglect and apathy taken root in a neighborhood fueling further deterioration often leading to other societal ills. Litter is often viewed as one of the earliest indicators that a neighborhood is in distress.26 The use of curb face screens at storm drain inlets leaves trash in the streets until removed by institutional control measures such as street sweeping and their use should be considered as having potential adverse impact on the environment. (Section II, page A-11 and A-13)		Trash is one of the most widely recognized pollutants by the public, and it contributes to quality-of-life issues. The reduction of trash has been addressed in many avenues from litter laws to educational campaigns to treatment controls. The focus of the Trash Amendments is to reduce the amount trash that enters our water bodies, most specifically through the storm drains. The Trash Amendments do not pretend to provide the all-encompassing solution to trash problems in California. The Trash Amendments focus on creating the implementation framework to control the discharge of trash from areas with high trash generation rates with a multiple avenues for achieving compliance. One of the reasonably foreseeable means of compliance is full capture systems. With proper operation and maintenance, full capture systems will capture trash from storm water that would have been discharged into the receiving water body.
76.47	Did the Santa Clara Valley Urban Runoff Pollution Prevention Program actually perform Rapid Trash Assessments in the Los Angeles River Watershed and Los Angeles area lakes? (Page A-14)		This has been modified in the revisions to the proposed Final Staff Report.

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76.48	The discussion of the Caltrans Public Education Litter Monitoring Study should note that sediment was not measured during the study. The Bay Area baseline monitoring effort (ref 9) reported that trash is 17% by volume and 4% by weight of all solids in runoff and reported various components of trash – recommend that the pie charts be included in the staff report. (A-16)		Sediment is outside of the scope of the discussion and the Litter Management Pilot Study discussion is sufficient.
76.49	That the Economic Analysis be redone to include realistic and predictable 25-year life cycle costs.		The Economic Considerations assumed a 10% per year expenditure of capital costs in order to achieve full implementation in ten years. The life cycle of the full capture systems depend on many factors such as the type of full capture system, the adequate operation and maintenance of the system, and the unique characteristics of the place where is going to be installed. It is not logical to assume that all full capture systems would have a life expectancy of 25 years. At the same time, in year ten of the compliance schedule with Track 1, State Water Board staff estimated that out of the incremental $3.95 per capita necessary to comply with Track 1 of the proposed Trash Amendments, $0.75 (or approximately 19% of the total cost) would be spent on installing or replacing the capital cost. Based on that information and assuming a 25 year cycle, in year 25 an additional $0.75 would need to be added to the $3.2 operations and maintenance cost for a period of ten years until all full capture systems were replaced. This reasoning was not included in the analysis because the uncertainty of the life cycle cost of the full capture systems and low impact development projects on the overall estimates.

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76.50	That actual cost be developed for maintenance of the CDS device.		The Economic Analysis assumed that the total cost of operations and maintenance for a full capture system is, on average, $342 per unit. The cost is very sensitive to the type of device installed, the location of installation, and the labor costs associated with each community.
76.51	Water Quality Objectives a. Add “or cause a contamination or hazard to public health”. b. Add footnote “To achieve statewide consistency in the application of this objective the State Board intends to develop guidance to the regional boards for determining “acceptable” levels of trash in creeks, flood control drainage systems, wetlands, estuaries and the ocean that do not constitute a nuisance, adversely affect beneficial water uses and/or cause a contamination.”		No Change. Please see response to Comment 76.5. and 76.6
76.52	Applicability a. A provision must be added that addresses systems /devices that could be certified during the interim period between now and when effective date of the Trash Provisions. b. A new provision (3) must be added that requires all systems/devices meet the new definition/criteria added in the Monitoring and Reporting Sections and Appendices. c. A new provision (4) must be added that addresses those devices that have already been certified and		The State Water Board does not agree this additional language for the full capture systems is a necessary addition to the proposed Trash Amendments. Ongoing certification by the Los Angeles Water Board can continue until the Trash Amendments are effective. For response to comments on the definition, criteria and certification, see Responses to Comments 76.11, 76.12 and 76.19.

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	upon review have been found to not comply with the new definition/criteria.		
76.53	Permitted Dischargers Compliance a. These sections need to address a MS4 permittees responsibility to address those dischargers where they have no regulatory authority yet those dischargers actually discharge to the MS4.		Trash is generated from multiple sources and transported to state waters through multiple mechanisms. The Trash Amendments focus on one of the pathways, namely storm water. Under the Trash Amendments, MS4 permittees would be required to address trash from high trash generating areas under the jurisdiction of the municipality, specifically the priority land uses. For high trash generating areas, the permitting authority can either require the MS4 implement trash controls or issue WDRs or waivers of WDRs to the land owner to implement appropriate trash controls. Please see Responses to Comments 6.5 and 6.6.
76.54	Permitted Dischargers Compliance a. Add a footnote that "Municipalities may require and oversee the design, installation, operation and maintenance of full capture systems, other treatment controls and institutional controls on private property".		Comment noted. The Trash Amendments limit trash controls to areas of the permittee's jurisdiction. The storm drains are those under the jurisdiction of the permittee, thus public drains. See also Responses to Comments 25.1 and 42.3.
76.55	Additional High Trash Generating Land Uses a. Add amusement parks, sports complexes, regional transit parking lots and flea markets.		These are specific land uses or locations that a permitting authority may determine to generate substantial amounts for trash and require compliance under Track 1 or Track 2. Please see Response to Comment 6.6.
76.56	Time Schedule a. The permittee must do more than explain how the controls are "designed" to achieve the same performance results as Track 1. They must also be required to submit		Please see Response to Comment 18.6.

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	a monitoring program plan that documents the reduction in the discharge of trash achieving the same performance results as Track 1. b. Institutional controls such as street sweeping, storm drain cleaning, enforcement, etc. under Track 2 should be given a time schedule of two budget cycles or three years from the effective date of the proposed Trash Amendments to implement these control measures. Institutional controls such as ordinances could require 5 years to be fully implemented. Installation of Full Capture systems/devices installed in storm drain inlets should have a time schedule of 5 years. The 10-year compliance time frame in Track 1 and 2 must be limited to installation of large capacity Full Capture Devices serving large areas.		
76.57	Time Extensions a. This section should be deleted because dischargers have already been alerted as a result of the Public Notice and the draft Trash Amendments that they must develop and implement trash control measures.		Please see Response to Comment 4.5.
76.58	a. That the Installation, Inspection and Operation and Maintenance Programs in Comment #11 be adopted as minimum level of effort under Monitoring and Reporting and be included as Appendices to the		As the compliance options vary among NPDES permits for storm water discharges, the monitoring and reporting options could be tailored to the type of compliance. The balance between the need for consistency and flexibility would be achieved through standardized objectives in the monitoring program. The proposed Trash Amendments could establish

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	Trash Amendments. b. Include in the Definition of Terms a definition of "effectiveness". c. That the demonstration of the reduction in trash discharged from previous years be determined by measuring the mass and volume of trash actually removed by the control measure and/or discharged from the MS4. d. The monitoring results must be reported by individual land use categories. e. The mass and volume of trash reduced must be reported. f. This reporting requirement can be deleted if the volume and mass of trash discharge are reported.		minimum monitoring and reporting provisions, and Water Boards could include more extensive provisions in implementing permits. For Track 2 MS4 permittees, monitoring plans and reports must demonstrate the effectiveness of trash controls and the compliance with full capture system equivalency. The specifics of effectiveness, quantification unit of trash, and assessment by individual land use would be required at the discretion of the permitting authority. However, the State Water Board agrees that quantification by mass and volume, as well as reporting by individual land uses categories, is preferred for achieving the monitoring requirements. Please see Responses to Comments 4.6 and 6.2.
76.59	Enforcement Strategy a. An enforcement strategy must be added to the Trash Amendments that implements USEPA's guidance on establishment of TMDLs and NPDES permits. See Comment #42. This strategy must provide guidance to the Regional Boards on NPDES permit revisions and/or enforcement actions that would implement the iterative process by adding additional Full Capture Certified system/devices and trash control measures necessary to achieve compliance with water quality standard. b. The enforcement strategy must address the failure of currently certified systems/devices that do not		An iterative process is already identified in the Trash Amendments. See Responses to Comments 76.12 and 76.42.

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	comply with the revised definition/criteria.		
76.60	Revised Definition/Criteria of Full Capture Systems. The following additional minimum criteria are recommended: § Require that all devices installed in storm drain inlets be sized based on the peak 5-minute rainfall intensity determined by NOAA's Point Precipitation Frequency Estimates and that large capacity full capture devices be sized using the catchments Tc and NOAA's Point Precipitation Frequency Estimates. § Prohibit the use of on-line trash control devices that allow peak flows to circulate or low through the trash storage area unless they are cleaned out after each storm event; or specify that trash control devices shall retain trash in an "off line" configuration where peak flows are bypassed upstream of the devices trash storage area § Label storm drain inlets that require confined space entry for maintenance or replacement "Danger Permit Required – Confine Space Entry Do Not Enter" and provide confined space entry training and certification for installation and maintenance personnel § Capture residual solids and water used to power wash screens and the inlet and dispose in sanitary sewer or regulated disposal site		The State Water Board does not recommend changes to the definition of full capture systems. See Response to Comment 76.18.

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	§ Coordination of inspections and mosquito abatement with mosquito abatement agencies b. The devices that have been certified/recognized by the Regional Boards should be critically reviewed to determine whether they meet the updated definition/criteria and a revised list must be published.		
76.61	Priority Land Uses a. Change "High-density residential" to "Residential". b. Add "regional transit parking lots".		The Trash Amendments will maintain high density residential as a priority land use, where other residential land uses and regional transit parking lots could be included as alternate equivalent land uses if determined to generate substantial amounts of trash to require trash controls. See also Responses to Comments 76.13 and 76.15.
76.62	Exemption from priority land use designation a. Add a provision (7) Exemption from a priority land use designation: An MS4 permittee may request from the applicable permitting authority the exemption of a designated Priority Land Use or specific areas of a Priority Land Use based on low trash generation rates determined by measurement of the mass and volume of discharged.		Please see Responses to Comments 10.1 and 10.7.
76.63	Trash a. Add to the definition those items that have been found in storm water runoff. See Comment 76.14.		Please see Response to Comment 76.14.
77.1	The California Coastal Commission support the proposed amendments to the Statewide Water Quality Control plans to control trash. The		The State Water Boards appreciates the support from the California Coastal Commission on the Trash Amendments. In particular, the State Water Board is proud of Coastal Commission's California Coastal Cleanup Day to highlight the

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	proposed amendments would play a critical role in helping to stem the flow of trash from inland waterways to the coast and ocean while improving the water quality and habitat and recreational values of those waterways.		trash problem in our waterways and inspire volunteers to participate and clean up their local waterways. The data from Coastal Cleanup Day has been instrumental for the Staff Report (see Final Staff Report Appendix A). The State Water Board looks forward to continued partnership with the Coastal Commission in the implementation of the Trash Amendments.
78.1	Corrections should be made in Section 9.4 Economic Considerations, page 173 the Draft Staff Report: " To comply with the proposed Trash Amendments, expenditures by Caltrans are estimated to increase by $92 million annually in total capital costs and $1 million for the first year and increasing to $10 million per year after ten years for operation and maintenance of structural controls." It should be noted that the estimate above for Caltrans excludes total capital costs associated with trash reduction requirements specific to San Francisco Bay Regional Board requirements (Attachment V of our Permit) or the trash reduction requirements specific to Trash TMDLs in the Los Angeles Regional Board region (Attachment IV of our Permit).		The State Water Board appreciates corrections to the estimated expenditures for Caltrans to comply with the proposed Trash Amendments. While the State Water Board recognizes the estimated incremental costs for Caltrans are conservative, the information provided in the letter was unclear on how final estimated cost of $92 million annually was calculated. The Economic Consideration conducted by State Water Board staff is based on several clearly defined assumptions. One assumption was for the average capital cost of a full capture system, $800 per drop inlet. If the cost of a full capture system is more expensive, then the total cost will increase. The $176,000 per acre proposed by Caltrans is a different type and scale of cost factor. This cost factor is derived for the estimated cost of compliance for TDMLs, which encompasses a host of pollutants including trash. For the Economic Considerations, the incremental cost of compliance needs to be based on the cost for trash controls, which would be a proportion of the $176,000 per acre estimate. For the additional cost of "$1 million for the first year and increasing to $10 million per year after ten years for operation and maintenance of structural controls," it is unclear how those estimates were determined. Therefore, the proposed Final Staff Report was not modified with the proposed changes but the estimates provided by Caltrans will be considered.
78.2	Other inaccurate financial information related to Caltrans projected expenditures, as stated in Appendix C of the Draft Staff Report include the following: Appendix C,		The State Water Board agrees with the recommended change in Caltrans' current annual expenditures for ongoing maintenance activities for litter removal. The change was made in the proposed Final Staff Report. However, State Water Board disagrees with the other proposed changes on

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	page C-2: "Caltrans currently spends over $80 million annually for ongoing maintenance activities for litter removal. To comply with the proposed Trash Amendment, over a ten-year period, the annual expenditure by Caltrans is expected are estimated to increase by $92 million annually in capital construction costs assuming full capture retrofit. Maintenance of the full capture devices will increase approximately $1 million for the first year and increasing to $10 million per year after ten years."		estimated annual costs. (Final Staff Report Appendix C, pp. C-2-4, C-15, C-18-19, and C-50-54.) For that, please see Response to Comment 78.1.
78.3	Appendix C, page C-4, Table 1. Summary of Estimated Compliance Costs of the Proposed Trash Amendments for NPDES Storm Water Permits: "Population/size: 50,000 lane-miles" "Baseline of Current Trash Control Costs: "Total and Per Capita Per Year: $80 M per year" "Estimated Incremental Cost for Track 1: "Total and Per Capita Per Year: "Total Capital Cost: $92 M annually "Operation & Maintenance: $1M for year l, increasing to $10 M per year after ten years"		The State Water Board agrees with the recommended change in Caltrans' total lane miles. The change was made in the proposed Final Staff Report. (Final Staff Report Appendix C, pp. C-2-4, C-15, C-18-19, and C-50-54.) Additionally, please see Responses to Comments 78.1 and 78.2.

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78.4	Appendix C, page C-15: "Caltrans spends approximately $80 million a year on "litter removal" (i.e., trash control), or approximately $1,600 per lane-mile."		The State Water Board agrees with the recommended changes, which are reflected in the proposed Final Staff Report. (Final Staff Report Appendix C, pp. C-2-4, C-15, C-18-19, and C-50-54.)
78.5	Appendix C, page C-18-19: "Caltrans annually spends $80 million on litter removal. This is approximately 6.7% of their $1.2 billion maintenance budget for FY 13-14. Caltrans manages over 50,000 lane-miles of roadways; owns and operates 265 state highways; and owns and manages 12,300 bridges and 665 buildings and other structures. Caltrans spends an average of $1,600 per lane-mile on litter removal."		The State Water Board agrees with the recommended changes, which are reflected in the proposed Final Staff Report. (Final Staff Report Appendix C, pp. C-2-4, C-15, C-18-19, and C-50-54.)
78.6	Appendix C, page C-50: "8. POTENTIAL COSTS FOR CALTRANS Caltrans' Division of Maintenance expenditures on "litter removal" is $80 million per year. According to Caltrans, there are approximately 50,000 lane miles (approximately 15,000 centerline miles) in California. Therefore, the current cost of litter removal is, on average, $1,600 per lane mile per year."		Please see Responses to Comments 78.3, 78.4, and 78.5.
78.7	Appendix C, page C-50-51: "For unit costs, we assumed the same installation (176,000/acre		Please see Responses to Comments 78.1 and 78.2.

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	treated) capital construction. We estimated that there are approximately 18 catch basins per mile in rural areas and 36 catch basins per mile in urban areas. Because significant trash generating areas are more likely to be in urban areas, we used the higher estimate to calculate the number of catch basins needing full capture devices. Under these assumptions, estimated incremental capital costs for Caltrans would be approximately $92 million annually and incremental annual operation would be approximately $1M for year 1 and increasing to $10M per year after ten years (Table 30)."		
79.1	As you may know, Contra Costa County is split between two regional water quality control boards (Region 2 – San Francisco and Regional 5 – Central Valley) but it was decided early on that the Cities of Brentwood, Oakley, and Antioch as well as the eastern portion of Unincorporated Contra Costa County would have their municipal stormwater permit largely mirror the MRP. As such, both permits include Provision C.10 for trash load reduction. The only difference in the two Provision C.10 requirements is that the East Contra Costa Permittees have an extra year to report on trash load reduction. MRP Permittees were supposed to demonstrate a 40%		Please see Response to Comment 7.3 and 64.2.

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	reduction in trash load by July 1, 2014 whereas East Contra Costa Permittees have until July 1, 2015 to meet that reduction number. And the target for 70% and 100% are also separated by a year. Is this an issue that needs further addressing or just clarifying language in the footnote?		

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiia. [Tax Limitation] (Refs & Annos)

West's Ann.Cal.Const. Art. 13A, § 1

§ 1. Ad valorem tax on real property; maximum amount; application; school facilities

Effective: November 8, 2000
Currentness

Sec. 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any of the following:

(1) Indebtedness approved by the voters prior to July 1, 1978.

(2) Bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:

(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIII A, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.

(B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.

(C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.

(D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects.

(c) Notwithstanding any other provisions of law or of this Constitution, school districts, community college districts, and county offices of education may levy a 55 percent vote ad valorem tax pursuant to subdivision (b).

Credits

(Adopted June 6, 1978. Amended June 3, 1986. Amended by Initiative Measure (Prop. 39, § 4, operative Nov. 8, 2000, approved Nov. 7, 2000).)

Notes of Decisions (149)

West's Ann. Cal. Const. Art. 13A, § 1, CA CONST Art. 13A, § 1
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiia. [Tax Limitation] (Refs & Annos)

West's Ann.Cal.Const. Art. 13A, § 2

§ 2. Full cash value assessment; property destroyed by disaster; contaminated property

Effective: June 6, 2018
Currentness

<Section prior to amendment by Initiative Measure (Prop. 5, § 2, operative if approved at the Nov. 6, 2018 election). See, also, Art. 13A, § 2 as amended by Initiative Measure (Prop. 5, § 2, operative if approved at the Nov. 6, 2018 election). See Preface for election results (for electronic publications, see Constitution Refs & Annos).>

SEC. 2. (a) The "full cash value" means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property that is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. For purposes of this section, the term "newly constructed" does not include that portion of an existing structure that consists of the construction or reconstruction of seismic retrofitting components, as defined by the Legislature.

However, the Legislature may provide that, under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after November 5, 1986.

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this State. For purposes of this paragraph, "local affected agency" means any city, special district, school district, or community college district that receives an annual property tax revenue allocation. This paragraph applies to any replacement dwelling that was purchased or newly constructed on

or after the date the county adopted the provisions of this subdivision relating to transfer of base year value, but does not apply to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction, or other factors causing a decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" does not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, that is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single- or multiple-family dwelling that is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely disabled person.

(4) The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person.

(5) The construction or addition, completed on or after January 1, 2019, of a rain water capture system, as defined by the Legislature.

(d) For purposes of this section, the term "change in ownership" does not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. This subdivision applies to any property acquired after March 1, 1975, but affects only those assessments of that property that occur after the provisions of this subdivision take effect.

(e)(1) Notwithstanding any other provision of this section, the Legislature shall provide that the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to

comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

(2) Except as provided in paragraph (3), this subdivision applies to any comparable replacement property acquired or newly constructed on or after July 1, 1985, and to the determination of base year values for the 1985-86 fiscal year and fiscal years thereafter.

(3) In addition to the transfer of base year value of property within the same county that is permitted by paragraph (1), the Legislature may authorize each county board of supervisors to adopt, after consultation with affected local agencies within the county, an ordinance allowing the transfer of the base year value of property that is located within another county in the State and is substantially damaged or destroyed by a disaster, as declared by the Governor, to comparable replacement property of equal or lesser value that is located within the adopting county and is acquired or newly constructed within three years of the substantial damage or destruction of the original property as a replacement for that property. The scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to this paragraph shall not exceed the scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to subdivision (a). For purposes of this paragraph, "affected local agency" means any city, special district, school district, or community college district that receives an annual allocation of ad valorem property tax revenues. This paragraph applies to any comparable replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed by a disaster, as declared by the Governor, occurring on or after October 20, 1991, and to the determination of base year values for the 1991-92 fiscal year and fiscal years thereafter.

(f) For the purposes of subdivision (e):

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its value immediately before the disaster. Damage includes a diminution in the value of property as a result of restricted access caused by the disaster.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property that it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster.

(g) For purposes of subdivision (a), the terms "purchased" and "change in ownership" do not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse that take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner's interest.

(5) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

(h)(1) For purposes of subdivision (a), the terms “purchased” and “change in ownership” do not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first one million dollars ($1,000,000) of the full cash value of all other real property between parents and their children, as defined by the Legislature. This subdivision applies to both voluntary transfers and transfers resulting from a court order or judicial decree.

(2)(A) Subject to subparagraph (B), commencing with purchases or transfers that occur on or after the date upon which the measure adding this paragraph becomes effective, the exclusion established by paragraph (1) also applies to a purchase or transfer of real property between grandparents and their grandchild or grandchildren, as defined by the Legislature, that otherwise qualifies under paragraph (1), if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of the purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (1), and the full cash value of a principal residence that fails to qualify for exclusion as a result of the preceding sentence, shall be included in applying, for purposes of subparagraph (A), the one-million-dollar ($1,000,000) full cash value limit specified in paragraph (1).

(i)(1) Notwithstanding any other provision of this section, the Legislature shall provide with respect to a qualified contaminated property, as defined in paragraph (2), that either, but not both, of the following apply:

(A)(i) Subject to the limitation of clause (ii), the base year value of the qualified contaminated property, as adjusted as authorized by subdivision (b), may be transferred to a replacement property that is acquired or newly constructed as a replacement for the qualified contaminated property, if the replacement real property has a fair market value that is equal to or less than the fair market value of the qualified contaminated property if that property were not contaminated and, except as otherwise provided by this clause, is located within the same county. The base year value of the qualified contaminated property may be transferred to a replacement real property located within another county if the board of supervisors of that other county has, after consultation with the affected local agencies within that county, adopted a resolution authorizing an intercounty transfer of base year value as so described.

(ii) This subparagraph applies only to replacement property that is acquired or newly constructed within five years after ownership in the qualified contaminated property is sold or otherwise transferred.

(B) In the case in which the remediation of the environmental problems on the qualified contaminated property requires the destruction of, or results in substantial damage to, a structure located on that property, the term “new construction”

does not include the repair of a substantially damaged structure, or the construction of a structure replacing a destroyed structure on the qualified contaminated property, performed after the remediation of the environmental problems on that property, provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

(2) For purposes of this subdivision, "qualified contaminated property" means residential or nonresidential real property that is all of the following:

(A) In the case of residential real property, rendered uninhabitable, and in the case of nonresidential real property, rendered unusable, as the result of either environmental problems, in the nature of and including, but not limited to, the presence of toxic or hazardous materials, or the remediation of those environmental problems, except where the existence of the environmental problems was known to the owner, or to a related individual or entity as described in paragraph (3), at the time the real property was acquired or constructed. For purposes of this subparagraph, residential real property is "uninhabitable" if that property, as a result of health hazards caused by or associated with the environmental problems, is unfit for human habitation, and nonresidential real property is "unusable" if that property, as a result of health hazards caused by or associated with the environmental problems, is unhealthy and unsuitable for occupancy.

(B) Located on a site that has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(C) Real property that contains a structure or structures thereon prior to the completion of environmental cleanup activities, and that structure or structures are substantially damaged or destroyed as a result of those environmental cleanup activities.

(D) Stipulated by the lead governmental agency, with respect to the environmental problems or environmental cleanup of the real property, not to have been rendered uninhabitable or unusable, as applicable, as described in subparagraph (A), by any act or omission in which an owner of that real property participated or acquiesced.

(3) It shall be rebuttably presumed that an owner of the real property participated or acquiesced in any act or omission that rendered the real property uninhabitable or unusable, as applicable, if that owner is related to any individual or entity that committed that act or omission in any of the following ways:

(A) Is a spouse, parent, child, grandparent, grandchild, or sibling of that individual.

(B) Is a corporate parent, subsidiary, or affiliate of that entity.

(C) Is an owner of, or has control of, that entity.

(D) Is owned or controlled by that entity.

If this presumption is not overcome, the owner shall not receive the relief provided for in subparagraph (A) or (B) of paragraph (1). The presumption may be overcome by presentation of satisfactory evidence to the assessor, who shall not be bound by the findings of the lead governmental agency in determining whether the presumption has been overcome.

(4) This subdivision applies only to replacement property that is acquired or constructed on or after January 1, 1995, and to property repairs performed on or after that date.

(j) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, are effective for changes in ownership that occur, and new construction that is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, are effective for changes in ownership that occur, and new construction that is completed, on or after the effective date of the amendment.

Credits

(Adopted June 6, 1978. Amended Nov. 7, 1978; Nov. 4, 1980; June 8, 1982; June 5, 1984; Nov. 6, 1984; June 3, 1986; Nov. 4, 1986; Nov. 8, 1988; S.C.A.37 (Prop. 110), approved June 5, 1990; S.C.A.33 (Prop. 127), approved Nov. 6, 1990; Stats.1992, Res. ch. 136 (A.C.A.41) (Prop. 171), approved Nov. 2, 1993; Stats.1993, Res. ch. 92 (A.C.A.8) (Prop. 177), approved June 7, 1994; Stats.1994, Res. ch. 110 (A.C.A.17), approved March 26, 1996; Stats.1998, Res. Ch. 60 (A.C.A.22) (Prop. 1, approved Nov. 3, 1998, eff. Nov. 4, 1998); Stats.2008, Res. c. 115 (S.C.A.4), § 1 (Prop. 13, approved June 8, 2010, eff. June 9, 2010); Stats.2018, Res. c. 1 (S.C.A.9), § 1 (Prop. 72, § 1, approved June 5, 2018, eff. June 6, 2018).)

Notes of Decisions (107)

West's Ann. Cal. Const. Art. 13A, § 2, CA CONST Art. 13A, § 2
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiia. [Tax Limitation] (Refs & Annos)

West's Ann.Cal.Const. Art. 13A, § 3

§ 3. Changes in state statutes resulting in higher taxes; imposition; noncompliant taxes adopted between Jan. 1, 2010 and effective date of act as void; burden of proof

Effective: November 3, 2010
Currentness

SEC. 3. (a) Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

(b) As used in this section, "tax" means any levy, charge, or exaction of any kind imposed by the State, except the following:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of providing the service or product to the payor.

(3) A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or the State, as a result of a violation of law.

(c) Any tax adopted after January 1, 2010, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.

(d) The State bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

Credits

(Adopted June 6, 1978. Amended by Initiative Measure (Prop. 26, § 2, approved Nov. 2, 2010, eff. Nov. 3, 2010).)

Notes of Decisions (73)

West's Ann. Cal. Const. Art. 13A, § 3, CA CONST Art. 13A, § 3
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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Proposed Legislation

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiia. [Tax Limitation] (Refs & Annos)

West's Ann.Cal.Const. Art. 13A, § 4

§ 4. Special taxes; imposition

Currentness

Sec. 4. Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

Credits
(Adopted June 6, 1978.)

Notes of Decisions (188)

West's Ann. Cal. Const. Art. 13A, § 4, CA CONST Art. 13A, § 4
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiia. [Tax Limitation] (Refs & Annos)

West's Ann.Cal.Const. Art. 13A, § 5

§ 5. Effective date of article

Currentness

Sec. 5. This article shall take effect for the tax year beginning on July 1 following the passage of this Amendment, except Section 3 which shall become effective upon the passage of this article.

Credits
(Adopted June 6, 1978.)

Notes of Decisions (2)

West's Ann. Cal. Const. Art. 13A, § 5, CA CONST Art. 13A, § 5
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiia. [Tax Limitation] (Refs & Annos)

West's Ann.Cal.Const. Art. 13A, § 6

§ 6. Severability

Currentness

Sec. 6. If any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect.

Credits
(Adopted June 6, 1978.)

West's Ann. Cal. Const. Art. 13A, § 6, CA CONST Art. 13A, § 6
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiia. [Tax Limitation] (Refs & Annos)

West's Ann.Cal.Const. Art. 13A, § 7

§ 7. Application of article

Currentness

Sec. 7. Section 3 of this article does not apply to the California Children and Families First Act of 1998.

Credits
(Added by Initiative Measure (Prop. 10, § 3, approved Nov. 3, 1998, operative Dec. 12, 1998).)

West's Ann. Cal. Const. Art. 13A, § 7, CA CONST Art. 13A, § 7
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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Proposed Legislation

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 1

§ 1. Total annual appropriations; amount not to exceed limit of prior year; adjustments

Currentness

Sec. 1. The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.

Credits
(Adopted Nov. 6, 1979. Amended by S.C.A.1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Notes of Decisions (9)

West's Ann. Cal. Const. Art. 13B, § 1, CA CONST Art. 13B, § 1
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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Proposed Legislation

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 2

§ 2. Revenues in excess of limitation

Currentness

Sec. 2. (a)(1) Fifty percent of all revenues received by the state in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the state in compliance with this article during that fiscal year and the fiscal year immediately following it shall be transferred and allocated, from a fund established for that purpose, pursuant to Section 8.5 of Article XVI.

(2) Fifty percent of all revenues received by the state in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the state in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years

(b) All revenues received by an entity of government, other than the state, in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the entity in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

Credits
(Adopted Nov. 6, 1979. Amended by Initiative Measure (Prop. 98), approved Nov. 8, 1988; S.C.A.1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Notes of Decisions (1)

West's Ann. Cal. Const. Art. 13B, § 2, CA CONST Art. 13B, § 2
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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Proposed Legislation

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 3

§ 3. Adjustment of appropriation limits; transfer of financial responsibility; emergency

Currentness

Sec. 3. The appropriations limit for any fiscal year pursuant to Sec. 1 shall be adjusted as follows:

(a) In the event that the financial responsibility of providing services is transferred, in whole or in part, whether by annexation, incorporation or otherwise, from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.

(b) In the event that the financial responsibility of providing services is transferred, in whole or in part, from an entity of government to a private entity, or the financial source for the provision of services is transferred, in whole or in part, from other revenues of an entity of government, to regulatory licenses, user charges or user fees, then for the year of such transfer the appropriations limit of such entity of government shall be decreased accordingly.

(c)(1) In the event an emergency is declared by the legislative body of an entity of government, the appropriations limit of the affected entity of government may be exceeded provided that the appropriations limits in the following three years are reduced accordingly to prevent an aggregate increase in appropriations resulting from the emergency.

(2) In the event an emergency is declared by the Governor, appropriations approved by a two-thirds vote of the legislative body of an affected entity of government to an emergency account for expenditures relating to that emergency shall not constitute appropriations subject to limitation. As used in this paragraph, “emergency” means the existence, as declared by the Governor, of conditions of disaster or of extreme peril to the safety of persons and property within the state, or parts thereof, caused by such conditions as attack or probable or imminent attack by an enemy of the United States, fire, flood, drought, storm, civil disorder, earthquake, or volcanic eruption.

Credits
(Adopted Nov. 6, 1979. Amended by S.C.A.1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Notes of Decisions (5)

West's Ann. Cal. Const. Art. 13B, § 3, CA CONST Art. 13B, § 3

Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 4

§ 4. Establishment or change in appropriation limit for new or existing entities by electors

Currentness

Sec. 4. The appropriations limit imposed on any new or existing entity of government by this Article may be established or changed by the electors of such entity, subject to and in conformity with constitutional and statutory voting requirements. The duration of any such change shall be as determined by said electors, but shall in no event exceed four years from the most recent vote of said electors creating or continuing such change.

Credits
(Adopted Nov. 6, 1979.)

West's Ann. Cal. Const. Art. 13B, § 4, CA CONST Art. 13B, § 4
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 5

§ 5. Establishment of funds by each entity of government; contributions; withdrawals

Currentness

Sec. 5. Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation.

Credits
(Adopted Nov. 6, 1979.)

Notes of Decisions (5)

West's Ann. Cal. Const. Art. 13B, § 5, CA CONST Art. 13B, § 5
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 6

§ 6. New programs or services mandated by Legislature or state agencies; subvention; appropriation of funds or suspension of operation

Effective: June 4, 2014
Currentness

SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

(1) Legislative mandates requested by the local agency affected.

(2) Legislation defining a new crime or changing an existing definition of a crime.

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.

(b)(1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004-05 fiscal year that have not been paid prior to the 2005-06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

Credits

(Adopted Nov. 6, 1979. Amended by Stats.2004, Res. c. 133 (S.C.A.4) (Prop.1A, approved Nov. 2, 2004, eff. Nov. 3, 2004); Stats.2013, Res. c. 123 (S.C.A.3), § 2 (Prop. 42, approved June 3, 2014, eff. June 4, 2014).)

Notes of Decisions (213)

West's Ann. Cal. Const. Art. 13B, § 6, CA CONST Art. 13B, § 6
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 7

§ 7. No impairment of obligation to meet bonded indebtedness

Currentness

Sec. 7. Nothing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with respect to existing or future bonded indebtedness.

Credits
(Adopted Nov. 6, 1979.)

West's Ann. Cal. Const. Art. 13B, § 7, CA CONST Art. 13B, § 7
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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Proposed Legislation

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 8

§ 8. Definitions

Currentness

Sec. 8. As used in this article and except as otherwise expressly provided herein:

(a) "Appropriations subject to limitation" of the state means any authorization to expend during a fiscal year the proceeds of taxes levied by or for the state, exclusive of state subventions for the use and operation of local government (other than subventions made pursuant to Section 6 and further exclusive of refunds of taxes, benefit payments from retirement, unemployment insurance, and disability insurance funds.

(b) "Appropriations subject to limitation" of an entity of local government means any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes.

(c) "Proceeds of taxes" shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, "proceeds of taxes" shall include subventions received from the state, other than pursuant to Section 6, and, with respect to the state, proceeds of taxes shall exclude such subventions.

(d) "Local government" means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state.

(e)(1) "Change in the cost of living" for the state, a school district, or a community college district means the percentage change in California per capita personal income from the preceding year.

(2) "Change in the cost of living" for an entity of local government, other than a school district or a community college district, shall be either (A) the percentage change in California per capita personal income from the preceding year, or (B) the percentage change in the local assessment roll from the preceding year for the jurisdiction due to the addition of local nonresidential new construction. Each entity of local government shall select its change in the cost of living pursuant to this paragraph annually by a recorded vote of the entity's governing body.

(f) “Change in population” of any entity of government, other than the state, a school district, or a community college district, shall be determined by a method prescribed by the Legislature.

“Change in population” of a school district or a community college district shall be the percentage change in the average daily attendance of the school district or community college district from the preceding fiscal year, as determined by a method prescribed by the Legislature.

“Change in population” of the state shall be determined by adding (1) the percentage change in the state's population multiplied by the percentage of the state's budget in the prior fiscal year that is expended for other than educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges, and (2) the percentage change in the total statewide average daily attendance in kindergarten and grades one to 12, inclusive, and the community colleges, multiplied by the percentage of the state's budget in the prior fiscal year that is expended for educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges.

Any determination of population pursuant to this subdivision, other than that measured by average daily attendance, shall be revised, as necessary, to reflect the periodic census conducted by the United States Department of Commerce, or successor department.

(g) “Debt service” means appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose.

(h) The “appropriations limit” of each entity of government for each fiscal year is that amount which total annual appropriations subject to limitation may not exceed under Sections 1 and 3. However, the “appropriations limit” of each entity of government for fiscal year 1978-79 is the total of the appropriations subject to limitation of the entity for that fiscal year. For fiscal year 1978-79, state subventions to local governments, exclusive of federal grants, are deemed to have been derived from the proceeds of state taxes.

(i) Except as otherwise provided in Section 5, “appropriations subject to limitation” do not include local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities.

Credits

(Adopted Nov. 6, 1979. Amended by S.C.A.1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Notes of Decisions (11)

West's Ann. Cal. Const. Art. 13B, § 8, CA CONST Art. 13B, § 8
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 9

§ 9. Appropriations subject to limitations; exclusions

Currentness

Sec. 9. "Appropriations subject to limitation" for each entity of government do not include:

(a) Appropriations for debt service.

(b) Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly.

(c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.

(d) Appropriations for all qualified capital outlay projects, as defined by the Legislature.

(e) Appropriations of revenue which are derived from any of the following:

(1) That portion of the taxes imposed on motor vehicle fuels for use in motor vehicles upon public streets and highways at a rate of more than nine cents ($0.09) per gallon.

(2) Sales and use taxes collected on that increment of the tax specified in paragraph (1).

(3) That portion of the weight fee imposed on commercial vehicles which exceeds the weight fee imposed on those vehicles on January 1, 1990.

Credits
(Adopted Nov. 6, 1979. Amended by S.C.A.1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Notes of Decisions (7)

West's Ann. Cal. Const. Art. 13B, § 9, CA CONST Art. 13B, § 9

Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 10

§ 10. Effective date

Currentness

Sec. 10. This Article shall be effective commencing with the first day of the fiscal year following its adoption.

Credits
(Adopted Nov. 6, 1979.)

West's Ann. Cal. Const. Art. 13B, § 10, CA CONST Art. 13B, § 10
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 11

§ 11. Adjustment of appropriations limit; judgment of court; severability

Currentness

Sec. 11. If any appropriation category shall be added to or removed from appropriations subject to limitation, pursuant to final judgment of any court of competent jurisdiction and any appeal therefrom, the appropriations limit shall be adjusted accordingly. If any section, part, clause or phrase in this Article is for any reason held invalid or unconstitutional, the remaining portions of this Article shall not be affected but shall remain in full force and effect.

Credits
(Added Nov. 6, 1979.)

West's Ann. Cal. Const. Art. 13B, § 11, CA CONST Art. 13B, § 11
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 12

§ 12. Appropriations subject to limitations; exclusion of cigarette and tobacco revenue

Currentness

Sec. 12. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988.

Credits
(Added by Initiative Measure (Prop. 99), approved Nov. 8, 1988.)

Notes of Decisions (2)

West's Ann. Cal. Const. Art. 13B, § 12, CA CONST Art. 13B, § 12
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 13

§ 13. Appropriations subject to limitations; exclusion of cigarette and tobacco revenue

Currentness

SEC. 13. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the California Children and Families First Trust Fund created by the California Children and Families First Act of 1998. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Children and Families First Trust Fund. The surtax created by the California Children and Families First Act of 1998 shall not be considered General Fund revenues for the purposes of Section 8 of Article XVI.

Credits
(Added by Initiative Measure (Prop. 10, § 4, approved Nov. 3, 1998, operative Dec. 12, 1998).)

West's Ann. Cal. Const. Art. 13B, § 13, CA CONST Art. 13B, § 13
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 14

§ 14. Appropriations subject to limitation; revenue from the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund

Effective: November 9, 2016
Currentness

SEC. 14. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund created by the California Healthcare, Research and Prevention Tobacco Tax Act of 2016. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund.

Credits
(Added by Initiative Measure (Prop. 56, § 6.2, approved Nov. 8, 2016, eff. Nov. 9, 2016).)

West's Ann. Cal. Const. Art. 13B, § 14, CA CONST Art. 13B, § 14
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

KeyCite Red Flag - Severe Negative Treatment
Enacted LegislationNew Section Added by 2017 Cal. Legis. Serv. Res. Ch. 30 (ACA 5) (WEST),

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 15

§ 15. Appropriations subject to limitation; Road Repair and Accountability Act of 2017

Effective: June 6, 2018
Currentness

SEC. 15. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenues from the Road Maintenance and Rehabilitation Account created by the Road Repair and Accountability Act of 2017, or any other revenues deposited into any other funds pursuant to the act. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenues being deposited in or appropriated from the Road Maintenance and Rehabilitation Account created by the Road Repair and Accountability Act of 2017 or any other account pursuant to the act.

Credits
(Added by Stats.2017, Res. c. 30 (A.C.A.5), § 1 (Prop. 69, § 1, approved June 5, 2018, eff. June 6, 2018).)

West's Ann. Cal. Const. Art. 13B, § 15, CA CONST Art. 13B, § 15
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XIIIC. [Voter Approval for Local Tax Levies] (Refs & Annos)

West's Ann.Cal.Const. Art. 13C, § 1

§ 1. Definitions

Effective: November 3, 2010
Currentness

SECTION 1. Definitions. As used in this article:

(a) “General tax” means any tax imposed for general governmental purposes.

(b) “Local government” means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

(c) “Special district” means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) “Special tax” means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

(e) As used in this article, “tax” means any levy, charge, or exaction of any kind imposed by a local government, except the following:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

(6) A charge imposed as a condition of property development.

(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

Credits

(Added by Initiative Measure (Prop. 218, § 3, approved Nov. 5, 1996). Amended by Initiative Measure (Prop. 26, § 3, approved Nov. 2, 2010, eff. Nov. 3, 2010).)

Notes of Decisions (77)

West's Ann. Cal. Const. Art. 13C, § 1, CA CONST Art. 13C, § 1
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XIIIC. [Voter Approval for Local Tax Levies] (Refs & Annos)

West's Ann.Cal.Const. Art. 13C, § 2

§ 2. General and special taxes; local government powers; powers of special purpose districts or agencies

Currentness

Sec. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

Credits
(Added by Initiative Measure (Prop. 218, § 3, approved Nov. 5, 1996).)

Notes of Decisions (60)

West's Ann. Cal. Const. Art. 13C, § 2, CA CONST Art. 13C, § 2
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XIIIC. [Voter Approval for Local Tax Levies] (Refs & Annos)

West's Ann.Cal.Const. Art. 13C, § 3

§ 3. Power of initiatives

Currentness

Sec. 3. Initiative Power for Local Taxes, Assessments, Fees and Charges. Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

Credits
(Added by Initiative Measure (Prop. 218, § 3, approved Nov. 5, 1996).)

Notes of Decisions (11)

West's Ann. Cal. Const. Art. 13C, § 3, CA CONST Art. 13C, § 3
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XIIID. [Assessment and Property Related Fee Reform] (Refs & Annos)

West's Ann.Cal.Const. Art. 13D, § 1

§ 1. Application of article

Currentness

Sec. 1. Application. Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

(a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.

(b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.

(c) Affect existing laws relating to the imposition of timber yield taxes.

Credits
(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Notes of Decisions (40)

West's Ann. Cal. Const. Art. 13D, § 1, CA CONST Art. 13D, § 1
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XIIID. [Assessment and Property Related Fee Reform] (Refs & Annos)

West's Ann.Cal.Const. Art. 13D, § 2

§ 2. Definitions

Currentness

Sec. 2. Definitions. As used in this article:

(a) “Agency” means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(b) “Assessment” means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. “Assessment” includes, but is not limited to, “special assessment,” “benefit assessment,” “maintenance assessment” and “special assessment tax.”

(c) “Capital cost” means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) “District” means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) “Fee” or “charge” means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(f) “Maintenance and operation expenses” means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) “Property ownership” shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) “Property-related service” means a public service having a direct relationship to property ownership.

(i) “Special benefit” means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute “special benefit.”

Credits
(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Notes of Decisions (32)

West's Ann. Cal. Const. Art. 13D, § 2, CA CONST Art. 13D, § 2
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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Proposed Legislation

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XIIID. [Assessment and Property Related Fee Reform] (Refs & Annos)

West's Ann.Cal.Const. Art. 13D, § 3

§ 3. Limitations on property taxes, assessments, fees and charges; electric and gas service fees

Currentness

Sec. 3. Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

Credits
(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Notes of Decisions (9)

West's Ann. Cal. Const. Art. 13D, § 3, CA CONST Art. 13D, § 3
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XIIID. [Assessment and Property Related Fee Reform] (Refs & Annos)

West's Ann.Cal.Const. Art. 13D, § 4

§ 4. Proposed assessments; procedures and requirements

Currentness

Sec. 4. Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

Credits

(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Notes of Decisions (80)

West's Ann. Cal. Const. Art. 13D, § 4, CA CONST Art. 13D, § 4
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XIIID. [Assessment and Property Related Fee Reform] (Refs & Annos)

West's Ann.Cal.Const. Art. 13D, § 5

§ 5. Effective date of article; assessments exempted from procedures and requirements of Section 4

Currentness

Sec. 5. Effective Date. Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

Credits
(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Notes of Decisions (14)

West's Ann. Cal. Const. Art. 13D, § 5, CA CONST Art. 13D, § 5
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XIIID. [Assessment and Property Related Fee Reform] (Refs & Annos)

West's Ann.Cal.Const. Art. 13D, § 6

§ 6. New or existing increased fees and charges; procedures and requirements; voter approval

Currentness

Sec. 6. Property Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section.

Credits
(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Notes of Decisions (89)

West's Ann. Cal. Const. Art. 13D, § 6, CA CONST Art. 13D, § 6
Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 26. Water Pollution Prevention and Control (Refs & Annos)
Subchapter I. Research and Related Programs (Refs & Annos)

33 U.S.C.A. § 1251

§ 1251. Congressional declaration of goals and policy

Currentness

(a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter--

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and

(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.

(b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) Congressional policy toward Presidential activities with foreign countries

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Administrator of Environmental Protection Agency to administer chapter

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

(e) Public participation in development, revision, and enforcement of any regulation, etc.

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) Procedures utilized for implementing chapter

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) Authority of States over water

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

CREDIT(S)

(June 30, 1948, c. 758, Title I, § 101, as added Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816; amended Pub.L. 95-217, §§ 5(a), 26(b), Dec. 27, 1977, 91 Stat. 1567, 1575; Pub.L. 100-4, Title III, § 316(b), Feb. 4, 1987, 101 Stat. 60.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 11548

Ex. Ord. No. 11548, July 20, 1970, 35 F.R. 11677, which related to the delegation of Presidential functions, was superseded by Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, set out as a note under section 1321 of this title.

EXECUTIVE ORDER NO. 11742

<Oct. 23, 1973, 38 F.R. 29457>

Delegation of Functions to Secretary of State Respecting Negotiation of International Agreements Relating to Enhancement of Environment

Under and by virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States, I hereby authorize and empower the Secretary of State, in coordination with the Council on Environmental Quality, the Environmental Protection Agency, and other appropriate Federal agencies, to perform, without the approval, ratification, or other action of the President, the functions vested in the President by Section 7 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500; 86 Stat. 898) with respect to international agreements relating to the enhancement of the environment.

RICHARD NIXON.

Notes of Decisions (128)

33 U.S.C.A. § 1251, 33 USCA § 1251
Current through P.L. 115-231. Also includes P.L. 115-233 to 115-270 and 115-272 to 115-277. Title 26 current through P.L. 115-277.

United States Code Annotated
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 26. Water Pollution Prevention and Control (Refs & Annos)
Subchapter III. Standards and Enforcement (Refs & Annos)

33 U.S.C.A. § 1312

§ 1312. Water quality related effluent limitations

Currentness

(a) Establishment

Whenever, in the judgment of the Administrator or as identified under section 1314(l) of this title, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 1311(b)(2) of this title, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

(b) Modifications of effluent limitations

(1) Notice and hearing

Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within 90 days of such publication hold a public hearing.

(2) Permits

(A) No reasonable relationship

The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this chapter) from achieving such limitation.

(B) Reasonable progress

The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed 5 years if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (i) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (ii) will result in reasonable further progress beyond the requirements of section 1311(b)(2) of this title toward the requirements of subsection (a) of this section.

(c) Delay in application of other limitations

The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 1311 of this title.

CREDIT(S)

(June 30, 1948, c. 758, Title III, § 302, as added Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 846; amended Pub.L. 100-4, Title III, § 308(e), Feb. 4, 1987, 101 Stat. 39.)

Notes of Decisions (6)

33 U.S.C.A. § 1312, 33 USCA § 1312
Current through P.L. 115-171.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 26. Water Pollution Prevention and Control (Refs & Annos)
Subchapter III. Standards and Enforcement (Refs & Annos)

33 U.S.C.A. § 1313

§ 1313. Water quality standards and implementation plans

Effective: October 10, 2000

Currentness

(a) Existing water quality standards

(1) In order to carry out the purpose of this chapter, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is a waiting approval by, the Administrator pursuant to this Act as in effect immediately prior to October 18, 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall, within three months after October 18, 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in

effect immediately prior to October 18, 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b) Proposed regulations

(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, if--

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

(c) Review; revised standards; publication

(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2)(A) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 1317(a)(1) of this title for which criteria have been published under section 1314(a) of this title, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 1314(a)(8) of this title. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved--

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

(d) Identification of areas with insufficient controls; maximum daily load; certain effluent limitations revision

(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 1311 of this title are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(D) Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314(a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife.

(4) Limitations on revision of certain effluent limitations

(A) Standard not attained

For waters identified under paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may

be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

(B) Standard attained

For waters identified under paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters or otherwise required by applicable water quality standards, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or any water quality standard established under this section, or any other permitting standard may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.

(e) Continuing planning process

(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this chapter.

(2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this chapter for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1), section 1311(b)(2), section 1316, and section 1317 of this title, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 1288 of this title, and applicable basin plans under section 1289 of this title;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 1311 and 1312 of this title.

(f) Earlier compliance

Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Heat standards

Water quality standards relating to heat shall be consistent with the requirements of section 1326 of this title.

(h) Thermal water quality standards

For the purposes of this chapter the term "water quality standards" includes thermal water quality standards.

(i) Coastal recreation water quality criteria

(1) Adoption by States

(A) Initial criteria and standards

Not later than 42 months after October 10, 2000, each State having coastal recreation waters shall adopt and submit to

the Administrator water quality criteria and standards for the coastal recreation waters of the State for those pathogens and pathogen indicators for which the Administrator has published criteria under section 1314(a) of this title.

(B) New or revised criteria and standards

Not later than 36 months after the date of publication by the Administrator of new or revised water quality criteria under section 1314(a)(9) of this title, each State having coastal recreation waters shall adopt and submit to the Administrator new or revised water quality standards for the coastal recreation waters of the State for all pathogens and pathogen indicators to which the new or revised water quality criteria are applicable.

(2) Failure of States to adopt

(A) In general

If a State fails to adopt water quality criteria and standards in accordance with paragraph (1)(A) that are as protective of human health as the criteria for pathogens and pathogen indicators for coastal recreation waters published by the Administrator, the Administrator shall promptly propose regulations for the State setting forth revised or new water quality standards for pathogens and pathogen indicators described in paragraph (1)(A) for coastal recreation waters of the State.

(B) Exception

If the Administrator proposes regulations for a State described in subparagraph (A) under subsection (c)(4)(B), the Administrator shall publish any revised or new standard under this subsection not later than 42 months after October 10, 2000.

(3) Applicability

Except as expressly provided by this subsection, the requirements and procedures of subsection (c) apply to this subsection, including the requirement in subsection (c)(2)(A) that the criteria protect public health and welfare.

CREDIT(S)

(June 30, 1948, c. 758, Title III, § 303, as added Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 846; amended Pub.L. 100-4, Title III, § 308(d), Title IV, § 404(b), Feb. 4, 1987, 101 Stat. 39, 68; Pub.L. 106-284, § 2, Oct. 10, 2000, 114 Stat. 870.)

Notes of Decisions (137)

33 U.S.C.A. § 1313, 33 USCA § 1313
Current through P.L. 115-171.

End of Document

United States Code Annotated
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 26. Water Pollution Prevention and Control (Refs & Annos)
Subchapter III. Standards and Enforcement (Refs & Annos)

33 U.S.C.A. § 1318

§ 1318. Records and reports; inspections

Currentness

(a) Maintenance; monitoring equipment; entry; access to information

Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 1315, 1321, 1342, 1344 (relating to State permit programs), 1345, and 1364 of this title--

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of his credentials--

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

(b) Availability to public; trade secrets exception; penalty for disclosure of confidential information

Any records, reports, or information obtained under this section (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18. Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(c) Application of State law

Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States).

(d) Access by Congress

Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of Congress, to such committee.

CREDIT(S)

(June 30, 1948, c. 758, Title III, § 308, as added Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 858; amended Pub.L. 95-217, § 67(c)(1), Dec. 27, 1977, 91 Stat. 1606; Pub.L. 100-4, Title III, § 310, Title IV, § 406(d)(1), Feb. 4, 1987, 101 Stat. 41, 73.)

Notes of Decisions (21)

33 U.S.C.A. § 1318, 33 USCA § 1318
Current through P.L. 115-171.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 26. Water Pollution Prevention and Control (Refs & Annos)
Subchapter IV. Permits and Licenses (Refs & Annos)

33 U.S.C.A. § 1342

§ 1342. National pollutant discharge elimination system

Effective: February 7, 2014

Currentness

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability

of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which--

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

(c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program; return of State program to Administrator

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(4) Limitations on partial permit program returns and withdrawals

A State may return to the Administrator administration, and the Administrator may withdraw under paragraph (3) of this subsection approval, of--

(A) a State partial permit program approved under subsection (n)(3) only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

(B) a State partial permit program approved under subsection (n)(4) only if an entire phased component of the permit program being administered by the State at the time is returned or withdrawn.

(d) Notification of Administrator

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.

(e) Waiver of notification requirement

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(j) Public information

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(l) Limitation on permit requirement

(1) Agricultural return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) Stormwater runoff from oil, gas, and mining operations

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(3) Silvicultural activities

(A) NPDES permit requirements for silvicultural activities

The Administrator shall not require a permit under this section nor directly or indirectly require any State to require a permit under this section for a discharge from runoff resulting from the conduct of the following silviculture activities conducted in accordance with standard industry practice: nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance.

(B) Other requirements

Nothing in this paragraph exempts a discharge from silvicultural activity from any permitting requirement under section 1344 of this title, existing permitting requirements under section 1342 of this title, or from any other federal law.

(C) The authorization provided in Section[1] 1365(a) of this title does not apply to any non-permitting program established under 1342(p)(6)[2] of this title for the silviculture activities listed in 1342(l)(3)(A)[3] of this title, or to any other limitations that might be deemed to apply to the silviculture activities listed in 1342(l)(3)(A)[3] of this title.

(m) Additional pretreatment of conventional pollutants not required

To the extent a treatment works (as defined in section 1292 of this title) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 1314(a)(4) of this title into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 1317(b)(1) of this title. Nothing in this subsection shall affect the Administrator's authority under sections 1317 and 1319 of this title, affect State and local authority under sections 1317(b)(4) and 1370 of this title, relieve such treatment works of its obligations to meet requirements established under this chapter, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) Partial permit program

(1) State submission

The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

(2) Minimum coverage

A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

(3) Approval of major category partial permit programs

The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if--

(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

(4) Approval of major component partial permit programs

The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if--

(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

(o) Anti-backsliding

(1) General prohibition

In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 1314(b) of this title subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 1311(b)(1)(C) or section 1313(d) or (e) of this title, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 1313(d)(4) of this title.

(2) Exceptions

A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if--

(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B);

(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or

(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent

limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this chapter or for reasons otherwise unrelated to water quality.

(3) Limitations

In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 1313 of this title applicable to such waters.

(p) Municipal and industrial stormwater discharges

(1) General rule

Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under this section) shall not require a permit under this section for discharges composed entirely of stormwater.

(2) Exceptions

Paragraph (1) shall not apply with respect to the following stormwater discharges:

(A) A discharge with respect to which a permit has been issued under this section before February 4, 1987.

(B) A discharge associated with industrial activity.

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than

250,000.

(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) Permit requirements

(A) Industrial discharges

Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.

(B) Municipal discharge

Permits for discharges from municipal storm sewers--

(i) may be issued on a system- or jurisdiction-wide basis;

(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(4) Permit application requirements

(A) Industrial and large municipal discharges

Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after February 4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(B) Other municipal discharges

Not later than 4 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after February 4, 1987. Not later than 6 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(5) Studies

The Administrator, in consultation with the States, shall conduct a study for the purposes of--

(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;

(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

(6) Regulations

Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

(q) Combined sewer overflows

(1) Requirement for permits, orders, and decrees

Each permit, order, or decree issued pursuant to this chapter after December 21, 2000, for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 (in this subsection referred to as the "CSO control policy").

(2) Water quality and designated use review guidance

Not later than July 31, 2001, and after providing notice and opportunity for public comment, the Administrator shall issue guidance to facilitate the conduct of water quality and designated use reviews for municipal combined sewer overflow receiving waters.

(3) Report

Not later than September 1, 2001, the Administrator shall transmit to Congress a report on the progress made by the Environmental Protection Agency, States, and municipalities in implementing and enforcing the CSO control policy.

(r) Discharges incidental to the normal operation of recreational vessels

No permit shall be required under this chapter by the Administrator (or a State, in the case of a permit program approved under subsection (b)) for the discharge of any graywater, bilge water, cooling water, weather deck runoff, oil water separator effluent, or effluent from properly functioning marine engines, or any other discharge that is incidental to the normal operation of a vessel, if the discharge is from a recreational vessel.

CREDIT(S)

(June 30, 1948, c. 758, Title IV, § 402, as added Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 880; amended Pub.L. 95-217, §§ 33(c), 50, 54(c)(1), 65, 66, Dec. 27, 1977, 91 Stat. 1577, 1588, 1591, 1599, 1600; Pub.L. 100-4, Title IV, §§ 401 to 404(a), (c), formerly (d), 405, Feb. 4, 1987, 101 Stat. 65 to 67, 69; Pub.L. 102-580, Title III, § 364, Oct. 31, 1992, 106 Stat. 4862; Pub.L. 104-66, Title II, § 2021(e)(2), Dec. 21, 1995, 109 Stat. 727; Pub.L. 106-554, § 1(a)(4) [Div. B, Title I, § 112(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-224; Pub.L. 110-288, § 2, July 29, 2008, 122 Stat. 2650; Pub.L. 113-79, Title XII, § 12313, Feb. 7, 2014, 128 Stat. 992.)

Notes of Decisions (244)

Footnotes

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should read “section 1342(p)(6)”.

[3] So in original. Probably should read “section 1342(l)(3)(A)”.

33 U.S.C.A. § 1342, 33 USCA § 1342
Current through P.L. 115-171.

End of Document

United States Code Annotated
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 26. Water Pollution Prevention and Control (Refs & Annos)
Subchapter V. General Provisions

33 U.S.C.A. § 1370

§ 1370. State authority

Currentness

Except as expressly provided in this chapter, nothing in this chapter shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this chapter, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this chapter; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.

CREDIT(S)

(June 30, 1948, c. 758, Title V, § 510, as added Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 893.)

Notes of Decisions (20)

33 U.S.C.A. § 1370, 33 USCA § 1370
Current through P.L. 115-171.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter D. Water Programs
Part 122. EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (Refs & Annos)
Subpart C. Permit Conditions

40 C.F.R. § 122.41

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

Effective: December 21, 2015

Currentness

The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in § 122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

(2) The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $25,000 per day for each violation. The Clean Water Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402

of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

(3) Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

(j) Monitoring and records.

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(4) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O.

(5) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 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 4 years, or both.

(k) Signatory requirements.

(1) All applications, reports, or information submitted to the Director shall be signed and certified. (See § 122.22)

(2) The CWA 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 6 months per violation, or by both.

(l) Reporting requirements.—

(1) Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a

new source in § 122.29(b); or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under § 122.42(a)(1).

(iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

(2) Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream under 40 CFR subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

(5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A report shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times), and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.41(g).

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See § 122.44(g).)

(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph (l)(6)(ii) of this section if the oral report has been received within 24 hours.

(7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6). For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph (l)(6) and the applicable required data in appendix A to 40 CFR part 127. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

(8) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(9) Identification of the initial recipient for NPDES electronic reporting data. The owner, operator, or the duly authorized representative of an NPDES–regulated entity is required to electronically submit the required NPDES information (as specified in appendix A to 40 CFR part 127) to the appropriate initial recipient, as determined by EPA, and as defined in § 127.2(b) of this chapter. EPA will identify and publish the list of initial recipients on its Web site and in the Federal Register, by state and by NPDES data group [see § 127.2(c) of this chapter]. EPA will update and maintain this listing.

(m) Bypass—

(1) Definitions.

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also it for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (m)(3) and (m)(4) of this section.

(3) Notice—

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass. As of December 21, 2020 all notices submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24–hour notice). As of December 21, 2020 all notices submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

(4) Prohibition of bypass.

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (m)(3) of this section.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

(n) Upset—

(1) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(3) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph (1)(6)(ii)(B) of this section (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph (d) of this section.

(4) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(Clean Water Act (33 U.S.C. 1251 et seq.), Safe Drinking Water Act (42 U.S.C. 300f et seq.), Clean Air Act (42 U.S.C. 7401 et seq.), Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.))

Editorial Note: In paragraphs (j)(2), (4) and (l)(4)(ii), there are references to 40 CFR part 503. These references are to a proposed rule which was published at 54 FR 5746, Feb. 6, 1989. There is currently no part 503 in the Code of Federal Regulations.

Credits

[48 FR 39620, Sept. 1, 1983; 49 FR 38049, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 50 FR 6941, Feb. 19, 1985; 54 FR 255, Jan. 4, 1989; 54 FR 18783, May 2, 1989; 58 FR 18016, April 7, 1993; 65 FR 30908, May 15, 2000; 72 FR 11211, March 12, 2007; 80 FR 64097, Oct. 22, 2015]

SOURCE: 45 FR 33418, May 19, 1980, as amended at 48 FR 14153, Apr. 1, 1983, unless otherwise noted.

AUTHORITY: The Clean Water Act, 33 U.S.C. 1251 et seq.

Notes of Decisions (528)

Current through May 24, 2018; 83 FR 24044.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter D. Water Programs
Part 122. EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (Refs & Annos)
Subpart C. Permit Conditions

40 C.F.R. § 122.44

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

Effective: December 21, 2015

Currentness

In addition to the conditions established under § 122.43(a), each NPDES permit shall include conditions meeting the following requirements when applicable.

(a)(1) Technology-based effluent limitations and standards based on: effluent limitations and standards promulgated under section 301 of the CWA, or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or a combination of the three, in accordance with § 125.3 of this chapter. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of § 122.29(d) (protection period).

(2) Monitoring waivers for certain guideline-listed pollutants.

(i) The Director may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an NPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N of this chapter if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(ii) This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

(iii) Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(iv) Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis.

(v) This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

(b)(1) Other effluent limitations and standards under sections 301, 302, 303, 307, 318, and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See also § 122.41(a).

(2) Standards for sewage sludge use or disposal under section 405(d) of the CWA unless those standards have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under section 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Director may initiate proceedings under these regulations to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

(3) Requirements applicable to cooling water intake structures under section 316(b) of the CWA, in accordance with part 125, subparts I, J, and N of this chapter.

(c) Reopener clause: For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

(d) Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318, and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.

(i) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

(ii) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(iii) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

(iv) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

(v) Except as provided in this subparagraph, when the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the permitting authority demonstrates in the fact sheet or statement of basis of the NPDES permit, using the procedures in paragraph (d)(1)(ii) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

(vi) Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of the following options:

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section

304(a) of the CWA, supplemented where necessary by other relevant information; or

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(1) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(2) The fact sheet required by § 124.56 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(3) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(4) The permit contains a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(vii) When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

(A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

(B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of CWA;

(3) Conform to the conditions to a State certification under section 401 of the CWA that meets the requirements of § 124.53 when EPA is the permitting authority. If a State certification is stayed by a court of competent jurisdiction or an appropriate State board or agency, EPA shall notify the State that the Agency will deem certification waived unless a finally effective State certification is received within sixty days from the date of the notice. If the State does not forward a finally effective certification within the sixty day period, EPA shall include conditions in the permit that may be necessary to meet EPA's obligation under section 301(b)(1)(C) of the CWA;

(4) Conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of CWA;

(6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of CWA;

(7) Incorporate section 403(c) criteria under part 125, subpart M, for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 40 CFR part 125, subpart D;

(9) Incorporate any other appropriate requirements, conditions, or limitations (other than effluent limitations) into a new source permit to the extent allowed by the National Environmental Policy Act, 42 U.S.C. 4321 et seq. and section 511 of the CWA, when EPA is the permit issuing authority. (See § 122.29(c)).

(e) Technology–based controls for toxic pollutants. Limitations established under paragraphs (a), (b), or (d) of this section, to control pollutants meeting the criteria listed in paragraph (e)(1) of this section. Limitations will be established in accordance with paragraph (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under § 124.56(b)(1)(i).

(1) Limitations must control all toxic pollutants which the Director determines (based on information reported in a permit application under § 122.21(g)(7) or in a notification under § 122.42(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c) of this chapter; or

(2) The requirement that the limitations control the pollutants meeting the criteria of paragraph (e)(1) of this section will be satisfied by:

(i) Limitations on those pollutants; or

(ii) Limitations on other pollutants which, in the judgment of the Director, will provide treatment of the pollutants under paragraph (e)(1) of this section to the levels required by § 125.3(c).

(f) Notification level. A "notification level" which exceeds the notification level of § 122.42(a)(1)(i), (ii) or (iii), upon a petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).

(g) Twenty-four hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under § 122.41(1)(6)(ii)(C) (24–hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(h) Durations for permits, as set forth in § 122.46.

(i) Monitoring requirements. In addition to § 122.48, the following monitoring requirements:

(1) To assure compliance with permit limitations, requirements to monitor:

(i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

(ii) The volume of effluent discharged from each outfall;

(iii) Other measurements as appropriate including pollutants in internal waste streams under § 122.45(i); pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.45(e); pollutants subject to notification requirements under § 122.42(a); and pollutants in sewage sludge or other monitoring as specified in 40 CFR part 503; or as determined to be necessary on a case-by-case basis pursuant to section 405(d)(4) of the CWA.

(iv) According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR part 136 for the analysis of pollutants or pollutant parameters or required under 40 CFR chapter I, subchapter N or O.

(A) For the purposes of this paragraph, a method is "sufficiently sensitive" when:

(1) The method minimum level (ML) is at or below the level of the effluent limit established in the permit for

the measured pollutant or pollutant parameter; or

(2) The method has the lowest ML of the analytical methods approved under 40 CFR part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

Note to paragraph (i)(1)(iv)(A): Consistent with 40 CFR part 136, applicants or permittees have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant or permittee can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of "sufficiently sensitive", the analytical results are not consistent with the QA/QC specifications for that method, then the Director may determine that the method is not performing adequately and the Director should select a different method from the remaining EPA–approved methods that is sufficiently sensitive consistent with 40 CFR 122.44(i)(1)(iv)(A). Where no other EPA–approved methods exist, the Director should select a method consistent with 40 CFR 122.44(i)(1)(iv)(B).

(B) In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N or O, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

(2) Except as provided in paragraphs (i)(4) and (5) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR part 503 (where applicable), but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127.

(3) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(4) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (i)(3) of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

(i) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(ii) The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

(iii) Such report and certification be signed in accordance with § 122.22; and

(iv) Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(5) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under § 122.41(l) (1), (4), (5), and (6) at least annually.

(j) Pretreatment program for POTWs. Requirements for POTWs to:

(1) Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR part 403.

(2)(i) Submit a local program when required by and in accordance with 40 CFR part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR part 403. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR part 403.

(ii) Provide a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance.

(3) For POTWs which are “sludge-only facilities,” a requirement to develop a pretreatment program under 40 CFR part 403 when the Director determines that a pretreatment program is necessary to assure compliance with Section 405(d) of the CWA.

(k) Best management practices (BMPs) to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) Authorized under section 402(p) of the CWA for the control of storm water discharges;

(3) Numeric effluent limitations are infeasible; or

(4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

Note to paragraph (k)(4): Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B–93–004, NTIS No. PB 94–178324, ERIC No. W498); Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R–92–005, NTIS No. PB 92–235951, ERIC No. N482); Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R–92–001, NTIS No. PB 93–223550; ERIC No. W139; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA 832/R–92–006, NTIS No. PB 92–235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA 833/R–92–002, NTIS No. PB 94–133782; ERIC No. W492. Copies of those documents (or directions on how to obtain them) can be obtained by contacting either the Office of Water Resource Center (using the EPA document number as a reference) at (202) 260–7786; or the Educational Resources Information Center (ERIC) (using the ERIC number as a reference) at (800) 276–0462. Updates of these documents or additional BMP documents may also be available. A list of EPA BMP guidance documents is available on the OWM Home Page at http://www.epa.gov/owm. In addition, States may have BMP guidance documents.

These EPA guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory, regulatory effect by virtue of their listing in this note.

(l) Reissued permits.

(1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62.)

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(i) Exceptions—A permit with respect to which paragraph (l)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if—

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b);

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) Limitations. In no event may a permit with respect to which paragraph (l)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

(m) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited copermittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director’s decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

(n) Grants. Any conditions imposed in grants made by the Administrator to POTWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.

(o) Sewage sludge. Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established, in accordance with any applicable regulations.

(p) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

(q) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 124.59 of this chapter.

(r) Great Lakes. When a permit is issued to a facility that discharges into the Great Lakes System (as defined in 40 CFR 132.2), conditions promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132.

(s) Qualifying State, Tribal, or local programs.

(1) For storm water discharges associated with small construction activity identified in § 122.26(b)(15), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. Where a qualifying State, Tribal, or local program does not include one or more of the elements in this paragraph (s)(1), then the Director must include those elements as conditions in the permit. A qualifying State, Tribal, or local erosion and sediment control program is one that includes:

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in § 122.26(b)(14)(x), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment control program is one that includes the elements listed in paragraph (s)(1) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

Credits

[49 FR 31842, Aug. 8, 1984; 49 FR 38049, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985; 50 FR 7912, Feb. 27, 1985; 54 FR 256, Jan. 4, 1989; 54 FR 18783, May 2, 1989; 54 FR 23895, 23896, June 2, 1989; 57 FR 11413, April 2, 1992; 57 FR 33049, July 24, 1992; 58 FR 18016, April 7, 1993; 60 FR 15386, March 23, 1995; 64 FR 42469, Aug. 4, 1999; 64 FR 43426, Aug. 10, 1999; 64 FR 68847, Dec. 8, 1999; 65 FR 30908, May 15, 2000; 65 FR 43661, July 13, 2000; 66 FR 53048, Oct. 18, 2001; 66 FR 65337, Dec. 18, 2001; 68 FR 13608, March 19, 2003; 69 FR 41682, July 9, 2004; 70 FR 60191, Oct. 14, 2005; 71 FR 35040, June 16, 2006; 72 FR 11212, March 12, 2007; 79 FR 49013, Aug. 19, 2014; 79 FR 56275, Sept. 19, 2014; 80 FR 64098, Oct. 22, 2015]

SOURCE: 45 FR 33418, May 19, 1980, as amended at 48 FR 14153, Apr. 1, 1983, unless otherwise noted.

AUTHORITY: The Clean Water Act, 33 U.S.C. 1251 et seq.

Notes of Decisions (156)

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End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter D. Water Programs
Part 123. State Program Requirements (Refs & Annos)
Subpart A. General

40 C.F.R. § 123.1

§ 123.1 Purpose and scope.

Currentness

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs and the requirements State programs must meet to be approved by the Administrator under sections 318, 402, and 405(a) (National Pollutant Discharge Elimination System—NPDES) of the CWA. This part also specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under section 405(f) (sludge management programs) of the CWA. The requirements that a State sewage sludge management program must meet for approval by the Administrator under section 405(f) are set out at 40 CFR part 501.

(b) These regulations are promulgated under the authority of sections 304(i), 101(e), 405, and 518(e) of the CWA, and implement the requirements of those sections.

(c) The Administrator will approve State programs which conform to the applicable requirements of this part. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405(a) will not be approved independent of a section 402 program.

(d)(1) Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program. After program approval EPA shall retain jurisdiction over any permits (including general permits) which it has issued unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals, modification requests, or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request or variance request is not finally resolved when the federally issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved.

(2) The procedures outlined in the preceding paragraph (d)(1) of this section for suspension of permitting authority and transfer of existing permits will also apply when EPA approves an Indian Tribe's application to operate a State program and a State was the authorized permitting authority under § 123.23(b) for activities within the scope of the newly approved program. The authorized State will retain jurisdiction over its existing permits as described in paragraph (d)(1)

of this section absent a different arrangement stated in the Memorandum of Agreement executed between EPA and the Tribe.

(e) Upon submission of a complete program, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program taking into consideration the requirements of this part, the CWA and any comments received.

(f) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part.

(g)(1) Except as may be authorized pursuant to paragraph (g)(2) of this section or excluded by § 122.3, the State program must prohibit all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction except as authorized by a permit in effect under the State program or under section 402 of CWA. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges. When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.21 before EPA will begin formal review.

(2) A State may seek approval of a partial or phased program in accordance with section 402(n) of the CWA.

(h) In many cases, States (other than Indian Tribes) will lack authority to regulate activities on Indian lands. This lack of authority does not impair that State's ability to obtain full program approval in accordance with this part, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. EPA will administer the program on Indian lands if a State (or Indian Tribe) does not seek or have authority to regulate activities on Indian lands.

Note: States are advised to contact the United States Department of the Interior, Bureau of Indian Affairs, concerning authority over Indian lands.

(i) Nothing in this part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this part;

(2) Operating a program with a greater scope of coverage than that required under this part. If an approved State program has greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

Note: For example, if a State requires permits for discharges into publicly owned treatment works, these permits are not

NPDES permits.

Credits

[54 FR 256, Jan. 4, 1989; 54 FR 18784, May 2, 1989; 58 FR 67981, Dec. 22, 1993; 59 FR 64343, Dec. 14, 1994; 63 FR 45122, Aug. 24, 1998]

SOURCE: 45 FR 33456, May 19, 1980, as amended at 48 FR 14178, Apr. 1, 1983, unless otherwise noted.

AUTHORITY: Clean Water Act, 33 U.S.C. 1251 et seq.

Notes of Decisions (26)

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Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter D. Water Programs
Part 130. Water Quality Planning and Management (Refs & Annos)

40 C.F.R. § 130.2

§ 130.2 Definitions.

Currentness

(a) The Act. The Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(b) Indian Tribe. Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

(c) Pollution. The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(d) Water quality standards (WQS). Provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

(e) Load or loading. An amount of matter or thermal energy that is introduced into a receiving water; to introduce matter or thermal energy into a receiving water. Loading may be either man-caused (pollutant loading) or natural (natural background loading).

(f) Loading capacity. The greatest amount of loading that a water can receive without violating water quality standards.

(g) Load allocation (LA). The portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.

(h) Wasteload allocation (WLA). The portion of a receiving water's loading capacity that is allocated to one of its existing or

future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

(i) Total maximum daily load (TMDL). The sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.

(j) Water quality limited segment. Any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.

(k) Water quality management (WQM) plan. A State or areawide waste treatment management plan developed and updated in accordance with the provisions of sections 205(j), 208 and 303 of the Act and this regulation.

(l) Areawide agency. An agency designated under section 208 of the Act, which has responsibilities for WQM planning within a specified area of a State.

(m) Best Management Practice (BMP). Methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

(n) Designated management agency (DMA). An agency identified by a WQM plan and designated by the Governor to implement specific control recommendations.

Credits

[54 FR 14359, April 11, 1989; 65 FR 43662, July 13, 2000; 68 FR 13608, March 19, 2003]

SOURCE: 50 FR 1779, Jan. 11, 1985; 66 FR 53048, Oct. 18, 2001; 68 FR 13608, March 19, 2003, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (5)

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End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter D. Water Programs
Part 130. Water Quality Planning and Management (Refs & Annos)

40 C.F.R. § 130.7

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

Currentness

(a) General. The process for identifying water quality limited segments still requiring wasteload allocations, load allocations and total maximum daily loads (WLAs/LAs and TMDLs), setting priorities for developing these loads; establishing these loads for segments identified, including water quality monitoring, modeling, data analysis, calculation methods, and list of pollutants to be regulated; submitting the State's list of segments identified, priority ranking, and loads established (WLAs/LAs/TMDLs) to EPA for approval; incorporating the approved loads into the State's WQM plans and NPDES permits; and involving the public, affected dischargers, designated areawide agencies, and local governments in this process shall be clearly described in the State Continuing Planning Process (CPP).

(b) Identification and priority setting for water quality-limited segments still requiring TMDLs.

(1) Each State shall identify those water quality-limited segments still requiring TMDLs within its boundaries for which:

(i) Technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act;

(ii) More stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or Federal authority (law, regulation, or treaty); and

(iii) Other pollution control requirements (e.g., best management practices) required by local, State, or Federal authority are not stringent enough to implement any water quality standards (WQS) applicable to such waters.

(2) Each State shall also identify on the same list developed under paragraph (b)(1) of this section those water quality-limited segments still requiring TMDLs or parts thereof within its boundaries for which controls on thermal discharges under section 301 or State or local requirements are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish and wildlife.

(3) For the purposes of listing waters under § 130.7(b), the term "water quality standard applicable to such waters" and "applicable water quality standards" refer to those water quality standards established under section 303 of the Act, including numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements.

(4) The list required under §§ 130.7(b)(1) and 130.7(b)(2) of this section shall include a priority ranking for all listed water quality-limited segments still requiring TMDLs, taking into account the severity of the pollution and the uses to be made of such waters and shall identify the pollutants causing or expected to cause violations of the applicable water quality standards. The priority ranking shall specifically include the identification of waters targeted for TMDL development in the next two years.

(5) Each State shall assemble and evaluate all existing and readily available water quality-related data and information to develop the list required by §§ 130.7(b)(1) and 130.7(b)(2). At a minimum "all existing and readily available water quality-related data and information" includes but is not limited to all of the existing and readily available data and information about the following categories of waters:

(i) Waters identified by the State in its most recent section 305(b) report as "partially meeting" or "not meeting" designated uses or as "threatened";

(ii) Waters for which dilution calculations or predictive models indicate nonattainment of applicable water quality standards;

(iii) Waters for which water quality problems have been reported by local, state, or federal agencies; members of the public; or academic institutions. These organizations and groups should be actively solicited for research they may be conducting or reporting. For example, university researchers, the United States Department of Agriculture, the National Oceanic and Atmospheric Administration, the United States Geological Survey, and the United States Fish and Wildlife Service are good sources of field data; and

(iv) Waters identified by the State as impaired or threatened in a nonpoint assessment submitted to EPA under section 319 of the CWA or in any updates of the assessment.

(6) Each State shall provide documentation to the Regional Administrator to support the State's determination to list or not to list its waters as required by §§ 130.7(b)(1) and 130.7(b)(2). This documentation shall be submitted to the Regional Administrator together with the list required by §§ 130.7(b)(1) and 130.7(b)(2) and shall include at a minimum:

(i) A description of the methodology used to develop the list; and

(ii) A description of the data and information used to identify waters, including a description of the data and information used by the State as required by § 130.7(b)(5); and

(iii) A rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in § 130.7(b)(5); and

(iv) Any other reasonable information requested by the Regional Administrator. Upon request by the Regional Administrator, each State must demonstrate good cause for not including a water or waters on the list. Good cause includes, but is not limited to, more recent or accurate data; more sophisticated water quality modeling; flaws in the original analysis that led to the water being listed in the categories in § 130.7(b)(5); or changes in conditions, e.g., new control equipment, or elimination of discharges.

(c) Development of TMDLs and individual water quality based effluent limitations.

(1) Each State shall establish TMDLs for the water quality limited segments identified in paragraph (b)(1) of this section, and in accordance with the priority ranking. For pollutants other than heat, TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.

(i) TMDLs may be established using a pollutant-by-pollutant or biomonitoring approach. In many cases both techniques may be needed. Site-specific information should be used wherever possible.

(ii) TMDLs shall be established for all pollutants preventing or expected to prevent attainment of water quality standards as identified pursuant to paragraph (b)(1) of this section. Calculations to establish TMDLs shall be subject to public review as defined in the State CPP.

(2) Each State shall estimate for the water quality limited segments still requiring TMDLs identified in paragraph (b)(2) of this section, the total maximum daily thermal load which cannot be exceeded in order to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in the identified waters or parts thereof.

(d) Submission and EPA approval.

(1) Each State shall submit biennially to the Regional Administrator beginning in 1992 the list of waters, pollutants causing impairment, and the priority ranking including waters targeted for TMDL development within the next two years as required under paragraph (b) of this section. For the 1992 biennial submission, these lists are due no later than October 22, 1992. Thereafter, each State shall submit to EPA lists required under paragraph (b) of this section on April 1 of every even-numbered year. For the year 2000 submission, a State must submit a list required under paragraph (b) of this section only if a court order or consent decree, or commitment in a settlement agreement dated prior to January 1, 2000, expressly requires EPA to take action related to that State's year 2000 list. For the year 2002 submission, a State must submit a list required under paragraph (b) of this section by October 1, 2002, unless a court order, consent decree or commitment in a settlement agreement expressly requires EPA to take an action related to that State's 2002 list prior to October 1, 2002, in which case, the State must submit a list by April 1, 2002. The list of waters may be submitted as part of the State's biennial water quality report required by § 130.8 of this part and section 305(b) of the CWA or submitted under separate cover. All WLAs/LAs and TMDLs established under paragraph (c) for water quality limited segments shall continue to be submitted to EPA for review and approval. Schedules for submission of TMDLs shall be determined by the Regional Administrator and the State.

(2) The Regional Administrator shall either approve or disapprove such listing and loadings not later than 30 days after the date of submission. The Regional Administrator shall approve a list developed under § 130.7(b) that is submitted after the effective date of this rule only if it meets the requirements of § 130.7(b). If the Regional Administrator approves such listing and loadings, the State shall incorporate them into its current WQM plan. If the Regional Administrator disapproves such listing and loadings, he shall, not later than 30 days after the date of such disapproval, identify such waters in such State and establish such loads for such waters as determined necessary to implement applicable WQS. The Regional Administrator shall promptly issue a public notice seeking comment on such listing and loadings. After considering public comment and making any revisions he deems appropriate, the Regional Administrator shall transmit the listing and loads to the State, which shall incorporate them into its current WQM plan.

(e) For the specific purpose of developing information and as resources allow, each State shall identify all segments within its boundaries which it has not identified under paragraph (b) of this section and estimate for such waters the TMDLs with seasonal variations and margins of safety, for those pollutants which the Regional Administrator identifies under section 304(a)(2) as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife. However, there is no requirement for such loads to be submitted to EPA for approval, and establishing TMDLs for those waters identified in paragraph (b) of this section shall be given higher priority.

Credits

[57 FR 33049, July 24, 1992; 65 FR 17170, March 31, 2000; 65 FR 43663, July 13, 2000; 66 FR 53048, Oct. 18, 2001; 68 FR 13608, March 19, 2003]

SOURCE: 50 FR 1779, Jan. 11, 1985; 66 FR 53048, Oct. 18, 2001; 68 FR 13608, March 19, 2003, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (13)

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Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter D. Water Programs
Part 131. Water Quality Standards (Refs & Annos)
Subpart A. General Provisions

40 C.F.R. § 131.8

§ 131.8 Requirements for Indian Tribes to administer a water quality standards program.

Currentness

(a) The Regional Administrator, as determined based on OMB Circular A–105, may accept and approve a tribal application for purposes of administering a water quality standards program if the Tribe meets the following criteria:

(1) The Indian Tribe is recognized by the Secretary of the Interior and meets the definitions in § 131.3 (k) and (l),

(2) The Indian Tribe has a governing body carrying out substantial governmental duties and powers,

(3) The water quality standards program to be administered by the Indian Tribe pertains to the management and protection of water resources which are within the borders of the Indian reservation and held by the Indian Tribe, within the borders of the Indian reservation and held by the United States in trust for Indians, within the borders of the Indian reservation and held by a member of the Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of the Indian reservation, and

(4) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator’s judgment, of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the Act and applicable regulations.

(b) Requests by Indian Tribes for administration of a water quality standards program should be submitted to the lead EPA Regional Administrator. The application shall include the following information:

(1) A statement that the Tribe is recognized by the Secretary of the Interior.

(2) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. The statement should:

(i) Describe the form of the Tribal government;

(ii) Describe the types of governmental functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population, taxation, and the exercise of the power of eminent domain; and

(iii) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(3) A descriptive statement of the Indian Tribe's authority to regulate water quality. The statement should include:

(i) A map or legal description of the area over which the Indian Tribe asserts authority to regulate surface water quality;

(ii) A statement by the Tribe's legal counsel (or equivalent official) which describes the basis for the Tribes assertion of authority and which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority; and

(iii) An identification of the surface waters for which the Tribe proposes to establish water quality standards.

(4) A narrative statement describing the capability of the Indian Tribe to administer an effective water quality standards program. The narrative statement should include:

(i) A description of the Indian Tribe's previous management experience which may include, the administration of programs and services authorized by the Indian Self–Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Indian Mineral Development Act (25 U.S.C. 2101 et seq.), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(ii) A list of existing environmental or public health programs administered by the Tribal governing body and copies of related Tribal laws, policies, and regulations;

(iii) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal

government;

(iv) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards;

(v) A description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(5) Additional documentation required by the Regional Administrator which, in the judgment of the Regional Administrator, is necessary to support a Tribal application.

(6) Where the Tribe has previously qualified for eligibility or "treatment as a state" under a Clean Water Act or Safe Drinking Water Act program, the Tribe need only provide the required information which has not been submitted in a previous application.

(c) Procedure for processing an Indian Tribe's application.

(1) The Regional Administrator shall process an application of an Indian Tribe submitted pursuant to § 131.8(b) in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(2) Within 30 days after receipt of the Indian Tribe's application, the Regional Administrator shall provide appropriate notice. Notice shall:

(i) Include information on the substance and basis of the Tribe's assertion of authority to regulate the quality of reservation waters; and

(ii) Be provided to all appropriate governmental entities.

(3) The Regional Administrator shall provide 30 days for comments to be submitted on the Tribal application. Comments shall be limited to the Tribe's assertion of authority.

(4) If a Tribe's asserted authority is subject to a competing or conflicting claim, the Regional Administrator, after due

consideration, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated that it meets the requirements of § 131.8(a)(3).

(5) Where the Regional Administrator determines that a Tribe meets the requirements of this section, he shall promptly provide written notification to the Indian Tribe that the Tribe is authorized to administer the Water Quality Standards program.

Credits

[56 FR 64895, Dec. 12, 1991; 59 FR 64344, Dec. 14, 1994]

SOURCE: 48 FR 51405, Nov. 8, 1983; 57 FR 60910, Dec. 22, 1992, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1251 et seq.

Notes of Decisions (25)

Current through May 24, 2018; 83 FR 24044.

End of Document

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 1. Legislative Intent (Refs & Annos)

West's Ann.Cal.Gov.Code § 17500

§ 17500. Legislative findings and declarations

Effective: January 1, 2005

Currentness

The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIIIB of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.

It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIIIB of the California Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIIIB of the California Constitution.

Credits

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.2004, c. 890 (A.B.2856), § 2.)

Notes of Decisions (10)

West's Ann. Cal. Gov. Code § 17500, CA GOVT § 17500
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

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West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 2. General Provisions (Refs & Annos)

West's Ann.Cal.Gov.Code § 17514

§ 17514. Costs mandated by the state

Currentness

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

Credits

(Added by Stats.1984, c. 1459, § 1.)

Notes of Decisions (14)

West's Ann. Cal. Gov. Code § 17514, CA GOVT § 17514
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

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Proposed Legislation

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
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Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 4. Identification and Payment of Costs Mandated by the State (Refs & Annos)
Article 1. Commission Procedure (Refs & Annos)

West's Ann.Cal.Gov.Code § 17551

§ 17551. Hearing and decision on claims

Effective: January 1, 2008

Currentness

(a) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.

(b) Except as provided in Sections 17573 and 17574, commission review of claims may be had pursuant to subdivision (a) only if the test claim is filed within the time limits specified in this section.

(c) Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

(d) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

Credits

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1985, c. 179, § 5, eff. July 8, 1985, operative Jan. 1, 1985; Stats.1986, c. 879, § 2; Stats.2002, c. 1124 (A.B.3000), § 30.2, eff. Sept. 30, 2002; Stats.2004, c. 890 (A.B.2856), § 11; Stats.2007, c. 329 (A.B.1222), § 3.)

Notes of Decisions (6)

West's Ann. Cal. Gov. Code § 17551, CA GOVT § 17551
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

End of Document

West's Ann.Cal.Gov.Code § 17553

§ 17553. Procedures for receiving and hearing claims; filing of test claims; form and contents; incomplete test claims; determination of complete incorrect reduction claim

Effective: January 1, 2008

Currentness

(a) The commission shall adopt procedures for receiving claims filed pursuant to this article and Section 17574 and for providing a hearing on those claims. The procedures shall do all of the following:

(1) Provide for presentation of evidence by the claimant, the Department of Finance, and any other affected department or agency, and any other interested person.

(2) Ensure that a statewide cost estimate is adopted within 12 months after receipt of a test claim, when a determination is made by the commission that a mandate exists. This deadline may be extended for up to six months upon the request of either the claimant or the commission.

(3) Permit the hearing of a claim to be postponed at the request of the claimant, without prejudice, until the next scheduled hearing.

(b) All test claims shall be filed on a form prescribed by the commission and shall contain at least the following elements and documents:

(1) A written narrative that identifies the specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate and shall include all of the following:

(A) A detailed description of the new activities and costs that arise from the mandate.

(B) A detailed description of existing activities and costs that are modified by the mandate.

(C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

(D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(F) Identification of all of the following:

(i) Dedicated state funds appropriated for this program.

(ii) Dedicated federal funds appropriated for this program.

(iii) Other nonlocal agency funds dedicated for this program.

(iv) The local agency's general purpose funds for this program.

(v) Fee authority to offset the costs of this program.

(G) Identification of prior mandate determinations made by the Commission on State Mandates or a predecessor agency that may be related to the alleged mandate.

(H) Identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order.

(2) The written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal

knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:

(A) Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

(B) Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

(C) Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.

(D) If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Section 17574.

(3)(A) The written narrative shall be supported with copies of all of the following:

(i) The test claim statute that includes the bill number or executive order, alleged to impose or impact a mandate.

(ii) Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate.

(iii) Administrative decisions and court decisions cited in the narrative.

(B) State mandate determinations made by the Commission on State Mandates or a predecessor agency and published court decisions on state mandate determinations made by the Commission on State Mandates are exempt from this requirement.

(4) A test claim shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief. The date of signing, the declarant's title, address, telephone number, facsimile machine telephone number, and electronic mail address shall be included.

(c) If a completed test claim is not received by the commission within 30 calendar days from the date that an incomplete test claim was returned by the commission, the original test claim filing date may be disallowed, and a new test claim may be accepted on the same statute or executive order.

(d) In addition, the commission shall determine whether an incorrect reduction claim is complete within 10 days after the date that the incorrect reduction claim is filed. If the commission determines that an incorrect reduction claim is not complete, the commission shall notify the local agency and school district that filed the claim stating the reasons that the claim is not complete. The local agency or school district shall have 30 days to complete the claim. The commission shall serve a copy of the complete incorrect reduction claim on the Controller. The Controller shall have no more than 90 days after the date the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the commission.

Credits

(Added by Stats.1995, c. 945 (S.B.11), § 5, operative July 1, 1996. Amended by Stats.1998, c. 681 (A.B.1963), § 1, eff. Sept. 22, 1998; Stats.1999, c. 643 (A.B.1679), § 3; Stats.2004, c. 890 (A.B.2856), § 12; Stats.2006, c. 538 (S.B.1852), § 278; Stats.2007, c. 329 (A.B.1222), § 4.)

West's Ann. Cal. Gov. Code § 17553, CA GOVT § 17553
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

End of Document


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Unconstitutional or PreemptedPrior Version Held Unconstitutional by California School Boards Ass'n v. State, Cal.App. 3 Dist., Mar. 09, 2009

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 4. Identification and Payment of Costs Mandated by the State (Refs & Annos)
Article 1. Commission Procedure (Refs & Annos)

West's Ann.Cal.Gov.Code § 17556

§ 17556. Findings; costs not mandated upon certain conditions

Effective: October 19, 2010

Currentness

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

(a) The claim is submitted by a local agency or school district that requests or previously requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision. This subdivision applies regardless of whether the resolution from the governing body or a letter from a delegated representative of the governing body was adopted or sent prior to or after the date on which the statute or executive order was enacted or issued.

(b) The statute or executive order affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute or executive order was enacted or issued.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or

issued.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

Credits

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1986, c. 879, § 4; Stats.1989, c. 589, § 1; Stats.2004, c. 895 (A.B.2855), § 14; Stats.2005, c. 72 (A.B.138), § 7, eff. July 19, 2005; Stats.2006, c. 538 (S.B.1852), § 279; Stats.2010, c. 719 (S.B.856), § 31, eff. Oct. 19, 2010.)

Editors' Notes

VALIDITY

A prior version of this section was held unconstitutional as impermissibly broad, in the decision of California School Boards Ass'n v. State (App. 3 Dist. 2009) 90 Cal.Rptr.3d 501, 171 Cal.App.4th 1183.

Notes of Decisions (14)

West's Ann. Cal. Gov. Code § 17556, CA GOVT § 17556
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

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West's Annotated California Codes
Government Code (Refs & Annos)
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Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 4. Identification and Payment of Costs Mandated by the State (Refs & Annos)
Article 1. Commission Procedure (Refs & Annos)

West's Ann.Cal.Gov.Code § 17564

§ 17564. Claims under specified dollar amount; claims for direct and indirect costs

Effective: January 1, 2008

Currentness

(a) No claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551 or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars ($1,000). However, a county superintendent of schools or county may submit a combined claim on behalf of school districts, direct service districts, or special districts within their county if the combined claim exceeds one thousand dollars ($1,000) even if the individual school district's, direct service district's, or special district's claims do not each exceed one thousand dollars ($1,000). The county superintendent of schools or the county shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school, direct service, or special district. These combined claims may be filed only when the county superintendent of schools or the county is the fiscal agent for the districts. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district, direct service district, or special district provides to the county superintendent of schools or county and to the Controller, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines or reasonable reimbursement methodology and claiming instructions.

(c) Claims for direct and indirect costs filed pursuant to a legislatively determined mandate pursuant to Section 17573 shall be filed and paid in the manner prescribed in the Budget Act or other bill, or claiming instructions, if applicable.

Credits

(Added by Stats.1986, c. 879, § 9. Amended by Stats.1992, c. 1041 (A.B.1690), § 4; Stats.1999, c. 643 (A.B.1679), § 6; Stats.2002, c. 1124 (A.B.3000), § 30.9, eff. Sept. 30, 2002; Stats.2004, c. 890 (A.B.2856), § 23; Stats.2007, c. 329 (A.B.1222), § 9.)

Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

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Proposed Legislation

West's Annotated California Codes
Water Code (Refs & Annos)
Division 7. Water Quality (Refs & Annos)
Chapter 1. Policy (Refs & Annos)

West's Ann.Cal.Water Code § 13000

§ 13000. Conservation, control, and utilization of water resources; quality; statewide program; regional administration

Currentness

The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state.

The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

The Legislature further finds and declares that the health, safety and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state; that the state must be prepared to exercise its full power and jurisdiction to protect the quality of waters in the state from degradation originating inside or outside the boundaries of the state; that the waters of the state are increasingly influenced by interbasin water development projects and other statewide considerations; that factors of precipitation, topography, population, recreation, agriculture, industry and economic development vary from region to region within the state; and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy.

Credits

(Added by Stats.1969, c. 482, p. 1051, § 18, operative Jan. 1, 1970.)

Notes of Decisions (27)

West's Ann. Cal. Water Code § 13000, CA WATER § 13000
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

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West's Annotated California Codes
Water Code (Refs & Annos)
Division 7. Water Quality (Refs & Annos)
Chapter 1. Policy (Refs & Annos)

West's Ann.Cal.Water Code § 13001

§ 13001. Legislative intent

Currentness

It is the intent of the Legislature that the state board and each regional board shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The state board and regional boards in exercising any power granted in this division shall conform to and implement the policies of this chapter and shall, at all times, coordinate their respective activities so as to achieve a unified and effective water quality control program in this state.

Credits

(Added by Stats.1969, c. 482, p. 1051, § 18, operative Jan. 1, 1970.)

Notes of Decisions (8)

West's Ann. Cal. Water Code § 13001, CA WATER § 13001
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

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West's Ann.Cal.Water Code § 13170

§ 13170. Adoption of water quality control plans for waters as required by Federal Water Pollution Control Act

Currentness

The state board may adopt water quality control plans in accordance with the provisions of Sections 13240 to 13244, inclusive, insofar as they are applicable, for waters for which water quality standards are required by the Federal Water Pollution Control Act[1] and acts amendatory thereof or supplementary thereto. Such plans, when adopted, supersede any regional water quality control plans for the same waters to the extent of any conflict.

Credits

(Added by Stats.1971, c. 1288, p. 2524, § 6.)

Notes of Decisions (2)

Footnotes

1 33 U.S.C.A. § 1251 et seq.

West's Ann. Cal. Water Code § 13170, CA WATER § 13170
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

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KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedLimited on Preemption Grounds by Karuk Tribe of Northern California v. California Regional Water Quality Control Bd., North Coast Region, Cal.App. 1 Dist., Mar. 30, 2010

West's Annotated California Codes
Water Code (Refs & Annos)
Division 7. Water Quality (Refs & Annos)
Chapter 4. Regional Water Quality Control (Refs & Annos)
Article 3. Regional Water Quality Control Plans (Refs & Annos)

West's Ann.Cal.Water Code § 13241

§ 13241. Water quality objectives; beneficial uses; prevention of nuisances

Currentness

Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

(a) Past, present, and probable future beneficial uses of water.

(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.

(d) Economic considerations.

(e) The need for developing housing within the region.

(f) The need to develop and use recycled water.

Credits

(Added by Stats.1969, c. 482, p. 1061, § 18, operative Jan. 1, 1970. Amended by Stats.1979, c. 947, p. 3272, § 8; Stats.1991, c. 187 (A.B.673), § 2.)

Notes of Decisions (47)

West's Ann. Cal. Water Code § 13241, CA WATER § 13241
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

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West's Annotated California Codes
Water Code (Refs & Annos)
Division 7. Water Quality (Refs & Annos)
Chapter 4. Regional Water Quality Control (Refs & Annos)
Article 4. Waste Discharge Requirements (Refs & Annos)

West's Ann.Cal.Water Code § 13267

§ 13267. Investigation of water quality; reports; inspection of facilities

Effective: January 1, 2007

Currentness

(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.

(b)(1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

(2) When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

(c) In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.

(d) The state board or a regional board may require any person, including a person subject to a waste discharge requirement

under Section 13263, who is discharging, or who proposes to discharge, wastes or fluid into an injection well, to furnish the state board or regional board with a complete report on the condition and operation of the facility or injection well, or any other information that may be reasonably required to determine whether the injection well could affect the quality of the waters of the state.

(e) As used in this section, "evidence" means any relevant evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in a civil action.

(f) The state board may carry out the authority granted to a regional board pursuant to this section if, after consulting with the regional board, the state board determines that it will not duplicate the efforts of the regional board.

Credits

(Added by Stats.1969, c. 482, p. 1064, § 18, operative Jan. 1, 1970. Amended by Stats.1970, c. 918, § 5; Stats.1986, c. 1013, § 8, eff. Sept. 23, 1986; Stats.1992, c. 729 (S.B.1277), § 1; Stats.2001, c. 869 (A.B.1664), § 3; Stats.2006, c. 293 (S.B.729), § 2.)

Notes of Decisions (2)

West's Ann. Cal. Water Code § 13267, CA WATER § 13267
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

End of Document

West's Ann.Cal.Water Code § 13370

§ 13370. Legislative findings and declarations

Currentness

The Legislature finds and declares as follows:

(a) The Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), as amended, provides for permit systems to regulate the discharge of pollutants and dredged or fill material to the navigable waters of the United States and to regulate the use and disposal of sewage sludge.

(b) The Federal Water Pollution Control Act, as amended, provides that permits may be issued by states which are authorized to implement the provisions of that act.

(c) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto, provided, that the state board shall request federal funding under the Federal Water Pollution Control Act for the purpose of carrying out its responsibilities under this program.

Credits

(Added by Stats.1972, c. 1256, p. 2485, § 1, eff. Dec. 19, 1972. Amended by Stats.1978, c. 746, p. 2343, § 1; Stats.1980, c. 676, p. 2028, § 319; Stats.1987, c. 1189, § 1.)

Notes of Decisions (4)

West's Ann. Cal. Water Code § 13370, CA WATER § 13370
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

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West's Annotated California Codes
Water Code (Refs & Annos)
Division 7. Water Quality (Refs & Annos)
Chapter 5.5. Compliance with the Provisions of the Federal Water Pollution Control Act as Amended in 1972 (Refs & Annos)

West's Ann.Cal.Water Code § 13383

§ 13383. Monitoring, inspection, entry, reporting, and recordkeeping requirements; establishment and maintenance; inspections

Effective: January 1, 2004

Currentness

(a) The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements, as authorized by Section 13160, 13376, or 13377 or by subdivisions (b) and (c) of this section, for any person who discharges, or proposes to discharge, to navigable waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates, or proposes to own or operate, a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes, or proposes to use or dispose, of sewage sludge.

(b) The state board or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.

(c) The state board or a regional board may inspect the facilities of any person subject to this section pursuant to the procedure set forth in subdivision (c) of Section 13267.

Credits

(Added by Stats.1987, c. 1189, § 8. Amended by Stats.2003, c. 683 (A.B.897), § 6.)

West's Ann. Cal. Water Code § 13383, CA WATER § 13383
Current with urgency legislation through Ch. 13 of 2018 Reg.Sess

End of Document

2017 California Senate Bill No. 231, California 2017-2018 Regular Session

CALIFORNIA BILL TEXT

TITLE: Local government: fees and charges

VERSION: Adopted
October 06, 2017
Hertzberg
Image 1 within document in PDF format.
SUMMARY: An act to amend Section 53750 of, and to add Section 53751 to, the Government Code, relating to local government finance.

TEXT:

Senate Bill No. 231

CHAPTER 536

An act to amend Section 53750 of, and to add Section 53751 to, the Government Code, relating to local government finance.

[Approved by Governor October 6, 2017. Filed with Secretary of State October 6, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 231, Hertzberg. Local government: fees and charges.

Articles XIII C and XIII D of the California Constitution generally require that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution and defines terms for these purposes.

This bill would define the term "sewer" for these purposes. The bill would also make findings and declarations relating to the definition of the term "sewer" for these purposes.

The people of the State of California do enact as follows:

SECTION 1. Section 53750 of the Government Code is amended to read:

53750. For purposes of Article XIII C and Article XIII D of the California Constitution and this article, the following words have the following meanings, and shall be read and interpreted in light of the findings and declarations contained in Section 53751:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C of the California Constitution.

(b) "Assessment" means any levy or charge by an agency upon real property that is based upon the special benefit conferred upon the real property by a public improvement or service, that is imposed to pay the capital cost of the public improvement, the maintenance and operation expenses of the public improvement, or the cost of the service being provided. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment," and "special assessment tax."

(c) “District” means an area that is determined by an agency to contain all of the parcels that will receive a special benefit from a proposed public improvement or service.

(d) “Drainage system” means any system of public improvements that is intended to provide for erosion control, for landslide abatement, or for other types of water drainage.

(e) “Extended,” when applied to an existing tax or fee or charge, means a decision by an agency to extend the stated effective period for the tax or fee or charge, including, but not limited to, amendment or removal of a sunset provision or expiration date.

(f) “Flood control” means any system of public improvements that is intended to protect property from overflow by water.

(g) “Identified parcel” means a parcel of real property that an agency has identified as having a special benefit conferred upon it and upon which a proposed assessment is to be imposed, or a parcel of real property upon which a proposed property-related fee or charge is proposed to be imposed.

(h) (1) “Increased,” when applied to a tax, assessment, or property-related fee or charge, means a decision by an agency that does either of the following:

(A) Increases any applicable rate used to calculate the tax, assessment, fee, or charge.

(B) Revises the methodology by which the tax, assessment, fee, or charge is calculated, if that revision results in an increased amount being levied on any person or parcel.

(2) A tax, fee, or charge is not deemed to be “increased” by an agency action that does either or both of the following:

(A) Adjusts the amount of a tax, fee, or charge in accordance with a schedule of adjustments, including a clearly defined formula for inflation adjustment that was adopted by the agency prior to November 6, 1996.

(B) Implements or collects a previously approved tax, fee, or charge, so long as the rate is not increased beyond the level previously approved by the agency, and the methodology previously approved by the agency is not revised so as to result in an increase in the amount being levied on any person or parcel.

(3) A tax, assessment, fee, or charge is not deemed to be “increased” in the case in which the actual payments from a person or property are higher than would have resulted when the agency approved the tax, assessment, fee, or charge, if those higher payments are attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land.

(i) “Notice by mail” means any notice required by Article XIII C or XIII D of the California Constitution that is accomplished through a mailing, postage prepaid, deposited in the United States Postal Service and is deemed given when so deposited. Notice by mail may be included in any other mailing to the record owner that otherwise complies with Article XIII C or XIII D of the California Constitution and this article, including, but not limited to, the mailing of a bill for the collection of an assessment or a property-related fee or charge.

(j) “Record owner” means the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of any public entity, the State of California, or the United States, means the representative of that public entity at the address of that entity known to the agency.

(k) “Sewer” includes systems, all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes, including lateral and connecting sewers, interceptors, trunk and outfall lines, sanitary sewage treatment or disposal plants or works, drains, conduits, outlets for surface or storm waters, and any and all other works, property, or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters. “Sewer system” shall not include a sewer

system that merely collects sewage on the property of a single owner.

(l) “Registered professional engineer” means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(m) “Vector control” means any system of public improvements or services that is intended to provide for the surveillance, prevention, abatement, and control of vectors as defined in subdivision (k) of Section 2002 of the Health and Safety Code and a pest as defined in Section 5006 of the Food and Agricultural Code.

(n) “Water” means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source.

SEC. 2. Section 53751 is added to the Government Code, to read:

53751. The Legislature finds and declares all of the following:

(a) The ongoing, historic drought has made clear that California must invest in a 21st century water management system capable of effectively meeting the economic, social, and environmental needs of the state.

(b) Sufficient and reliable funding to pay for local water projects is necessary to improve the state’s water infrastructure.

(c) Proposition 218 was approved by the voters at the November 5, 1996, statewide general election. Some court interpretations of the law have constrained important tools that local governments need to manage storm water and drainage runoff.

(d) Storm waters are carried off in storm sewers, and careful management is necessary to ensure adequate state water supplies, especially during drought, and to reduce pollution. But a court decision has found storm water subject to the voter-approval provisions of Proposition 218 that apply to property-related fees, preventing many important projects from being built.

(e) The court of appeal in Howard Jarvis Taxpayers Ass’n v. City of Salinas (2002) 98 Cal.App.4th 1351 concluded that the term “sewer,” as used in Proposition 218, is “ambiguous” and declined to use the statutory definition of the term “sewer system,” which was part of the then-existing law as Section 230.5 of the Public Utilities Code.

(f) The court in Howard Jarvis Taxpayers Ass’n v. City of Salinas (2002) 98 Cal.App.4th 1351 failed to follow long-standing principles of statutory construction by disregarding the plain meaning of the term “sewer.” Courts have long held that statutory construction rules apply to initiative measures, including in cases that apply specifically to Proposition 218 (see People v. Bustamante (1997) 57 Cal.App.4th 693; Keller v. Chowchilla Water Dist. (2000) 80 Cal.App.4th 1006). When construing statutes, courts look first to the words of the statute, which should be given their usual, ordinary, and commonsense meaning (People v. Mejia (2012) 211 Cal.App.4th 586, 611). The purpose of utilizing the plain meaning of statutory language is to spare the courts the necessity of trying to divine the voters’ intent by resorting to secondary or subjective indicators. The court in Howard Jarvis Taxpayers Ass’n v. City of Salinas (2002) 98 Cal.App.4th 1351 asserted its belief as to what most voters thought when voting for Proposition 218, but did not cite the voter pamphlet or other accepted sources for determining legislative intent. Instead, the court substituted its own judgment for the judgment of voters.

(g) Neither the words “sanitary” nor “sewerage” are used in Proposition 218, and the common meaning of the term “sewer services” is not “sanitary sewerage.” In fact, the phrase “sanitary sewerage” is uncommon.

(h) Proposition 218 exempts sewer and water services from the voter-approval requirement. Sewer and water services are commonly considered to have a broad reach, encompassing the provision of clean water and then addressing the conveyance and treatment of dirty water, whether that water is rendered unclean by coming into contact with sewage or by flowing over the built-out human environment and becoming urban runoff.

(i) Numerous sources predating Proposition 218 reject the notion that the term “sewer” applies only to sanitary sewers and

sanitary sewerage, including, but not limited to:

(1) Section 230.5 of the Public Utilities Code, added by Chapter 1109 of the Statutes of 1970.

(2) Section 23010.3, added by Chapter 1193 of the Statutes of 1963.

(3) The Street Improvement Act of 1913.

(4) L.A. County Flood Control Dist. v. Southern Cal. Edison Co. (1958) 51 Cal.2d 331, where the California Supreme Court stated that "no distinction has been made between sanitary sewers and storm drains or sewers."

(5) Many other cases where the term "sewer" has been used interchangeably to refer to both sanitary and storm sewers include, but are not limited to, County of Riverside v. Whitlock (1972) 22 Cal.App.3d 863, Ramseier v. Oakley Sanitary Dist. (1961) 197 Cal.App.2d 722, and Torson v. Fleming (1928) 91 Cal.App. 168.

(6) Dictionary definitions of sewer, which courts have found to be an objective source for determining common or ordinary meaning, including Webster's (1976), American Heritage (1969), and Oxford English Dictionary (1971).

(j) Prior legislation has affirmed particular interpretations of words in Proposition 218, specifically Assembly Bill 2403 of the 2013-14 Regular Session (Chapter 78 of the Statutes of 2014).

(k) In Crawley v. Alameda Waste Management Authority (2015) 243 Cal.App.4th 396, the Court of Appeal relied on the statutory definition of "refuse collection services" to interpret the meaning of that phrase in Proposition 218, and found that this interpretation was further supported by the plain meaning of refuse. Consistent with this decision, in determining the definition of "sewer," the plain meaning rule shall apply in conjunction with the definitions of terms as provided in Section 53750.

(l) The Legislature reaffirms and reiterates that the definition found in Section 230.5 of the Public Utilities Code is the definition of "sewer" or "sewer service" that should be used in the Proposition 218 Omnibus Implementation Act.

(m) Courts have read the Legislature's definition of "water" in the Proposition 218 Omnibus Implementation Act to include related services. In Griffith v. Pajaro Valley Water Management Agency (2013) 220 Cal.App.4th 586, the Court of Appeal concurred with the Legislature's view that "water service means more than just supplying water," based upon the definition of water provided by the Proposition 218 Omnibus Implementation Act, and found that actions necessary to provide water can be funded through fees for water service. Consistent with this decision, "sewer" should be interpreted to include services necessary to collect, treat, or dispose of sewage, industrial waste, or surface or storm waters, and any entity that collects, treats, or disposes of any of these necessarily provides sewer service.

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674 F.2d 1227
United States Court of Appeals,
Ninth Circuit.

AMINOIL U. S. A., INC., a Delaware corporation, and the Signal Bolsa Corporation, a California corporation, Petitioners-Appellants,
v.
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, Respondent.
Amigos de Bolsa Chica, Inc., Real Party In Interest,
Ann McGill Gorsuch,* Administrator, Environmental Protection Agency, Real Party In Interest-Appellee.

No. 80-5516.
|
Argued and Submitted Nov. 5, 1981.
|
Decided April 2, 1982.

Synopsis
Operator of oil and gas well brought action in state court against Administrator of Environmental Protection Agency and others seeking review of state agency's decision under the national pollutant discharge elimination system, and Administrator of EPA removed the case to the district court. The United States District Court for the Central District of California, Robert M. Takasugi, J., dismissed the action against the Administrator for lack of jurisdiction, and plaintiff appealed. The Court of Appeals, Wallace, Circuit Judge, held that state court was without jurisdiction over oil well operator's suit against Administrator of Environmental Protection Agency for review of State Water Resources Board's decision finding operator's disposal site a "wetlands" subject to the Clean Water Act, and therefore, upon removal, federal district court was without jurisdiction over the suit.

Affirmed.

West Headnotes (10)

[1] **Removal of Cases**
Jurisdiction of state court

Removal jurisdiction of district court is entirely derivative of that of state court; where state court lacks jurisdiction, district court acquires none even if it would have had jurisdiction if suit had originally been commenced before it.

1 Cases that cite this headnote

[2] **Public Employment**
Sovereign immunity, and relation of official immunity thereto
United States
Necessity of waiver or consent
United States
What Are Suits Against United States or Its Officers or Agents Barred by Immunity
United States
Unauthorized or unconstitutional actions of officer
United States
Sovereign immunity, and relation of official immunity thereto

The United States and its officers, while acting in their official capacities, enjoy sovereign immunity, and a state court may entertain an action against officer of federal government only if United States has waived its immunity by consenting to suit or if the officer has exceeded his statutory or constitutional authority.

13 Cases that cite this headnote

[3] **United States**
Effect of waiver or consent

Section of Administrative Procedure Act waiving sovereign immunity of United States for nonmonetary claims against the government does not effect a waiver of sovereign immunity for suits against the United States or its officers

in state courts. 5 U.S.C.A. § 702.

3 Cases that cite this headnote

[4] **Public Employment**
Ministerial officers
United States
Ministerial officers

A simple mistake of fact or law does not necessarily mean that officer of government has exceeded the scope of his authority, and official action is still action of the sovereign, even if it is wrong, if it does not conflict with the terms of officer's valid statutory authority.

9 Cases that cite this headnote

[5] **Courts**
Exclusive or Concurrent Jurisdiction

Congress, in enacting Federal Water Pollution Control Act Amendments of 1972 vesting state tribunals with jurisdiction to decide matters in which the Environmental Protection Agency has an interest, did not bestow jurisdiction on state courts over the EPA. Federal Water Pollution Control Act Amendments of 1972, §§ 101–517, 101(a)(1), 301(a), 402, 33 U.S.C.A. §§ 1251–1376, 1251(a)(1), 1311(a), 1342; 28 U.S.C.A. § 1442(a)(1).

1 Cases that cite this headnote

[6] **United States**
Mode and sufficiency of waiver or consent

Congressional waiver of sovereign immunity is not to be lightly implied; absent unequivocal expression of congressional consent to suit, sovereign immunity bars even a claim for nonmonetary relief against government.

2 Cases that cite this headnote

[7] **Environmental Law**
Construction

When interpreting a statute as detailed as the Water Pollution Control Act Amendments of 1972, the remedies provided are presumed to be exclusive absent clear contrary evidence of legislative intent. Federal Water Pollution Control Act Amendments of 1972, §§ 101–517, 33 U.S.C.A. §§ 1251–1376.

3 Cases that cite this headnote

[8] **Courts**
Suits against United States or officers thereof
Removal of Cases
Jurisdiction of state court

State court was without jurisdiction over oil well operator's suit against Administrator of Environmental Protection Agency for review of State Water Resources Board's decision finding operator's disposal site a "wetlands" subject to the Clean Water Act, and therefore, upon removal, federal district court was without jurisdiction over the suit. Federal Water Pollution Control Act Amendments of 1972, §§ 101–517, 33 U.S.C.A. §§ 1251–1376.

5 Cases that cite this headnote

[9] **Environmental Law**
Administrative Decisions or Actions Reviewable in General
Environmental Law
Finality

Judicial review of Environmental Protection Agency action must await final agency action and must be initiated in federal court.

1 Cases that cite this headnote

[10] **Environmental Law**
Administrative Decisions or Actions Reviewable in General
Environmental Law
Finality

Nonfinal Environmental Protection Agency action is not reviewable in federal courts by means of joining the Agency as a party to a state court action seeking review of a state national pollutant discharge elimination system permit decision; review of EPA action must await final agency action and must be initiated in federal court. 5 U.S.C.A. § 704; 28 U.S.C.A. § 1442(a)(1).

1 Cases that cite this headnote

Attorneys and Law Firms

***1228** Victor J. Gold, Frederick A. Fudacz, Nossaman, Krueger & Marsh, Los Angeles, Cal., for petitioners-appellants.

Martin W. Matzen, Dept. of Justice, Washington, D. C., argued, for real party in interest-appellee; Andrea Sheridan Ordin, U. S. Atty., Los Angeles, Cal., Anne S. Almy, Dept. of Justice, Washington, D. C., on brief.

Appeal from the United States District Court for the Central District of California.

Before WALLACE and ANDERSON, Circuit Judges, and JAMESON,** District Judge.

Opinion

WALLACE, Circuit Judge:

This case presents a troublesome jurisdictional issue arising in the wake of our decision in Shell Oil Co. v. Train, 585 F.2d 408 (9th Cir. 1978) (Shell). Aminoil U.S.A., Inc. (Aminoil) appeals from the district court's order dismissing its action against Gorsuch, Administrator of the Environmental Protection ***1229** Agency (EPA or the Administrator), for lack of jurisdiction. The suit was originally filed in California state court for review of an order of the California State Water Resources Control Board (State Board). When Aminoil joined the Administrator as a real party in interest, the Administrator removed the case to the district court pursuant to 28 U.S.C. s 1442(a)(1). Because we conclude that the state court, and therefore the district court on removal, lacked jurisdiction to join the Administrator as a party, we affirm.

I

A. The Statutory Framework.

In 1972 Congress enacted amendments to the Federal Water Pollution Control Act which are now generally referred to as the Clean Water Act (Act). Pub.L. No. 92-500, 86 Stat. 816, codified at 33 U.S.C. ss 1251-1376. The purpose of these amendments is to eliminate pollutant discharges into the navigable waters of the United States by 1985. Act s 101(a)(1), 33 U.S.C. s 1251(a)(1). Section 402 of the Act creates the National Pollutant Discharge Elimination System (NPDES), which regulates the discharge of pollutants into navigable waters under the authority of the EPA. 33 U.S.C. s 1342. It is unlawful for any person to discharge a pollutant without first obtaining a NPDES permit and complying with its terms. Act s 301(a), 33 U.S.C. s 1311(a). Navigable waters have been administratively defined to include "wetlands" pursuant to regulations promulgated by the Army Corps of Engineers, 33 C.F.R. s 323.2, and the EPA, 40 C.F.R. s 122.3.

The Act is a "complicated and lengthy statute." American Frozen Food Inst. v. Train, 539 F.2d 107, 113 (D.C.Cir.1976). Its allocation of concurrent enforcement authority to both state and federal agencies creates a "cooperative federal-state scheme for the control of water pollution," Shell, supra, 585 F.2d at 409, and a "delicate partnership" between state and federal agencies. Save The Bay, Inc. v. Administrator of the EPA, 556 F.2d 1282, 1284 (5th Cir. 1977). The Act empowers the Administrator to issue discharge permits regulating the nature and quantity of the various pollutants which may lawfully be discharged. Act s 402(a), 33 U.S.C. s 1342(a). Yet in order "to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution," Act s 101(b), 33 U.S.C. s 1251(b), the Act provides that each state may establish and administer its own permit program covering pollutant

discharges into navigable waters within its jurisdiction. Act s 402(b), 33 U.S.C. s 1342(b). The Administrator must approve a proposed state permit program unless he determines that the program does not provide "adequate authority" to enforce the Act. Id. Once a state program is approved, the Act requires that the EPA suspend its own issuance of permits. Act s 402(c)(1), 33 U.S.C. s 1342(c)(1). California has adopted a plan for the issuance of NPDES permits, see Cal. Water Code s 13370 et seq., which has been approved by the EPA. 39 Fed.Reg. 26,061 (1973). The State Board and its nine subsidiary regional boards, therefore, "have primary responsibility for the enforcement of the (Act) and the effluent limitations established pursuant to it in California." Shell, supra, 585 F.2d at 410.

The EPA, however, retains independent supervisory authority over approved state programs. It may withdraw its approval of a state program if it determines that the state program is not being administered in accordance with the requirements of the Act, s 402(c)(3), 33 U.S.C. s 1342(c)(3), and the Administrator may veto any state discharge permit which he deems to be "outside the guidelines and requirements of (the Act)." Act s 402(d)(2), 33 U.S.C. s 1342(d)(2).[1] Under sections 309(a)(1) and ***1230** (a)(3) of the Act, 33 U.S.C. s 1319(a)(1), (a)(3), the EPA is empowered to notify violators and states that if the state has not commenced appropriate enforcement action within 30 days, the EPA will issue a compliance order or bring a civil action to enforce compliance. Section 309(b), 33 U.S.C. s 1319(b), authorizes the Administrator to commence a civil enforcement action against individual violators and recalcitrant state agencies in federal district court.[2]

Despite this residual federal supervisory responsibility, the scheme of cooperative federalism established by the Act remains "a system for the mandatory approval of a conforming State program and the consequent suspension of the federal program (which) creates a separate and independent State authority to administer the NPDES pollution controls...." Mianus River Preservation Comm. v. Administrator, EPA, 541 F.2d 899, 905 (2d Cir. 1976). The role envisioned for the states encompasses both the opportunity to assume primary responsibility for the implementation and enforcement of federal effluent discharge limitations, Act s 402(b), 33 U.S.C. s 1342(b), and the right to enact discharge limitations which are more stringent than the federal standards, Act s 510, 33 U.S.C. s 1370. Thus, although the Act gave the EPA the authority in the first instance to issue NPDES discharge permits, Act s 402(a)(1), 33 U.S.C. s 1342(a)(1), "Congress clearly intended that the states would eventually assume the major role in the operation of the NPDES program." Shell, supra, 585 F.2d at 410.

B. The Factual Background.

Aminoil operates oil and gas wells at a site in Orange County, California, leased from appellant Signal Bolsa Corporation. These operations produce drilling wastes which are presently discharged into the surrounding environment. The proper characterization of these surrounding waters is the basis of the instant dispute. In July 1978, the Fish and Wildlife Service of the United States Department of the Interior requested that the Santa Ana Region of the State Board (Regional Board) adopt an order declaring Aminoil's disposal site a "wetlands" subject to the jurisdiction of the Act and its companion California statute, Cal. Water Code s 13370 et seq. Following a meeting at the site between Aminoil, the EPA and the Regional Board, and after a public hearing, the Regional Board concluded that the area "cannot be defined as national wetlands. Therefore, an NPDES permit is not necessary."

The Amigos de Bolsa Chica (Amigos), an interested environmental group, petitioned the State Board for review of the Regional Board's decision pursuant to Cal.Water Code s 13320. Aminoil intervened in this proceeding. On July 13, 1979, while the Amigos' petition was pending, the EPA sent Aminoil a "finding of violation" pursuant to section 309(a)(1) of the Act, 33 U.S.C. s 1319(a) (1), indicating that Aminoil's discharges into wetlands without a NPDES permit were in violation of section 301 of the Act, 33 U.S.C. s 1311(a). In accordance with section 309(a)(1), the EPA notified Aminoil and the State Board that it would take "appropriate action" if the State Board had not commenced enforcement action within 30 days.

Two months later, the State Board mailed to the EPA a copy of a proposed order reversing the decision of the Regional Board and finding the property to be a "wetlands" subject to the jurisdiction of the Act. This proposed order was based upon the same record that was before the Regional Board; no additional evidentiary hearing was conducted. In a letter dated September 17, 1979, the EPA urged the State Board to adopt the proposed order without substantive change. Three days later, the State Board adopted the order.

On October 24, 1979, Aminoil filed an action in California superior court seeking review of the State Board's finding on the wetlands issue pursuant to ***1231** Cal.Water Code s 13330 and Cal.Civ.Proc. Code s 1094.5 (mandamus). It named as real parties in interest the Amigos and the Administrator. On November 20, 1979,

the Administrator removed the action to the district court pursuant to 28 U.S.C. s 1442(a)(1), which permits officers of United States agencies, when acting under color of such office, to remove civil actions commenced against them in state court to the federal district court. Subsequently, the Administrator filed a motion to dismiss, asserting that neither the state court, nor the district court upon removal, had jurisdiction to entertain the action against him, and that sovereign immunity barred the suit. The district court granted the motion. Relying on our decision in Shell, the court held:

> Shell cannot logically be interpreted as giving a state court jurisdiction over a federal agency in a dispute over federal law when such jurisdiction is denied a federal court. The EPA must take (final) action before it can be sued pursuant to the Act, and when it is sued, it must be sued in federal court.[3]

Because this ruling did not affect Amigos, Aminoil brought a motion pursuant to Fed.R.Civ.P. 54(b). The district court granted the motion and entered final judgment as to the Administrator upon its express determination that "there (was) no just reason for delay in entering such judgment." It is from this judgment that the instant appeal was taken.

II

Shell holds that informal action[4] by the EPA, which influences a state agency's decision to reject NPDES permit applications under an EPA-approved state program, is not reviewable in federal court.[5] We had previously decided that such informal EPA action is not directly reviewable in this court pursuant to section 509(b)(1)(F) of the Act, 33 U.S.C. s 1369(b)(1)(F). Shell, supra, 585 F.2d at 411. In Shell the court concluded that federal review should similarly be unavailable in the district court. First, the court reasoned that the State Board could not reasonably be considered the agent of the EPA, id. at 412, and that serious constitutional problems would be raised in reviewing the claim that a federal agency had "coerced" a state agency. Id. at 413-14. Second, the court held that there was no basis for federal review under section 10 of the Administrative Procedure Act (APA), 5 U.S.C. s 704, as that provision is limited to review of "final agency action for which there is no other adequate remedy in a court." Id. at 414. Thus, because the EPA had not yet taken final action, and because state court review of the permit decision was available and would have been adequate, federal review was foreclosed.

> Federal courts are not the sole avenue of review of the states' administrative decisions. Jurisdiction to review the State Board's decision is specifically conferred on the states' courts of general jurisdiction.... The existence of a state judicial ***1232** forum for the review of the regional board's action forecloses the availability of the federal forum under the terms of the Administrative Procedure Act.
>
> > Proper respect for both the integrity and independence of the state administrative mechanism, mandated by Congress in this context, required that Shell's complaint be dismissed.
>
> Id. at 414-15 (citation omitted).

Perhaps more importantly, however, the Shell decision was premised on the scheme of cooperative federalism embodied in the Act. Permitting federal review of such "informal" EPA action prior to any affirmative EPA action authorized by the Act would conflict with the allocation of enforcement authority and jurisdiction mandated by Congress.

> (H)olding that statutorily sanctioned advice by the EPA to a state agency constitutes final federal agency action reviewable in the federal courts would permit an applicant, dissatisfied with a decision of a state board, to circumvent the appellate process envisioned by the statute and bestow jurisdiction upon a federal court simply by alleging coercion or undue influence. The statute provides ample opportunity for the assertion of federal jurisdiction after the EPA has taken formal action.

Id. at 414. As in Shell, permitting federal review in this case would allow an individual, dissatisfied with a decision of the State Board, to attempt to circumvent the appellate process envisioned by the statute and bestow jurisdiction upon a federal court by joining the Administrator as a party to its state court action, in hope that the Administrator, as here, would exercise his right to remove.

[1] Our analysis, however, must be somewhat different from that utilized in Shell. It is settled that the removal

jurisdiction of the district court is entirely derivative of that of the state court. Minnesota v. United States, 305 U.S. 382, 389, 59 S.Ct. 292, 295, 83 L.Ed. 235 (1939). Where the state court lacks jurisdiction, the district court acquires none even if it would have had jurisdiction if the suit had originally been commenced before it. Lambert Run Coal Co. v. Baltimore & Ohio R. Co., 258 U.S. 377, 382, 42 S.Ct. 349, 351, 66 L.Ed. 671 (1922); Jacobson v. Tahoe Regional Planning Agency, 566 F.2d 1353, 1362 (9th Cir. 1977), aff'd in relevant part sub nom., Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391, 99 S.Ct. 1171, 59 L.Ed.2d 401 (1979). Unlike Shell, therefore, our focus in this case must be on the jurisdiction of the state court, rather than the federal district court.

The EPA insists, and the district court held, that Shell compels the conclusion that the state courts were without jurisdiction to permit joinder of the Administrator. It argues that since Shell establishes that judicial review of states' NPDES permit decisions is proper in state court, but not federal court, the correlative principle is equally true: the EPA is subject to the jurisdiction of the federal courts, but not the state courts, in the exercise of its supervisory authority under the Act. In light of Shell, Aminoil concedes that initial federal review of its dispute with the State Board and the EPA would not properly lie with the district court under the judicial review provisions of the Act or section 10 of the APA, 5 U.S.C. s 704. Nonetheless, it argues that state court review of the State Board's decision is consistent with Shell and that the California courts, as courts of general jurisdiction, have the power to join the Administrator as a "necessary" or "indispensable" party. See Cal.Civ.Proc.Code s 389. During oral argument, counsel for Aminoil aptly stated the relief his client seeks:

> (Aminoil) seeks only a single proceeding in which it can be decided whether its property in Orange County is a "wetlands" subject to federal jurisdiction, and a determination that will be binding on all parties having an interest in it.... The EPA is trying to maximize its flexibility, in that it does not want to be sued in federal court, it does not want to be sued in state court. It wants to maintain its regulatory prerogatives at the expense of the states, its partners in this federal- ***1233** state scheme, and to the considerable detriment of private litigants like (Aminoil) who seek an economical resolution of the "wetlands" federal jurisdictional issue.

Thus, Aminoil fears that it may ultimately persuade the California courts to reverse the State Board's decision, but will then be forced to relitigate the wetlands issue in an independent enforcement action brought by the EPA in district court. While we are sympathetic with Aminoil's desire for a single, determinative proceeding, a desire which is certainly consistent with long-standing notions of judicial economy and the principle that needlessly duplicative litigation should be avoided, we do not believe the state courts are the proper forums for such a proceeding under either the Act or Shell.

III

[2] The undisputed fact that the California courts are courts of general jurisdiction is not dispositive. Although these courts have jurisdiction over Aminoil's cause of action against the State Board, they may not necessarily have the power to join the Administrator as a party. It is settled that the United States, and its officers while acting in their official capacities, enjoy sovereign immunity. Thus, a state court may entertain an action against an officer of the federal government only if the United States has waived its immunity by consenting to suit or if the officer has exceeded his statutory or constitutional authority. See, e.g., Dugan v. Rank, 372 U.S. 609, 620-22, 83 S.Ct. 999, 1006-07, 10 L.Ed.2d 15 (1963); United States v. Sherwood, 312 U.S. 584, 586, 61 S.Ct. 767, 769, 85 L.Ed. 1058 (1941); Martinez v. Marshall, 573 F.2d 555, 560 (9th Cir. 1977); Smith v. Grimm, 534 F.2d 1346, 1351 n.6 (9th Cir.), cert. denied, 429 U.S. 980, 97 S.Ct. 493, 50 L.Ed.2d 589 (1976).

[3] Aminoil argues that a 1976 amendment to the APA, 5 U.S.C. s 702, waives sovereign immunity in this case. That statute provides in part:

> An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable

party.

This provision is clearly inapplicable. While we have held that section 702 waives the sovereign immunity of the United States for non-monetary claims against the government, Hill v. United States, 571 F.2d 1098, 1102 (9th Cir. 1978), the waiver of sovereign immunity in section 702 is expressly limited to actions brought "in a court of the United States ...." The legislative history demonstrates that section 702 was not intended to effect a waiver of sovereign immunity for suits against the United States or its officers in state courts. "The consent to suit is also limited to claims in the courts of the United States; hence, the United States remains immune from suit in state courts." H.R.Rep.No.94-1656, 94th Cong., 2d Sess. 11 (1976), reprinted in (1976) U.S.Code Cong. & Ad.News 6121, 6131.

Aminoil also argues that sovereign immunity does not bar its suit because the Administrator acted beyond the scope of his statutory authority. It relies primarily[6] on Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949), where the Court wrote that "where the officer's powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions." Id. at 689, 69 S.Ct. at 1461. Aminoil maintains that if its Orange County property is not a "wetlands" properly subject to jurisdiction under the Act, the Administrator ***1234** had no authority pursuant to the Act to issue his finding of violation or otherwise to influence the State Board.

[4] We are not persuaded that Larson supports Aminoil's argument. There, the Court held that the key question in addressing the sovereign immunity of the United States is "whether the relief sought in a suit nominally addressed to the officer is relief against the sovereign." Id. at 687, 69 S.Ct. at 1460 (footnote omitted). The Court observed that where an officer of the United States acts in an unconstitutional manner or oversteps the limits of his statutorily delegated authority, his actions are not those of the sovereign and he may be held personally liable for monetary or equitable relief. Id. at 689-90, 69 S.Ct. at 1461. The relief Aminoil seeks, a determination that its Orange County property is not a wetlands subject to the Act and the NPDES system, is relief against the sovereign because it would preclude the Administrator in his official capacity from enforcing the Act. Id. at 688-89, 69 S.Ct. at 1461. See Dugan v. Rank, supra, 372 U.S. at 620, 83 S.Ct. at 1006. Moreover, Aminoil clearly cannot maintain that the Administrator was not authorized by the Act to issue the "finding of violation." See Act s 309(a) (1), 33 U.S.C. s 1319(a)(1). See also Malone v. Bowdoin, 369 U.S. 643, 648 n.9, 82 S.Ct. 980, 984 n.9, 8 L.Ed.2d 168 (1962). Its argument is that, since the Administrator incorrectly determined that the Orange County property is subject to federal jurisdiction, his actions were beyond the scope of his authority and are therefore not barred by sovereign immunity. Larson, however, clearly rejected this argument. A simple mistake of fact or law does not necessarily mean that an officer of the government has exceeded the scope of his authority. Official action is still action of the sovereign, even if it is wrong, if it "do(es) not conflict with the terms of (the officer's) valid statutory authority ...." 337 U.S. at 695, 69 S.Ct. at 1464.

[5] Aminoil argues, finally, that consent to suit should be implied from the dual enforcement scheme of the Act itself. It contends that having vested state tribunals with jurisdiction to decide matters in which the EPA has an interest, Congress implicitly bestowed jurisdiction on those courts over the EPA. Aminoil relies on United States v. Hellard, 322 U.S. 363, 64 S.Ct. 985, 88 L.Ed. 1326 (1944), where the Court found implied consent to suit in state court from an act of Congress which subjected United States land (Indian property) to state law, and provided that (1) the United States would be bound by state court judgments, and (2) the United States must be given an opportunity to appear in state court actions. Id. at 364, 64 S.Ct. at 986. Neither of these provisions appears in the Act. If the latter did appear, Aminoil might justifiably claim that Congress had consented to joinder of the EPA in state court actions for review of NPDES permit decisions. Yet in the absence of statutory provisions similar to those involved in Hellard, and particularly in light of the delicate partnership between federal and state administrative agencies created by the Act, we are unwilling to infer that Congress has implicitly consented to state court actions against the EPA or the Administrator.[7]

[6] A congressional waiver is not to be lightly implied; absent an unequivocal expression of congressional consent to suit, sovereign immunity bars even a claim for non-monetary relief against the government. United States v. Mitchell, 445 U.S. 535, 538, 100 S.Ct. 1349, 1352, 63 L.Ed.2d 607 (1980); ***1235** United States v. Testan, 424 U.S. 392, 399, 96 S.Ct. 948, 953, 47 L.Ed.2d 114 (1976); Hill v. United States, supra. There is no clear indication of intent to waive immunity in this case. Indeed, the Act's structure strongly supports the opposite inference-a congressional intent to preclude the exercise of state court jurisdiction over the EPA or the Administrator. Far from an unequivocal expression of consent to joinder of the agency in state court, the Act's allocation of dual enforcement authority to state and federal agencies suggests a similar allocation of judicial authority, confining review of formal EPA action to the

exclusive jurisdiction of the federal courts.

[7] In addition to the question of sovereign immunity, our holding is also compelled by an analysis of the issue of jurisdiction. Although the Act is silent as to the scope of state court jurisdiction, the remedies provided in the Act for review of allegedly improper EPA action lie in the federal courts. For example, the agency's issuance or denial of a permit under section 402 and its action in making any determination as to a state permit program are directly reviewable in the United States courts of appeals. Act s 509(b)(1) (D), (F), 33 U.S.C. s 1369(b)(1)(D), (F). Cf. Crown Simpson Pulp Co. v. Costle, 445 U.S. 193, 100 S.Ct. 1093, 63 L.Ed.2d 312 (1980) (per curiam) (EPA's formal objection to a state-issued permit, pursuant to section 402(d)(2), 33 U.S.C. s 1342(d)(2), is directly reviewable in the courts of appeals). The federal district courts have jurisdiction over civil enforcement actions brought by the Administrator. Act s 309(b), 33 U.S.C. s 1319(b). Further, section 505(a) of the Act, 33 U.S.C. s 1365(a), authorizes any citizen to bring a civil action in the district courts for enforcement of the Act against parties who discharge pollutants or against the Administrator for his failure to perform any nondiscretionary act or duty under the Act. See Note 7, supra. Although the Act does not expressly provide that these remedies against the EPA and the Administrator are exclusive,[8] when interpreting a statute as detailed as the Act, the remedies provided are presumed to be exclusive absent clear contrary evidence of legislative intent. See National Railroad Passenger Corp. v. National Ass'n of Railroad Passengers, 414 U.S. 453, 458, 94 S.Ct. 690, 693, 38 L.Ed.2d 646 (1974).

[8] Nothing in the legislative history of the Act provides such a clear indication of contrary legislative intent. See Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n, 453 U.S. 1, 14, 101 S.Ct. 2615, 2623, 69 L.Ed.2d 435 (1981). Indeed, we infer from the EPA's statutory right to intervene in a "citizen suit" filed in district court, see Act s 505(c)(2), 33 U.S.C. s 1365(c)(2), and from the lack of any correlative right to intervene in state court actions, a congressional intent to preclude state court jurisdiction over the agency or the Administrator. If, therefore, as Aminoil argues, it will remain subject to independent and potentially conflicting federal authority absent joinder of the EPA in its state court action, it is because "(p)roper respect for both the integrity and independence of the state (judicial) mechanism, mandated by Congress in this context," requires that result. See Shell, supra, 585 F.2d at 414-15. Holding otherwise would sharply conflict with the EPA's independent authority to supervise state permit programs under the Act. See Act s 402(i), 33 U.S.C. s 1342(i); S.Rep.No.95-370, 95th Cong., 1st Sess. 73 (emphasizing importance of "vigorous" EPA oversight), reprinted in (1977) U.S.Code Cong. & Ad.News 4326, 4398. Section 402(i) expressly permits the EPA to take enforcement action in federal court notwithstanding the existence of a lawfully-issued state NPDES permit or the EPA's prior approval of such a permit. If the ***1236** EPA finds that any person is in violation of the Act, it must issue a finding of violation and institute a civil enforcement action in federal court if the state agency involved itself fails to commence "appropriate enforcement action." Act s 309(a)(1), 33 U.S.C. s 1319(a)(1). Thus, allowing joinder of the EPA in a state court action could create substantial practical impediments to the EPA's exercise of its supervisory responsibility.

[9] Therefore, this is not a case in which construing the Act to preclude state court review of federal agency action "creat(es) ... a seemingly irrational bifurcated system." Crown Simpson Pulp Co. v. Costle, supra, 445 U.S. at 197, 100 S.Ct. at 1095 (footnote omitted). We hold, as did the district court, that judicial review of EPA action, whether under the Act or section 10 of the APA, 5 U.S.C. s 704, must await final EPA action and must be initiated in federal court.

IV

This holding does not conflict with our previous decision in United States v. ITT Rayonier, Inc., 627 F.2d 996 (9th Cir. 1980) (Rayonier). There, we held that the Act's allocation of concurrent enforcement authority does not prevent the EPA from being collaterally estopped based upon a state court action, to which it was not a party, for review of the terms of a state-issued NPDES permit. Id. at 1002, 1003-04. Aminoil argues that a very limited extension of Rayonier would allow the EPA or the Administrator to be joined as a party to a state court action. It contends that it is inconsistent to hold, as we did in Rayonier, that the EPA may be bound by a state court decision to which it was not a party, but that it may not be joined in a state court action, the disposition of which may bind it. According to Aminoil, therefore, the obvious corollary of Rayonier is that the EPA may be joined in a state court action for review of a NPDES permit decision by a state agency.[9]

Rayonier involved the proper construction of a state-issued NPDES permit which provided that effluent limitations for certain pollutants would be modified to be consistent with any final guidelines promulgated by the EPA. When those guidelines were promulgated, the state

agency issued an order which required the permit holder to comply with the federal guidelines. After the EPA issued a finding of violation to the permit holder and the state agency pursuant to section 309(a)(1) of the Act, 33 U.S.C. s 1319(a)(1), a state court reversed the state agency, finding that the language of the permit excused compliance with the federal guidelines pending judicial approval of the final guidelines. The EPA then filed its own enforcement action in district court pursuant to section 309(b) of the Act, 33 U.S.C. s 1319(b). Rayonier, supra, 627 F.2d at 999. We reversed the district court's grant of summary judgment for the EPA. We reasoned that the Act was not such a countervailing statutory policy as to preclude application of the doctrine of collateral estoppel. Id. at 1000-02. We further reasoned that collateral estoppel was applicable because "(i)n the context of (that) case," the EPA and the state agency were in privity. Id. at 1003. We clearly indicated, however, that the issues presented in Rayonier "may be sui generis." Id. at 1004.

We do not believe that Rayonier supports the position for which Aminoil argues. First, the case is distinguishable from the instant dispute. Although Rayonier places a limitation on the EPA's ability to bring an independent enforcement action, it is a specific, ***1237** narrow limit. Rayonier involved construction of a state-issued NPDES permit. Here, in contrast, the substantive issue presented in Aminoil's complaint is whether its Orange County property is a "wetlands" within the meaning of certain lawfully-promulgated administrative regulations. In other words, the issue is whether federal jurisdiction over "navigable waters" extends to Aminoil's property and therefore makes that property subject to the requirements of the Act. We recently concluded that a holding under state law is not dispositive of the question of navigability under federal law. Puget Sound Power & Light Co. v. Federal Energy Regulatory Comm'n, 644 F.2d 785, 788 (9th Cir. 1981). Puget Sound, therefore, implies that there are situations in which the "wetlands" issue cannot be finally determined by a state court.

Alternatively, even if the EPA could be collaterally estopped in a subsequent enforcement action, it does not necessarily follow that state courts can exercise jurisdiction over the agency or its Administrator. The doctrine of sovereign immunity and the allocation of judicial authority implicit in the structure of the Act preclude the states from exercising jurisdiction over the EPA. This allocation of federal-state jurisdiction follows logically from the framework of cooperative federalism created by the Act. Thus, the preclusion of state court jurisdiction is a product of the congressional policy judgment underlying the Act itself. It is not for us to revise that congressional judgment merely because it may place private litigants in the unenviable and burdensome position of being required to litigate their liability under the Act in two separate judicial systems. See Central Hudson Gas & Elec. Corp. v. EPA, 587 F.2d 549, 559 (2d Cir. 1978). Therefore, if it is inconsistent with Rayonier to hold that the EPA may not be joined as a party to a state court action the disposition of which may ultimately bind it, it is the responsibility of Congress to correct any such inconsistency by amending the Act to allow the EPA to be joined in state court actions for review of state agency NPDES permit decisions.

[10] We recognize, on the other hand, that our holding does not comport well with traditional notions of judicial economy and the principle that needlessly duplicative litigation should be avoided. We emphasize, therefore, that we hold only that, in order to be consistent with Shell, nonfinal EPA action is not reviewable in the federal courts by means of joining the EPA as a party to a state court action seeking review of a state NPDES permit decision. Under both the Act and section 10 of the Administrative Procedure Act, 5 U.S.C. s 704, review of EPA action must await final agency action and must be initiated in federal court.[10]

V

The district court's order dismissing the Administrator as a party, and its final judgment entered as to the Administrator, are affirmed. As the only basis for federal jurisdiction in this case was the Administrator's right to remove this action pursuant to 28 U.S.C. s 1442(a)(1), the district court should remand the remainder of the action to the state court.

AFFIRMED.

All Citations

674 F.2d 1227, 17 ERC 1702, 12 Envtl. L. Rep. 20,594

Footnotes

* We substitute Ann McGill Gorsuch, Administrator of the Environmental Protection Agency, as successor to the original appellee Douglas M. Costle, the former Administrator, pursuant to Fed.R.App.P. 43.

** Honorable William J. Jameson, United States District Judge, District of Montana, sitting by designation.

1 The states are required to transmit a copy of any permit application to the Administrator. Act s 402(d)(1), 33 U.S.C. s 1342(d)(1). The Administrator may waive this notification requirement, id. s 402(e), 33 U.S.C. s 1342(e), and may also waive his authority to veto any particular state-issued permit. Id. s 402(d)(3), 33 U.S.C. s 1342(d)(3). He has done neither in this case.

2 Section 402(i) of the Act, 33 U.S.C. s 1342(i), provides that "nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act."

3 Actually, the district court stated that the EPA must take "formal" rather than "final" action before it may be sued pursuant to the Act. For accuracy, we made the change in the text. The EPA's issuance of a finding of violation, unlike the recommendation at issue in Shell, is undoubtedly formal action authorized by s 309(a)(1) of the Act, 33 U.S.C. s 1319(a)(1). See Note 4, infra. Like the recommendation at issue in Shell, on the other hand, a finding of violation is not "final agency action" within the meaning of 5 U.S.C. s 704. See Shell Oil Co. v. Train, 585 F.2d 408, 414 (9th Cir. 1978). The difference between the two words is not material in light of the present procedural posture of this case.

4 The EPA informally recommended denial of Shell's application for a permit variance pursuant to a "memorandum of understanding" between the State Board and the EPA's Region IX office in San Francisco. Shell, supra, 585 F.2d at 411. Unlike the instant case, the EPA did not issue a formal "finding of violation" under section 309(a)(1) of the Act, 33 U.S.C. s 1319(a)(1), or take any other action pursuant to its statutory authority to supervise state NPDES permit programs.

5 The Shell decision has met with some criticism. See Note, Jurisdiction to Review Informal EPA Influence Upon State Decisionmaking Under the Federal Water Pollution Control Act: Shell Oil Co. v. Train, 92 Harv.L.Rev. 1814 (1979), and Shell, supra, 585 F.2d at 415-21 (Wallace, J., dissenting). However, Shell is binding precedent in this appeal.

6 Aminoil also cites Philadelphia Co. v. Stimson, 223 U.S. 605, 32 S.Ct. 340, 56 L.Ed. 570 (1912). This case is easily distinguishable because there the plaintiff sought to impose personal liability on an officer of the United States for a wrongful taking of property. Id. at 619, 32 S.Ct. at 344. Here, in contrast, Aminoil did not join the Administrator in his individual capacity and is not seeking to impose personal liability on him.

7 Section 505(a) of the Act, 33 U.S.C. s 1365(a), authorizes any citizen to bring a civil action in district court against alleged violators of the Act or against the Administrator for his failure to perform any nondiscretionary act or duty under the Act. Some courts have held that this section effects a waiver of sovereign immunity. See, e.g., South Carolina Wildlife Federation v. Alexander, 457 F.Supp. 118, 122 (D.S.C.1978); Township of Long Beach v. City of New York, 445 F.Supp. 1203, 1210 (D.N.J.1978). We do not pass upon that question. But to the extent this section might be interpreted to indicate congressional intent to waive sovereign immunity, it militates against the implied consent argued for by Aminoil because the section is, by its own terms, limited to the federal district courts.

8 Some courts have suggested that the jurisdiction of the courts of appeals under section 509(b)(1), 33 U.S.C. s 1369(b)(1), is exclusive. See Central Hudson Gas & Elec. Corp. v. EPA, 587 F.2d 549, 555 (2d Cir. 1978); American Frozen Food Inst. v. Train, 539 F.2d 107, 124 (D.C.Cir.1976); American Petroleum Inst. v. Train, 526 F.2d 1343, 1345-46 (10th Cir. 1975). In addition, it appears that the district courts' jurisdiction over civil enforcement actions initiated by the Administrator is "exclusive of the courts of the States." 28 U.S.C. s 1355.

9 There appears to us to be an inconsistency between this argument and Aminoil's prior contention. On the one hand, Aminoil insisted earlier that it should be permitted to join the Administrator as a party to its state court action because otherwise, even if it is successful in that suit, it may be forced to relitigate the wetlands issue if the EPA decides to exercise its supervisory authority under the Act. On the other hand, Aminoil now argues that the Administrator should be joined as a party because otherwise Rayonier will preclude him from relitigating the issue in a subsequent civil enforcement action. In that situation, however, Aminoil's fear of being denied a single, determinative adjudication would be unfounded.

10 We do not decide that it is impossible for private litigants such as Aminoil to obtain a single, dispositive determination of the "wetlands" issue. For example, we do not consider the propriety of filing an action for a declaratory judgment in the federal district court and joining the EPA and the appropriate state agency as defendants. Nothing in our decision

precludes the federal courts from exercising jurisdiction over an EPA-approved state agency. Absent problems of ripeness, it may be that there are no substantial barriers to application of the federal Declaratory Judgment Act, 28 U.S.C. s 2201. See Abbott Laboratories v. Gardner, 387 U.S. 136, 139-41, 153-54, 87 S.Ct. 1507, 1510-11, 1517-18, 18 L.Ed.2d 681 (1967). See also Califano v. Sanders, 430 U.S. 99, 105, 97 S.Ct. 980, 984, 51 L.Ed.2d 192 (1977); S.Rep.No.92-414, 92d Cong., 2d Sess. (citing Abbott Laboratories v. Gardner, supra), reprinted in (1972) U.S.Code Cong. & Ad.News 3668, 3750. Nonetheless, we expressly reserve this question to a later case where it may be properly presented.

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828 F.2d 620
United States Court of Appeals, Ninth Circuit.

Eraine BEEMAN, George Kunges, Amourette Kunges, John Shields and Loraine Shields, Plaintiffs-Appellants,
v.
Robert OLSON, Commissioner of the Bureau of Reclamation; David Houston, Regional Director of the Mid-Pacific Regional Office, Bureau of Reclamation; Douglas OLSON, Project Manager of the Field Office-LaHontan Basin, Bureau of Reclamation; Max Peterson, Chief of the Forest Service, United States Department of Agriculture; Zane Smith, Regional Forester, United States Department of Agriculture; William Morgan, Supervisor, Lake Tahoe Management Unit, United States Department of Agriculture, Defendants-Appellees.

No. 86–2303.
|
Argued and Submitted Aug. 11, 1987.
|
Decided Sept. 25, 1987.

Synopsis
Residents of trailer park brought suit in California state court against six federal officers in their official capacities for improperly evicting them from trailer homes in park located on federal lands and the government removed case to federal court. The United States District Court for the Eastern District of California, Milton L. Schwartz, J., presiding, granted summary judgment in favor of government and dismissed claims for lack of subject matter jurisdiction and appeal was taken. The Court of Appeals, David R. Thompson, Circuit Judge, held that: (1) federal officials acting in their official capacity were immune from trailer park residents' suit alleging they were improperly evicted from trailer park located on federal land, and (2) federal court was without jurisdiction over suit removed to it from state court which lacked subject matter jurisdiction.

Vacated and remanded.

West Headnotes (3)

[1] **Public Employment**
Sovereign immunity, and relation of official immunity thereto
United States
Sovereign immunity, and relation of official immunity thereto

United States officials, while acting in their official capacities, enjoy sovereign immunity, and state court may not entertain action against them unless their immunity has been waived by consenting to suit or unless officials have exceeded their statutory or constitutional authority.

8 Cases that cite this headnote

[2] **Public Employment**
Particular torts
United States
Privilege or immunity; good faith

Federal officials acting on their official capacities were immune from trailer park residents' state court action alleging residents were improperly evicted from trailer homes in park located on federal land, and thus state court lacked subject matter jurisdiction over action.

7 Cases that cite this headnote

[3] **Removal of Cases**
Constitutional and statutory provisions
Removal of Cases
Jurisdiction of state court

At time action against federal officials for removal of residents of trailer court from federal land was improperly commenced in state court which lacked jurisdiction over action due to sovereign immunity of federal officials, federal court was without jurisdiction over suit removed

to it from state court which lacked subject matter jurisdiction, even though federal court would have had jurisdiction had suit been brought there originally; amendment allowing federal court to hear case even if state court from which suit was removed did not have jurisdiction over claim was enacted subsequent to case, and thus did not apply. 28 U.S.C.A. §§ 1441, 1441(e).

8 Cases that cite this headnote

Attorneys and Law Firms

***620** Tamara Dahn, Sacramento, Cal., for plaintiffs-appellants.

Maria A. Iizuka, Washington, D.C., for defendants-appellees.

***621** Appeal from the United States District Court for the Eastern District of California.

Before WRIGHT, FARRIS and THOMPSON, Circuit Judges.

Opinion

DAVID R. THOMPSON, Circuit Judge:

Eraine Beeman and several other residents of the Tahoe City Trailer Park (appellants) filed suit in California state court on January 29, 1985 against six federal officers in their official capacities. No state or local official or agency was sued. Appellants alleged that they were being improperly evicted from their trailer homes in the Tahoe City Trailer Park. The Park is located on federal land. Appellants sought compensation under federal and state law.

On February 11, 1985 the government removed the case to the United States District Court for the Eastern District of California pursuant to 28 U.S.C. § 1442(a)(1). The district court granted summary judgment in favor of the government on claims brought by the appellants under state law, and dismissed the appellants' federal claims for lack of subject matter jurisdiction.

DISCUSSION

[1] [2] The only defendants in this case are the federal officers, each of whom was alleged to have been acting in his official capacity. United States officials, while acting in their official capacities, enjoy sovereign immunity, and a state court may not entertain an action against them unless their immunity has been waived by consenting to suit or unless the official has exceeded his statutory or constitutional authority. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949); *Aminoil U.S.A., Inc. v. California State Water Resources Control Board*, 674 F.2d 1227, 1233 (9th Cir.1982). Neither exception applies here. Thus, the state court lacked subject matter jurisdiction.

[3] At the time this case was filed in state court, a federal court was without jurisdiction over a suit removed to it from state court if the state court from which it was removed lacked subject matter jurisdiction, even though the federal court would have had jurisdiction had the suit been brought there originally. *Minnesota v. United States*, 305 U.S. 382, 389, 59 S.Ct. 292, 295, 83 L.Ed. 235 (1938); *Dyer v. Greif Bros., Inc.*, 766 F.2d 398, 399 (9th Cir.1985); *Aminoil*, 674 F.2d at 1232. This rule was changed for cases commenced after June 19, 1986, the date 28 U.S.C. § 1441, titled "Actions Removable Generally" was amended. Section 1441(e) now provides:

> The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

This amendment does not apply to the present case, however, because this action was commenced in California state court on January 29, 1985, prior to the enactment of the amendment. *See* Pub.L. 99–336 § 3(b) ("The amendment made by this section shall apply with respect to claims in civil actions commenced in State courts on or after the date of the enactment of this section."); *see also Bradley, Arant, Rose & White v. United States*, 802 F.2d 1323, 1325 (11th Cir.1986) (applying pre-amendment rule to case decided after, but commenced prior to, enactment of the amendment, without explicitly discussing amendment); *Federal Land Bank of Omaha v. Duschen Farms, Inc.*, 650 F.Supp. 729, 732 (N.D.Iowa 1986) (applying pre-amendment rule to case decided after, but commenced prior to, enactment of the amendment, noting "that new 28 U.S.C. § 1441(e) is inapplicable since this action was commenced before June

19, 1986.").

CONCLUSION

The state court from which this case was removed lacked subject matter jurisdiction. The case was commenced in state court prior to the amendment to 28 U.S.C. § 1441. The new rule for removal jurisdiction prescribed by section 1441(e) does not apply to this case. The judgment of the ***622** district court, therefore, is vacated in its entirety, and this case is remanded to the district court with instructions to dismiss it for lack of subject matter jurisdiction.

VACATED and REMANDED.

All Citations

828 F.2d 620

124 Cal.App.4th 866
Court of Appeal, Fourth District, Division 1, California.

BUILDING INDUSTRY ASSOCIATION OF SAN DIEGO COUNTY et al., Plaintiffs and Appellants,
v.
STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Respondents,
San Diego Baykeeper et al., Interveners and Respondents.

No. D042385.
|
Dec. 7, 2004.
|
Certified for Partial Publication.[1]
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As Modified on Denial of Rehearing Jan. 4, 2005.
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Review Denied March 30, 2005.*

Synopsis
Background: Building industry association filed petition for writ of mandate against regional and state water control boards, challenging issuance of comprehensive municipal stormwater sewer permit, as including water quality standard provisions which allegedly were too stringent and impossible to satisfy, and so violative of federal Clean Water Act standard. Environmental groups intervened as defendants. The Superior Court, San Diego County, Wayne L. Peterson, J., denied petition. Association appealed.

[Holding:] The Court of Appeal, Haller, J., held that water boards were not prohibited by Clean Water Act "maximum extent practicable" standard of stormwater pollutant abatement from including provisions in permit which required that municipalities comply with state water quality standards.

Affirmed.

West Headnotes (12)

[1] **Administrative Law and Procedure**
Presumptions
Administrative Law and Procedure
Burden of showing error

In exercising its independent judgment when reviewing an administrative proceeding, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.

2 Cases that cite this headnote

[2] **Administrative Law and Procedure**
Scope

On review of a trial court's determination of a challenge to an administrative ruling, the Court of Appeal applies a substantial evidence standard when reviewing the trial court's factual determinations on the administrative record.

1 Cases that cite this headnote

[3] **Administrative Law and Procedure**
Scope

On review of a trial court's determination of a challenge to an administrative ruling, an appellate court conducts a de novo review of the trial court's legal determinations, and is also not bound by the legal determinations made by the agency.

1 Cases that cite this headnote

[4] **Administrative Law and Procedure**
Deference to agency in general

Court of Appeal gives appropriate consideration to an administrative agency's expertise underlying its interpretation of an applicable statute.

4 Cases that cite this headnote

[5] **Administrative Law and Procedure**
Environment and health
Environmental Law
Water pollution

In determining the meaning of the Clean Water Act and its amendments, federal courts generally defer to the construction of a statutory provision by the Environmental Protection Agency (EPA) if the disputed portion of the statute is ambiguous. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

2 Cases that cite this headnote

[6] **Administrative Law and Procedure**
Environment and health
Environmental Law
Water pollution

Court of Appeal considers and gives due deference to statutory interpretations of Clean Water Act by regional and state water control boards. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

8 Cases that cite this headnote

[7] **Environmental Law**
Conditions and limitations

Regional and state water control boards, in issuing comprehensive municipal stormwater sewer permit, were not prohibited by Clean Water Act "maximum extent practicable" standard of stormwater pollutant abatement from including provisions in permit which required that municipalities comply with state water quality standards; language of pertinent statute communicated basic principle that boards, which had been federally approved to issue permit, retained discretion to impose appropriate water pollution controls in addition to those that came within definition of "maximum extent practicable," this principle was consistent with legislative history and purpose of Act, and there was no showing that applicable water quality standards were unattainable. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(3)(B)(iii), 33 U.S.C.A. § 1342(p)(3)(B)(iii).

See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, §§ 66-69; Cal. Jur. 3d, Pollution and Conservation Laws, § 113 et seq.

14 Cases that cite this headnote

[8] **Statutes**
Grammar, spelling, and punctuation

While punctuation and grammar should be considered in interpreting a statute, neither is controlling unless the result is in harmony with the clearly expressed intent of the Legislature.

Cases that cite this headnote

[9] **Administrative Law and Procedure**
Plain, literal, or clear meaning; ambiguity
Statutes
Extrinsic Aids to Construction

If the statutory language is susceptible to more than one reasonable interpretation, a court must look to a variety of extrinsic aids to interpreting the statute, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.

2 Cases that cite this headnote

[10] **Appeal and Error**
Motions, hearings, and orders in general
Appeal and Error
Judgment in General

All lower court judgments and orders are presumed correct, and persons challenging them on appeal must affirmatively show reversible error.

Cases that cite this headnote

[11] **Appeal and Error**
Statement of evidence

A party challenging the sufficiency of evidence to support a judgment on appeal must summarize, and cite to, all of the material evidence, not just the evidence favorable to his or her appellate positions.

1 Cases that cite this headnote

[12] **Administrative Law and Procedure**
Burden of showing error

The party challenging the scope of an administrative permit has the burden of showing the agency abused its discretion or its findings were unsupported by the facts.

Cases that cite this headnote

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Opinion

HALLER, J.

***871** This case concerns the environmental regulation of municipal storm sewers that carry excess water runoff to lakes, lagoons, rivers, bays, and the ocean. The waters flowing through these sewer systems have accumulated numerous harmful pollutants that are then discharged into the water body without receiving any treatment. To protect against the resulting water quality impairment, federal and state laws impose regulatory controls on storm sewer discharges. In particular, municipalities and other public entities are required to obtain, and comply with, a regulatory permit limiting the quantity and quality of water runoff that can be discharged from these storm sewer systems.

In this case, the California Regional Water Control Board, San Diego Region, (Regional Water Board) conducted numerous public hearings and then issued a comprehensive municipal storm sewer permit governing 19 local public entities. Although these entities did not bring an administrative challenge to the permit, one business organization, the Building Industry Association of San Diego County (Building Industry), filed an administrative appeal with the State Water Resources Control Board (State Water Board). After making some modifications to the permit, the State Water Board denied

the appeal. Building Industry then petitioned for a writ of mandate in the superior court, asserting numerous claims, including that the permit violates state and federal law because the permit provisions are too stringent and impossible to satisfy. Three environmental groups intervened as defendants in the action. After a hearing, the trial court found Building Industry failed to prove its claims and entered judgment in favor of the administrative agencies (the Water Boards) and the intervener environmental groups.

On appeal, Building Industry's main contention is that the regulatory permit violates federal law because it allows the Water Boards to impose municipal storm sewer control measures more stringent than a federal standard known as "maximum extent practicable." (****131** 33 U.S.C. § 1342(p)(3)(B)(iii).)[2] In the published portion of this opinion, we reject this contention, and conclude the Water Boards had the authority to include a permit provision requiring compliance with state water quality standards. In the unpublished portion of the opinion, we find Building Industry's additional contentions to be without merit. We affirm the judgment.

***872** RELEVANT BACKGROUND INFORMATION

I. *Summary of Relevant Clean Water Act Provisions*

Before setting forth the factual background of this particular case, it is helpful to summarize the federal and state statutory schemes for regulating municipal storm sewer discharges.[3]

A. *Federal Statutory Scheme*

When the United States Congress first enacted the Federal Water Pollution Control Act in 1948, the Congress relied primarily on state and local enforcement efforts to remedy water pollution problems. (*Middlesex Cty. Sewerage Auth. v. Sea Clammers* (1981) 453 U.S. 1, 11, 101 S.Ct. 2615, 69 L.Ed.2d 435; *Tahoe–Sierra Preservation Council v. State Water Resources Control Bd.* (1989) 210 Cal.App.3d 1421, 1433, 259 Cal.Rptr. 132.) However, by the early 1970's, it became apparent that this reliance on local enforcement was ineffective and had resulted in the "accelerating environmental degradation of rivers, lakes, and streams...." (*Natural Resources Defense Council, Inc. v. Costle* (D.C.Cir.1977) 568 F.2d 1369, 1371 (*Costle*); see *EPA v. State Water Resources Control Board* (1976) 426 U.S. 200, 203, 96 S.Ct. 2022, 48 L.Ed.2d 578.) In response, in 1972 Congress substantially amended this law by mandating compliance with various minimum technological effluent standards established by the federal government and creating a comprehensive regulatory scheme to implement these laws. (See *EPA v. State Water Resources Control Board, supra,* 426 U.S. at pp. 204–205, 96 S.Ct. 2022.) The objective of this law, now commonly known as the Clean Water Act, was to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (§ 1251(a).)

The Clean Water Act employs the basic strategy of prohibiting pollutant emissions from "point sources"[4] unless the party discharging the pollutants obtains a permit, known as an NPDES[5] permit. (See *EPA v. State Water Resources Control Board, supra,* 426 U.S. at p. 205, 96 S.Ct. 2022.) It is "unlawful ***873** for any person to discharge a pollutant without obtaining a permit and complying with its terms." (*Ibid.;* § 1311(a); see ****132** *Costle, supra,* 568 F.2d at p. 1375.) An NPDES permit is issued by the United States Environmental Protection Agency (EPA) or by a state that has a federally approved water quality program. (§ 1342(a), (b); *EPA v. State Water Resources Control Board, supra,* 426 U.S. at p. 209, 96 S.Ct. 2022.) Before an NPDES is issued, the federal or state regulatory agency must follow an extensive administrative hearing procedure. (See 40 C.F.R. §§ 124.3, 124.6, 124.8, 124.10; see generally Wardzinski et al., *National Pollutant Discharge Elimination System Permit Application and Issuance Procedures,* in The Clean Water Act Handbook (Evans edit., 1994) pp. 72–74 (Clean Water Act Handbook).) NPDES permits are valid for five years. (§ 1342(b)(1)(B).)

Under the Clean Water Act, the proper scope of the controls in an NPDES permit depends on the applicable state water quality standards for the affected water bodies. (See *Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1092, 1 Cal.Rptr.3d 76.) Each state is required to develop water quality standards that establish " 'the desired condition of a waterway.' " (*Ibid.*) A water quality standard for any given water segment has two components: (1) the designated beneficial uses of the water body; and (2) the water quality criteria sufficient to protect those uses. (*Ibid.*) As enacted in 1972, the Clean Water Act mandated that an NPDES permit require compliance with state water quality standards and that this goal be met by setting forth a specific "effluent limitation," which is a restriction on the amount of pollutants that may be discharged at the point source. (§§

1311, 1362(11).)

Shortly after the 1972 legislation, the EPA promulgated regulations exempting most municipal storm sewers from the NPDES permit requirements. (*Costle, supra,* 568 F.2d at p. 1372; see *Defenders of Wildlife v. Browner* (9th Cir.1999) 191 F.3d 1159, 1163 (*Defenders of Wildlife*).) When environmental groups challenged this exemption in federal court, the Ninth Circuit held a storm sewer is a point source and the EPA did not have the authority to exempt categories of point sources from the Clean Water Act's NPDES permit requirements. (*Costle, supra,* 568 F.2d at pp. 1374–1383.) The *Costle* court rejected the EPA's argument that effluent-based storm sewer regulation was administratively infeasible because of the variable nature of storm water pollution and the number of affected storm sewers throughout the country. (*Id.* at pp. 1377–1382.) Although the court acknowledged the practical problems relating to storm sewer regulation, the court found the EPA had the flexibility under the Clean Water Act to design regulations that would overcome these problems. (*Id.* at pp. 1379–1383.)

***874** During the next 15 years, the EPA made numerous attempts to reconcile the statutory requirement of point source regulation with the practical problem of regulating possibly millions of diverse point source discharges of storm water. (*Defenders of Wildlife, supra,* 191 F.3d at p. 1163; see Gallagher, *Clean Water Act* in Environmental Law Handbook (Sullivan edit., 2003) p. 300 (Environmental Law Handbook); Eisen, *Toward a Sustainable Urbanism: Lessons from Federal Regulation of Urban Stormwater Runoff* (1995) 48 Wash. U.J. Urb. & Contemp. L. 1, 40–41 (*Regulation of Urban Stormwater Runoff*).)

Eventually, in 1987, Congress amended the Clean Water Act to add provisions that specifically concerned NPDES permit requirements for storm sewer discharges. (§ 1342(p); see *Defenders of Wildlife, supra,* ****133** 191 F.3d at p. 1163; *Natural Resources Defense Council v. U.S. E.P.A.* (1992) 966 F.2d 1292, 1296.) In these amendments, enacted as part of the Water Quality Act of 1987, Congress distinguished between industrial and municipal storm water discharges. With respect to *industrial* storm water discharges, Congress provided that NPDES permits "shall meet all applicable provisions of this section and section 1311 [requiring the EPA to establish effluent limitations under specific timetables] ...." (§ 1342(p)(3)(A).) With respect to *municipal* storm water discharges, Congress clarified that the EPA had the authority to fashion NPDES permit requirements to meet water quality standards without specific numerical effluent limits and instead to impose "controls to reduce the discharge of pollutants to the maximum extent practicable ...." (§ 1342(p)(3)(B)(iii); see *Defenders of Wildlife, supra,* 191 F.3d at p. 1163.) Because the statutory language pertaining to municipal storm sewers is at the center of this appeal, we quote the relevant portion of the statute in full:

> "(B) Permits for discharges from municipal storm sewers—
>
> "(i) may be issued on a system- or jurisdiction-wide basis;
>
> "(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
>
> "(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." (§ 1342(p)(3)(B).)

To ensure this scheme would be administratively workable, Congress placed a moratorium on many new types of required stormwater permits until 1994 (§ 1342(p)(1)), and created a phased approach to necessary municipal ***875** stormwater permitting depending on the size of the municipality (§ 1342(p)(2)(D)). (See *Environmental Defense Center, Inc. v. U.S. E.P.A.* (9th Cir.2003) 344 F.3d 832, 841–842.)

B. *State Statutory Scheme*

Three years before the 1972 Clean Water Act, the California Legislature enacted its own water quality protection legislation, the Porter–Cologne Water Quality Control Act (Porter–Cologne Act), seeking to "attain the highest water quality which is reasonable...." (Wat.Code, § 13000.) The Porter–Cologne Act created the State Water Board to formulate statewide water quality policy and established nine regional boards to prepare water quality plans (known as basin plans) and issue permits governing the discharge of waste. (Wat.Code, §§ 13100, 13140, 13200, 13201, 13240, 13241, 13243.) The Porter–Cologne Act identified these permits as "waste discharge requirements," and provided that the waste discharge requirements must mandate compliance with the applicable regional water quality control plan. (Wat.Code, §§ 13263, subd. (a), 13377, 13374.)

Shortly after Congress enacted the Clean Water Act in

1972, the California Legislature added chapter 5.5 to the Porter–Cologne Act, for the purpose of adopting the necessary federal requirements to ensure it would obtain EPA approval to issue NPDES permits. (Wat.Code, § 13370, subd. (c).) As part of these amendments, the Legislature provided that the state and regional water boards "shall, as required or authorized by the [Clean Water Act], issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions ****134** [of the Clean Water Act], together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." (Wat.Code, § 13377.) Water Code section 13374 provides that "[t]he term 'waste discharge requirements' as referred to in this division is the equivalent of the term 'permits' as used in the [Clean Water Act]."

California subsequently obtained the required approval to issue NPDES permits. (*WaterKeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal.App.4th 1448, 1453, 126 Cal.Rptr.2d 389.) Thus, the waste discharge requirements issued by the regional water boards ordinarily also serve as NPDES permits under federal law. (Wat.Code, § 13374.)

II. *The NPDES Permit at Issue in this Case*

Under its delegated authority and after numerous public hearings, in February 2001 the Regional Water Board issued a 52–page NPDES permit ***876** and Waste Discharge Requirements (the Permit) governing municipal storm sewers owned by San Diego County, the San Diego Unified Port District, and 18 San Diego-area cities (collectively, "Municipalities").[6] The first 10 pages of the Permit contain the Regional Water Board's detailed factual findings. These findings describe the manner in which San Diego-area water runoff absorbs numerous harmful pollutants and then is conveyed by municipal storm sewers into local waters without any treatment. The findings state that these storm sewer discharges are a leading cause of water quality impairment in the San Diego region, endangering aquatic life and human health. The findings further state that to achieve applicable state water quality objectives, it is necessary not only to require municipalities to comply with existing pollution-control technologies, but also to require compliance with applicable "receiving water limits" (state water quality standards) and to employ an "iterative process" of "development, implementation, monitoring, and assessment" to improve existing technologies.

Based on these factual findings, the Regional Water Board included in the Permit several overall prohibitions applicable to municipal storm sewer discharges. Of critical importance to this appeal, these prohibitions concern two categories of restrictions. First, the Municipalities are prohibited from discharging those pollutants "which have not been reduced to the *maximum extent practicable.... "*[7] (Italics added). Second, the Municipalities are ****135** prohibited from discharging pollutants "which cause or contribute to exceedances of receiving water quality objectives ..." and/or that "cause or contribute to the violation of water quality standards...." This second category of restrictions (referred to in this opinion as the "Water Quality Standards provisions") essentially provide that a Municipality may not discharge pollutants if those pollutants would cause the receiving water body to exceed the applicable water quality standard. It is these latter restrictions that are challenged by Building Industry in this appeal.

***877** Part C of the Permit (as amended) qualifies the Water Quality Standards provisions by detailing a procedure for enforcing violations of those standards through a step-by-step process of "timely implementation of control measures ...," known as an "iterative" process. Under this procedure, when a municipality "caus[es] or contribute[s] to an exceedance of an applicable water quality standard," the municipality must prepare a report documenting the violation and describing a process for improvement and prevention of further violations. The municipality and the regional water board must then work together at improving methods and monitoring progress to achieve compliance. But the final provision of Part C states that "Nothing in this section shall prevent the [Regional Water Board] from enforcing any provision of this Order while the [municipality] prepares and implements the above report."

In addition to these broad prohibitions and enforcement provisions, the Permit requires the Municipalities to implement, or to require businesses and residents to implement, various pollution control measures referred to as "best management practices," which reflect techniques for preventing, slowing, retaining or absorbing pollutants produced by stormwater runoff. These best management practices include structural controls that minimize contact between pollutants and flows, and non-structural controls such as educational and public outreach programs. The Permit also requires the Municipalities to regulate discharges associated with new development and redevelopment and to ensure a completed project will not result in significantly increased discharges of pollution from storm water runoff.

III. *Administrative and Trial Court Challenges*

After the Regional Water Board issued the Permit, the Building Industry, an organization representing the interests of numerous construction-related businesses, filed an administrative challenge with the State Water Board. Although none of the Municipalities joined in the administrative appeal, Building Industry claimed its own independent standing based on its assertion that the Permit would impose indirect obligations on the regional building community. (See Wat.Code, § 13320 [permitting any "aggrieved person" to challenge regional water board action].) Among its numerous contentions, Building Industry argued that the Water Quality Standards provisions in the Permit require strict compliance with state water quality standards beyond what is "practicable" and therefore violate federal law.

In November 2001, the State Water Board issued a written decision rejecting Building Industry's appeal after making certain modifications to the Permit. (Cal. Wat. Resources Control Bd. Order WQ2001–15 (Nov. 15, 2001).) Of particular relevance here, the State Water Board modified the Permit to make clear that the iterative enforcement process applied to the Water Quality Standards provisions in the Permit. But ***878** the State Water Board did not delete the Permit's provision stating ****136** that the Regional Water Board retains the authority to enforce the Water Quality Standards provisions even if a Municipality is engaged in this iterative process.

Building Industry then brought a superior court action against the Water Boards, challenging the Regional Board's issuance of the Permit and the State Water Board's denial of Building Industry's administrative challenge.[8] Building Industry asserted numerous legal claims, including that the Water Boards: (1) violated the Clean Water Act by imposing a standard greater than the "maximum extent practicable" standard; (2) violated state law by failing to consider various statutory factors before issuing the Permit; (3) violated the California Environmental Quality Act (CEQA) by failing to prepare an environmental impact report (EIR); and (4) made findings that were factually unsupported.

Three environmental organizations, San Diego BayKeeper, Natural Resources Defense Council, and California CoastKeeper (collectively, Environmental Organizations), requested permission to file a complaint in intervention, seeking to uphold the Permit and asserting a direct and substantial independent interest in the subject of the action. Over Building Industry's objections, the trial court permitted these organizations to file the complaint and enter the action as parties-interveners.

After reviewing the lengthy administrative record and the parties' briefs, and conducting an oral hearing, the superior court ruled in favor of the Water Boards and Environmental Organizations (collectively, respondents). Applying the independent judgment test, the court found Building Industry failed to meet its burden to establish the State Water Board abused its discretion in approving the Permit or that the administrative findings are contrary to the weight of the evidence. In particular, the court found Building Industry failed to establish the Permit requirements were "impracticable under federal law or unreasonable under state law," and noted that there was evidence showing the Regional Water Board considered many practical aspects of the regulatory ***879** controls before issuing the Permit. Rejecting Building Industry's legal arguments, the court also stated that under federal law the Water Boards had the discretion "to require strict compliance with water quality standards" or "to require less than strict compliance with water quality standards." The court also sustained several of respondents' evidentiary objections, including to documents relating to the legislative history of the Clean Water Act.

Building Industry appeals, challenging the superior court's determination that the Permit did not violate the federal Clean Water Act. In its appeal, Building Industry does not reassert its claim that the Permit violates state law, except for its contentions pertaining to CEQA.

DISCUSSION

I. *Standard of Review*

[1] A party aggrieved by a final decision of the State Water Board may obtain review of the decision by filing a timely ****137** petition for writ of mandate in the superior court. (Wat.Code, § 13330, subd. (a).) Code of Civil Procedure section 1094.5 governs the proceedings, and the superior court must exercise its independent judgment in examining the evidence and resolving factual disputes. (Wat.Code, § 13330, subd. (d).) "In exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the

evidence." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817, 85 Cal.Rptr.2d 696, 977 P.2d 693.)

[2] [3] [4] [5] [6] In reviewing the trial court's factual determinations on the administrative record, a Court of Appeal applies a substantial evidence standard. (*Fukuda v. City of Angels, supra*, 20 Cal.4th at p. 824, 85 Cal.Rptr.2d 696, 977 P.2d 693.) However, in reviewing the trial court's legal determinations, an appellate court conducts a de novo review. (See *Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123, 129, 133 Cal.Rptr.2d 249.) Thus, we are not bound by the legal determinations made by the state or regional agencies or by the trial court. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7–8, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) But we must give appropriate consideration to an administrative agency's expertise underlying its interpretation of an applicable statute.[9] (*Ibid.*)

***880** II. *Water Boards' Authority to Enforce Water Quality Standards in NPDES Permit*

Building Industry's main appellate contention is very narrow. Building Industry argues that two provisions in the Permit (the Water Quality Standards provisions) violate federal law because they prohibit the Municipalities from discharging runoff from storm sewers if the discharge would cause a water body to exceed the applicable water quality standard established under state law.[10] Building Industry contends that under federal law the "maximum extent practicable" standard is the "exclusive" measure that may be applied to municipal storm sewer discharges and a regulatory agency may not require a Municipality to comply with a state water quality standard if the required controls exceed a "maximum extent practicable" standard.

In the following discussion, we first reject respondents' contentions that Building Industry waived these arguments by failing to raise a substantial evidence challenge to the court's factual findings and/or ****138** to reassert its state law challenges on appeal. We then focus on the portion of the Clean Water Act (§ 1342(p)(3)(B)(iii)) that Building Industry contends is violated by the challenged Permit provisions. On our de novo review of this legal issue, we conclude the Permit's Water Quality Standards provisions are proper under federal law, and Building Industry's legal challenges are unsupported by the applicable statutory language, legislative purpose, and legislative history.

A. *Building Industry Did Not Waive the Legal Argument*

Respondents (the Water Boards and Environmental Organizations) initially argue that Building Industry waived its right to challenge the Permit's consistency with the maximum extent practicable standard because Building Industry did not challenge the trial court's *factual* findings that Building Industry failed to prove any of the Permit requirements were "impracticable" or "unreasonable."

In taking this position, respondents misconstrue the nature of Building Industry's appellate contention challenging the Water Quality Standards provisions. Building Industry's contention concerns the scope of the authority given to the Regional Water Board under the Permit terms. Specifically, ***881** Building Industry argues that the Regional Water Board does not have the authority to require the Municipalities to adhere to the applicable water quality standards because federal law provides that the "maximum extent practicable" standard is the exclusive standard that may be applied to storm sewer regulation. This argument—concerning the proper scope of a regulatory agency's authority—presents a purely legal issue, and is not dependent on the court's factual findings regarding the practicality of the specific regulatory controls identified in the Permit.

Respondents alternatively contend that Building Industry waived its right to challenge the propriety of the Water Quality Standards provisions under federal law because the trial court found the provisions were valid under state law and Building Industry failed to reassert its state law challenges on appeal. Under the particular circumstances of this case, we conclude Building Industry did not waive its rights to challenge the Permit under federal law.

Although it is well settled that the Clean Water Act authorizes states to impose water quality controls that are more stringent than are required under federal law (§ 1370; see *PUD No. 1 of Jefferson Cty. v. Washington Dept. of Ecology* (1994) 511 U.S. 700, 705, 114 S.Ct. 1900, 128 L.Ed.2d 716; *Northwest Environmental Advocates v. Portland* (9th Cir.1995) 56 F.3d 979, 989), and California law specifically allows the imposition of controls more stringent than federal law (Wat.Code, § 13377), the Water Boards made a tactical decision in the superior court to assert the Permit's validity based solely on federal law, and repeatedly made clear they were not seeking to justify the Permit requirements based on the Boards' independent authority to act under state law. On appeal, the Water Boards continue to rely primarily on

federal law to uphold the Permit requirements, and their assertions that we may decide the matter based solely on state law are in the nature of asides rather than direct arguments. On this record, it would be improper to rely solely on state law to uphold the challenged Permit provisions.

B. *The Water Quality Standards Requirement Does Not Violate Federal Law*

[7] We now turn to Building Industry's main substantive contention on appeal— ****139** that the Permit's Water Quality Standards provisions (fn.10, *ante*) violate federal law. Building Industry's contention rests on its interpretation of the 1987 Water Quality Act amendments containing NPDES requirements for municipal storm sewers. The portion of the relevant statute reads: "(B) Permits for discharges from municipal storm sewers ... [¶] ... [¶] (iii) shall require controls to reduce the discharge of pollutants to the *maximum extent practicable, including* management practices, control techniques and ***882** system, design and engineering methods, and such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants." (§ 1342(p)(3)(B)(iii), italics added.)

1. *Statutory Language*

Focusing on the first 14 words of subdivision (iii), Building Industry contends the statute means that the maximum extent practicable standard sets the upper limit on the type of control that can be used in an NPDES permit, and that each of the phrases following the word "*including* " identify examples of "maximum extent practicable" controls. (§ 1342(p)(3)(B)(iii), italics added.) Building Industry thus reads the final "and such other provisions" clause as providing the EPA with the authority only to include *other* types of "maximum extent practicable" controls in an NPDES storm sewer permit.

Respondents counter that the term "including" refers only to the three identified types of pollution control procedures—(1) "management practices"; (2) "control techniques"; and (3) "system, design and engineering methods"—and that the last phrase, "*and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants,*" provides the EPA (or the approved state regulatory agency) the specific authority to go beyond the maximum extent practicable standard to impose effluent limitations or water-quality based standards in an NPDES permit. In support, respondents argue that because the word "system" in section 1342(p)(3)(B)(iii) is singular, it necessarily follows from parallel-construction grammar principles that the word "system" is part of the phrase "system, design and engineering methods" rather than the phrase "control techniques and system." Under this view and given the absence of a comma after the word "techniques," respondents argue that the "and such other provisions" clause cannot be fairly read as restricted by the "maximum extent practicable" phrase, and instead the "and such other provisions" clause is a separate and distinct clause that acts as a second direct object to the verb "require" in the sentence. (§ 1342(p)(3)(B)(iii).)

Building Industry responds that respondents' proposed statutory interpretation is "not logical" because if the "and such other provisions" phrase is the direct object of the verb "require," the sentence would not make sense. Building Industry states that "permits" do not generally "require" provisions; they "include" or "contain" them.

As a matter of grammar and word choice, respondents have the stronger position. The second part of Building Industry's proposed interpretation—"control techniques and system, design, and engineering methods"—without a comma after the word "techniques" does not logically serve as a ***883** parallel construct with the "and such other provisions" clause. Moreover, we disagree that the "and such other provisions" clause cannot be a direct object to the word "require." (§ 1342(p)(3)(B)(iii).) Although it is not the clearest way of articulating the concept, the language of section 1342(p)(3)(B)(iii) does communicate the basic ****140** principle that the EPA (and/or a state approved to issue the NPDES permit) retains the discretion to impose "appropriate" water pollution controls in addition to those that come within the definition of " 'maximum extent practicable.' " (*Defenders of Wildlife, supra,* 191 F.3d at pp. 1165–1167.) We find unpersuasive Building Industry's reliance on several statutory interpretation concepts, *ejusdem generis, noscitur a sociis,* and *expressio unius est exclusion alterius,* to support its narrower statutory construction.

2. *Purpose and History of Section 1342(p)(3)(B)(iii)*

[8] [9] Further, "[w]hile punctuation and grammar should be considered in interpreting a statute, neither is controlling unless the result is in harmony with the clearly expressed intent of the Legislature." (*In re John S.* (2001) 88 Cal.App.4th 1140, 1144, fn. 1, 106 Cal.Rptr.2d 476; see *Estate of Coffee* (1941) 19 Cal.2d 248, 251, 120 P.2d 661.) If the statutory language is susceptible to more than one reasonable interpretation, a court must also "look to a

variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340, 14 Cal.Rptr.3d 857, 92 P.3d 350.)

The legislative purpose underlying the Water Quality Act of 1987, and section 1342(p) in particular, supports that Congress intended to provide the EPA (or the regulatory agency of an approved state) the discretion to require compliance with water quality standards in a municipal storm sewer NPDES permit, particularly where, as here, that compliance will be achieved primarily through an iterative process.

Before section 1342(p) was enacted, the courts had long recognized that the EPA had the authority to require a party to comply with a state water quality standard even if that standard had not been translated into an effluent limitation. (See *EPA v. State Water Resources Control Board, supra,* 426 U.S. at p. 205, fn. 12, 96 S.Ct. 2022; *PUD No. 1 of Jefferson Cty. v. Washington Dept. of Ecology, supra,* 511 U.S. at p. 715, 114 S.Ct. 1900; *Northwest Environmental Advocates v. Portland* (9th Cir.1995) 56 F.3d 979, 987; *Natural Resources Defense Council v. U.S.E.P.A.* (9th Cir.1990) 915 F.2d 1314, 1316.) Specifically, section 1311(b)(1)(C) gave the regulatory agency the authority to impose "any more stringent limitation including those necessary to meet water quality standards," and section 1342(a)(2) provided that "[t]he [EPA] Administrator shall ***884** prescribe conditions for [NPDES] permits to assure compliance" with requirements identified in section 1342(a)(1), which encompass state water quality standards. The United States Supreme Court explained that when Congress enacted the 1972 Clean Water Act, it retained "[w]ater quality standards ... as a supplementary basis for effluent limitations, ... so that numerous point sources despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels...." (*EPA v. State Water Resources Control Board, supra,* 426 U.S. at p. 205, fn. 12, 96 S.Ct. 2022; see also *Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239.)

There is nothing in section 1342(p)(3)(B)(iii)'s statutory language or legislative history showing that Congress intended to eliminate this discretion when it amended the Clean Water Act in 1987. ****141** To the contrary, Congress added the NPDES storm sewer requirements to strengthen the Clean Water Act by making its mandate correspond to the practical realities of municipal storm sewer regulation. As numerous commentators have pointed out, although Congress was reacting to the physical differences between municipal storm water runoff and other pollutant discharges that made the 1972 legislation's blanket effluent limitations approach impractical and administratively burdensome, the primary point of the legislation was to address these administrative problems while giving the administrative bodies the tools to meet the fundamental goals of the Clean Water Act in the context of stormwater pollution. (See *Regulation of Urban Stormwater Runoff, supra,* 48 Wash.U.J. Urb. & Contemp. L. at pp. 44–46; Environmental Law Handbook, *supra,* at p. 300; Clean Water Act Handbook, *supra,* at pp. 62–63.) In the 1987 congressional debates, the Senators and Representatives emphasized the need to prevent the widespread and escalating problems resulting from untreated storm water toxic discharges that were threatening aquatic life and creating conditions dangerous to human health. (See Remarks of Sen. Durenberger, 133 Cong. Rec. 1279 (Jan. 14, 1987); Remarks of Sen. Chaffee, 133 Cong. Rec. S738 (daily ed. Jan 14, 1987); Remarks of Rep. Hammerschmidt, 133 Cong. Rec. 986 (Jan. 8, 1987); Remarks of Rep. Roe, 133 Cong. Rec. 1006, 1007 (Jan. 8, 1987); Remarks of Sen. Stafford, 132 Cong. Rec. 32381, 32400 (Oct. 16, 1986).) This legislative history supports that in identifying a maximum extent practicable standard Congress did not intend to substantively bar the EPA/state agency from imposing a more stringent water quality standard if the agency, based on its expertise and technical factual information and after the required administrative hearing procedure, found this standard to be a necessary and workable enforcement mechanism to achieving the goals of the Clean Water Act.

To support a contrary view, Building Industry relies on comments by Minnesota Senator David Durenberger during the lengthy congressional ***885** debates on the 1987 Water Quality Act amendments.[11] (132 Cong. Rec. 32400 (Oct. 16, 1986); 133 Cong. Rec. S752 (daily ed. Jan. 14, 1987).) In the cited portions of the Congressional Record, Senator Durenberger states that NPDES permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable. Such controls include management practices, control techniques and systems, design and engineering methods, and such other provisions, as the Administrator determines appropriate for the control of pollutants in the stormwater discharge." (*Ibid.*) When viewing these statements in context, it is apparent that the Senator was merely paraphrasing the words of the proposed statute and was not intending to address the issue of whether the maximum extent practicable standard was a regulatory ceiling or whether he believed the proposed amendments limited the EPA's existing discretion.[12]

****142** Building Industry's reliance on comments made by Georgia Representative James Rowland, who participated in drafting the 1987 Water Quality Act amendments, is similarly unhelpful. During a floor debate on the proposed amendments, Representative Rowland noted that cities have "millions of" stormwater discharge points and emphasized the devastating financial burden on cities if they were required to obtain a permit for each of these points. (133 Cong. Rec. 522 (daily ed. Feb. 3, 1987).) Representative Rowland then explained that the amendments would address this problem by "allow[ing] communities to obtain far less costly single jurisdictionwide permits." (*Ibid.*) Viewed in context, these comments were directed at the need for statutory provisions permitting the EPA to issue jurisdiction-wide permits thereby preventing unnecessary administrative costs to the cities, and do not reflect a desire to protect cities from the cost of complying with strict water quality standards when deemed necessary by the regulatory agency.

3. Interpretations by the EPA and Other Courts

Our conclusion that Congress intended section 1342(p)(3)(B)(iii) to provide the regulatory agency with authority to impose standards stricter than a "maximum extent practicable" standard is consistent with interpretations by ***886** the EPA and the Ninth Circuit. In its final rule promulgated in the Federal Register, the EPA construed section 1342(p)(3)(B)(iii) as providing the administrative agency with the authority to impose water-quality standard controls in an NPDES permit if appropriate under the circumstances. Specifically, the EPA stated this statutory provision requires "controls to reduce the discharge of pollutants to the maximum extent practicable, *and where necessary water quality-based controls* ...." (55 Fed.Reg. 47990, 47994 (Nov. 16, 1990), italics added.) We are required to give substantial deference to this administrative interpretation, which occurred after an extensive notice and comment period. (See *ibid.; Chevron, supra,* 467 U.S. at pp. 842–844, 104 S.Ct. 2778.)

The only other court that has interpreted the "such other provisions" language of section 1342(p)(3)(B)(iii) has reached a similar conclusion. (*Defenders of Wildlife, supra,* 191 F.3d at pp. 1166–1167.) In *Defenders of Wildlife,* environmental organizations brought an action against the EPA, challenging provisions in an NPDES permit requiring several Arizona localities to adhere to various best management practice controls without requiring numeric effluent limitations. (*Id.* at p. 1161.) The environmental organizations argued that section 1342(p) did not allow the EPA to issue NPDES permits without requiring strict compliance with effluent limitations. (*Defenders of Wildlife, supra,* at p. 1161.) Rejecting this argument, the Ninth Circuit found section 1342(p)(3)(B)(iii)'s statutory language "unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly" with effluent limitations. (*Defenders of Wildlife, supra,* at p. 1164.)

But in a separate part of the opinion, the *Defenders of Wildlife* court additionally rejected the reverse argument made by the affected municipalities (who were the interveners in the action) that "the EPA may not, under the [Clean Water Act], require strict compliance with state water-quality standards, through numerical limits or otherwise." (*Defenders of Wildlife, supra,* 191 F.3d at p. 1166.) The court stated: "Although Congress did not require ****143** municipal storm-sewer discharges to comply strictly with [numerical effluent limitations], § 1342(p)(3)(B)(iii) states that '[p]ermits for discharges from municipal storm sewers ... shall require ... *such other provisions as the Administrator ... determines appropriate for the control of such pollutants.*' (Emphasis added.) That provision gives the EPA discretion to determine what pollution controls are appropriate.... [¶] *Under that discretionary provision, the EPA has the authority to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants.* The EPA also has the authority to require less than strict compliance with state water-quality standards.... Under 33 U.S.C. § 1342(p)(3)(B)(iii), the EPA's choice to include either management practices or numeric limitations in the permits was within its discretion. [Citations.]" (*Defenders of Wildlife, supra,* 191 F.3d at pp. 1166–1167, second italics added.) Although dicta, this ***887** conclusion reached by a federal court interpreting federal law is persuasive and is consistent with our independent analysis of the statutory language.[13]

To support its interpretation of section 1342(p)(3)(B)(iii), Building Industry additionally relies on the statutory provisions addressing nonpoint source runoff (a diffuse runoff not channeled through a particular source), which were also part of the 1987 amendments to the Clean Water Act. (§ 1329.) In particular, Building Industry cites to section 1329(a)(1)(C), which states, "The Governor of each State shall ... prepare and submit to the [EPA] Administrator for approval, a report which ... [¶] ... [¶] describes the process ... for identifying best management practices and measures to control each [identified] category ... of nonpoint sources and ... to reduce, to the *maximum extent practicable,* the level of pollution resulting from such category...." (Italics added.) Building Industry argues that because this "nonpoint source" statutory language expressly identifies only the maximum

extent practicable standard, we must necessarily conclude that Congress meant to similarly limit the storm sewer point source pollution regulations to the maximum extent practicable standard.

The logic underlying this analogy is flawed because the critical language in the two statutory provisions is different. In the nonpoint source statute, Congress chose to include only the maximum extent practicable standard (§ 1329(a)(1)(C)); whereas in the municipal storm sewer provisions, Congress elected to include the "and such other provisions" clause (§ 1342(p)(3)(B)(iii)). This difference leads to the reasonable inference that Congress had a different intent when it enacted the two statutory provisions. Moreover, because of a fundamental difference between point and nonpoint source pollution, Congress has historically treated the two types of pollution differently and has subjected each type to entirely different requirements. (See *Pronsolino v. Nastri* (9th Cir.2002) 291 F.3d 1123, 1126–1127.) Given this different treatment, it would be improper to presume Congress intended to apply the same standard in both statutes. Building Industry's citation to comments during the 1987 congressional debates regarding nonpoint source regulation does ****144** not support Building Industry's contentions.

***888** 4. *Contention that it is "Impossible" for Municipalities to Meet Water Quality Standards*

We also reject Building Industry's arguments woven throughout its appellate briefs, and emphasized during oral arguments, that the Water Quality Standards provisions violate federal law because compliance with those standards is "impossible." The argument is not factually or legally supported.

[10] [11] First, there is no showing on the record before us that the applicable water quality standards are unattainable. The trial court specifically concluded that Building Industry failed to make a factual showing to support this contention, and Building Industry does not present a proper appellate challenge to this finding sufficient to warrant our reexamining the evidence. All judgments and orders are presumed correct, and persons challenging them must affirmatively show reversible error. (*Walling v. Kimball* (1941) 17 Cal.2d 364, 373, 110 P.2d 58.) A party challenging the sufficiency of evidence to support a judgment must summarize (and cite to) *all* of the material evidence, not just the evidence favorable to his or her appellate positions. (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887–888, 160 Cal.Rptr. 516, 603 P.2d 881; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282, 188 Cal.Rptr. 123.) Building Industry has made no attempt to comply with this well established appellate rule in its briefs.

In a supplemental brief, Building Industry attempted to overcome this deficiency by asserting that "[t]he record clearly establishes that [the Water Quality Standards provisions] are unattainable during the period the permit is in effect." This statement, however, is not supported by the proffered citation or by the evidence viewed in the light most favorable to the respondents. Further, the fact that many of the Municipalities' storm sewer discharges currently violate water quality standards does not mean that the Municipalities cannot comply with the standards during the five-year term of the Permit. Additionally, Building Industry's assertions at oral argument that the trial court never reached the "impossibility" issue and/or that respondents' counsel conceded the issue below are belied by the record, including the trial court's rejection of Building Industry's specific challenge to the proposed statement of decision on this very point.[14]

[12] We reject Building Industry's related argument that it was respondents' burden to affirmatively show it is feasible to satisfy each of the applicable Water Quality Standards provisions. The party challenging the scope of an administrative permit, such as an NPDES, has the burden of ***889** showing the agency abused its discretion or its findings were unsupported by the facts. (See *Fukuda v. City of Angels, supra,* 20 Cal.4th at p. 817, 85 Cal.Rptr.2d 696, 977 P.2d 693; *Huntington Park Redevelopment Agency v. Duncan* (1983) 142 Cal.App.3d 17, 25, 190 Cal.Rptr. 744.) Thus, it was not respondents' burden to affirmatively demonstrate it was possible for the Municipalities to meet the Permit's requirements.

Building Industry alternatively contends it was not required to challenge the facts underlying the trial court's determination that the Permit requirements were feasible ****145** because the court's determination was wrong as a matter of law. Specifically, Building Industry asserts that a Permit requirement that is more stringent than a "maximum extent practicable" standard is, by definition, "not practicable" and therefore "technologically impossible" to achieve under any circumstances. Building Industry relies on a dictionary definition of "practicable," which provides that the word means " 'something that can be done; feasible,' " citing the 1996 version of "Webster's Encyclopedic Unabridged Dictionary."

This argument is unpersuasive. The federal maximum extent practicable standard it is not defined in the Clean Water Act or applicable regulations, and thus the Regional Water Board properly included a detailed description of the term in the Permit's definitions section.

(See *ante*, fn. 7.) As broadly defined in the Permit, the maximum extent practicable standard is a highly flexible concept that depends on balancing numerous factors, including the particular control's technical feasibility, cost, public acceptance, regulatory compliance, and effectiveness. This definition conveys that the Permit's maximum extent practicable standard is a term of art, and is not a phrase that can be interpreted solely by reference to its everyday or dictionary meaning. Further, the Permit's definitional section states that the maximum extent practicable standard "considers economics and is generally, but not necessarily, *less* stringent than BAT." (Italics added.) BAT is an acronym for "best available technology economically achievable," which is a technology-based standard for industrial storm water dischargers that focuses on reducing pollutants by treatment or by a combination of treatment and best management practices. (See *Texas Oil & Gas Ass'n v. U.S. E.P.A.* (5th Cir.1998) 161 F.3d 923, 928.) If the maximum extent practicable standard is generally "less stringent" than another Clean Water Act standard that relies on available technologies, it would be unreasonable to conclude that anything more stringent than the maximum extent practicable standard is necessarily impossible. In other contexts, courts have similarly recognized that the word "practicable" does not necessarily mean the most that can possibly be done. (See *Nat. Wildlife Federation v. Norton* (E.D.Cal.2004) 306 F.Supp.2d 920, 928, fn. 12 ["[w]hile the meaning of the term 'practicable' in the [Endangered Species Act] is not entirely clear, the term does not simply equate to 'possible' "]; ***890** *Primavera Familienstiftung v. Askin* (S.D.N.Y.1998) 178 F.R.D. 405, 409 [noting that "impracticability does not mean impossibility, but rather difficulty or inconvenience"].)

We additionally question whether many of Building Industry's "impossibility" arguments are premature on the record before us. As we have explained, the record does not support that any required control is, or will be, impossible to implement. Further, the Permit allows the Regional Water Board to enforce water quality standards during the iterative process, but does not impose any obligation that the Board do so. Thus, we cannot determine with any degree of certainty whether this obligation would ever be imposed, particularly if it later turns out that it is not possible for a Municipality to achieve that standard.

Finally, we comment on Building Industry's repeated warnings that if we affirm the judgment, all affected Municipalities will be in immediate violation of the Permit because they are not now complying with applicable water quality standards, subjecting them to immediate and substantial civil penalties, and leading to a potential "shut down" of public operations. These doomsday arguments are unsupported. The Permit makes clear that Municipalities ****146** are required to adhere to numerous specific controls (none of which are challenged in this case) and to comply with water quality standards through "timely implementation of control measures" by engaging in a cooperative iterative process where the Regional Water Board and Municipality work together to identify violations of water quality standards in a written report and then incorporate approved modified best management practices. Although the Permit allows the regulatory agencies to enforce the water quality standards during this process, the Water Boards have made clear in this litigation that they envision the ongoing iterative process as the centerpiece to achieving water quality standards. Moreover, the regulations provide an affected party reasonable time to comply with new permit requirements under certain circumstances. (See 40 C.F.R. § 122.47.) There is nothing in this record to show the Municipalities will be subject to immediate penalties for violation of water quality standards.

We likewise find speculative Building Industry's predictions that immediately after we affirm the judgment, citizens groups will race to the courthouse to file lawsuits against the Municipalities and seek penalties for violation of the Water Quality Standards provisions.[15] As noted, the applicable laws provide time for an affected entity to comply with new standards. Moreover, although we do not reach the enforcement issue in this case, we note the ***891** Permit makes clear that the iterative process is to be used for violations of water quality standards, and gives the Regional Water Board the discretionary authority to enforce water quality standards during that process. Thus, it is not at all clear that a citizen would have standing to compel a municipality to comply with a water quality standard despite an ongoing iterative process. (See § 1365(a)(1)(2).)

III.–VII.[*]

DISPOSITION

Judgment affirmed. Appellants to pay respondents' costs on appeal.

WE CONCUR: BENKE, Acting P.J., and AARON, J.

All Citations

124 Cal.App.4th 866, 22 Cal.Rptr.3d 128, 34 Envtl. L. Rep. 20,149, 04 Cal. Daily Op. Serv. 10,694, 2004 Daily Journal D.A.R. 14,492

Footnotes

1 Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of Discussion parts III, IV, V, VI and VII.

* Baxter, J., and Brown, J., dissented.

2 Further statutory references are to title 33 of the United States Code, unless otherwise specified.

3 The systems that carry untreated urban water runoff to receiving water bodies are known as "[m]unicipal separate storm sewer" systems (40 C.F.R. § 122.26(b)(8)), and are often referred to as "MS4s" (40 C.F.R. § 122.30). For readability, we will identify these systems as municipal storm sewers. To avoid confusion in this case, we will generally use descriptive names, rather than initials or acronyms, when referring to parties and concepts.

4 The Clean Water Act defines a "point source" to be "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." (§ 1362(14).)

5 NPDES stands for National Pollution Discharge Elimination System.

6 Under the Clean Water Act, entities responsible for NPDES permit conditions pertaining to their own discharges are referred to as "copermittees." (40 C.F.R. § 122.26(b)(1).) For clarity and readability, we shall refer to these entities as Municipalities.

7 The Permit does not precisely define this phrase, and instead, in its definition section, contains a lengthy discussion of the variable nature of the maximum extent practicable concept, referred to as MEP. A portion of this discussion is as follows: "[T]he definition of MEP is dynamic and will be defined by the following process over time: municipalities propose their definition of MEP by way of their [local storm sewer plan]. Their total collective and individual activities conducted pursuant to the [plan] becomes their proposal for MEP as it applies both to their overall effort, as well as to specific activities (e.g., MEP for street sweeping, or MEP for municipal separate storm sewer maintenance). In the absence of a proposal acceptable to the [Regional Water Board], the [Regional Water Board] defines MEP." The definition also identifies several factors that are "useful" in determining whether an entity has achieved the maximum extent practicable standard, including "Effectiveness," "Regulatory Compliance," "Public Acceptance," "Cost," and "Technical Feasibility."

8 Several other parties were also named as petitioners: Building Industry Legal Defense Foundation, California Business Properties Association, Construction Industry Coalition for Water Quality, San Diego County Fire Districts Association, and the City of San Marcos. However, because these entities were not parties in the administrative challenge, the superior court properly found they were precluded by the administrative exhaustion doctrine from challenging the administrative agencies' compliance with the federal and state water quality laws. Although these entities were named as appellants in the notice of appeal, they are barred by the exhaustion doctrine from asserting appellate contentions concerning compliance with federal and state water quality laws. However, as to any other claims (such as CEQA), these entities are proper appellants. For ease of reference and where appropriate, we refer to the appellants collectively as Building Industry.

9 We note that in determining the meaning of the Clean Water Act and its amendments, federal courts generally defer to the EPA's statutory construction if the disputed portion of the statute is ambiguous. (See *Chevron U.S.A. v. Natural Res. Def. Council, Inc.* (1984) 467 U.S. 837, 842–844, 104 S.Ct. 2778, 81 L.Ed.2d 694 (*Chevron*).) However, the parties do not argue this same principle applies to a *state agency's* interpretation of the Clean Water Act. Nonetheless, under governing state law principles, we do consider and give due deference to the Water Boards' statutory interpretations in this case. (See *Yamaha Corp. of America v. State Bd. of Equalization, supra,* 19 Cal.4th at pp. 7–8, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

10 These challenged Permit provisions state "Discharges from [storm sewers] which cause or contribute to exceedances of receiving water quality objectives for surface water or groundwater are prohibited" (Permit, § A.2), and "Discharges from [storm sewers] that cause or contribute to the violation of water quality standards ... are prohibited" (Permit, § C.1).

11 We agree with Building Industry that the trial court's refusal to consider this legislative history on the basis that it was not presented to the administrative agencies was improper. However, this error was not prejudicial because we apply a de novo review standard in interpreting the relevant statutes.

12 In the cited remarks, Senator Durenberger in fact expressed his dissatisfaction with the EPA's prior attempts to regulate municipal storm sewers. He pointed out, for example, that "[r]unoff from municipal separate storm sewers and industrial sites contain significant values of both toxic and conventional pollutants," and that despite the Clean Water Act's "clear directive," the EPA "has failed to require most stormwater point sources to apply for permits which would control the pollutants in their discharge." (133 Cong. Rec. 1274, 1279–1280 (daily ed. Jan. 14, 1987).)

13 Building Industry's reliance on two other Ninth Circuit decisions to support a contrary statutory interpretation is misplaced. (See *Natural Res. Def. Council, Inc. v. U.S.E.P.A., supra,* 966 F.2d at p. 1308; *Environmental Defense Center, Inc. v. U.S. E.P.A.* (9th Cir.2003) 344 F.3d 832.) Neither of these decisions addressed the issue of the scope of a regulatory agency's authority to exceed the maximum extent practicable standard in issuing NPDES permits for municipal storm sewers.

14 Because we are not presented with a proper appellate challenge, we do not address the trial court's factual determinations in this case concerning whether it is possible or practical for a Municipality to achieve any specific Permit requirement.

15 The Clean Water Act allows a citizen to sue a discharger to enforce limits contained in NPDES permits, but requires the citizen to notify the alleged violator, the state, and the EPA of its intention to sue at least 60 days before filing suit, and limits the enforcement to nondiscretionary agency acts. (See § 1365(a)(1)(2).)

* See footnote 1, *ante*.

190 Cal.App.3d 521, 234 Cal.Rptr. 795

CARMEL VALLEY FIRE PROTECTION DISTRICT et al., Plaintiffs and Respondents,
v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants.
RINCON DEL DIABLO MUNICIPAL WATER DISTRICT et al., Plaintiffs and Respondents,
v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants.
COUNTY OF LOS ANGELES, Plaintiff and Respondent,
v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants.

No. B006078., No. B011941., No. B011942.
Court of Appeal, Second District, Division 5, California.
Feb 19, 1987.

SUMMARY

The trial court, in separate proceedings brought by three counties against the state for reimbursement of funds expended by the counties in complying with a state order to provide protective clothing and equipment for county fire fighters, issued writs of mandate compelling the state to reimburse the counties. Previously, the counties had filed test claims with the State Board of Control for reimbursement of similar expenses. The board determined that there was a state mandate and the counties should be reimbursed. The state did not seek judicial review of the board's decision. Thereafter, a local government claims bill, Sen. Bill No. 1261 (Stats. 1981, ch. 1090, p. 4191) was introduced to provide appropriations to pay some of the counties' claims for the state-mandated costs. After various amendments, the legislation was enacted into law without the appropriations. The counties then sought reimbursement by filing petitions for writs of mandate and complaints for declaratory relief. (Superior Court of Los Angeles County, No. C437471, Norman L. Epstein, Judge; No. C514623 and No. C515319, Jack T. Ryburn, Judge.)

In a consolidated appeal, the Court of Appeal affirmed with certain modifications. It held that, by failing to seek judicial review of the board's decision, the state had waived its right to contest the board's finding that the counties' expenditures were state mandated. Similarly, it held that the state was collaterally estopped from attacking the board's findings. It also held that the executive orders requiring the expenditures constituted the type of "program" that is subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6. The court also held that the trial courts had not ordered an appropriation in violation of the separation of powers doctrine, and that the trial courts correctly determined that certain legislative disclaimers, findings, and budget control language did not exonerate the state from its constitutionally and statutorily imposed obligation to reimburse the counties' state-mandated costs. Further, the court held that the trial courts properly authorized the counties to satisfy their claims by offsetting fines and forfeitures due to the state, and that the counties were entitled to interest. (Opinion by Eagleson, J., with Ashby, Acting P. J., and Hastings, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

([1a], [1b])
Estoppel and Waiver § 23--Waiver--Trial and Appeal--Failure to Seek Judicial Review of Administrative Decision--Waiver of Right to Contest Findings.
In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state waived its right to contest findings made by the State Board of Control in a previous proceeding. The board found that the costs were state-mandated and that the county was entitled to reimbursement. The state failed to seek judicial review of the board's decision, and the statute of limitations applicable to such review had passed. Moreover, the state, through its agents, had acquiesced in the board's findings by seeking an appropriation to satisfy the validated claims, which, however, was rebuffed by the Legislature.

([2])
Estoppel and Waiver § 19--Waiver--Requisites.

Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has been waived. A right that is waived is lost forever. The doctrine of waiver applies to rights and privileges afforded by statute.

[See **Cal.Jur.3d,** Estoppel and Waiver § 21; **Am.Jur.2d,** Estoppel and Waiver § 154.]

([3a], [3b], 3c, [3d])
Judgments § 81--Res Judicata--Collateral Estoppel--County's Action for Reimbursement of State-mandated Costs--Findings of State Board of Control.
In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state was collaterally estopped from attacking the findings made, in a previous proceeding, by the State Board of Control that the costs were state-mandated and that the county was entitled to reimbursement. The issues were fully litigated before the board. Similarly, although the state was not a party to the board hearings, it was in privity with those state agencies which did participate. Moreover, a determination of conclusiveness would not work an injustice.

([4])
Judgments § 81--Res Judicata--Collateral Estoppel--Elements.
In order for the doctrine of collateral estoppel to apply, the issues in the two proceedings must be the same, the prior proceeding must have resulted in a final judgment on the merits, and the parties or their privies must be involved.

([5])
Judgments § 84--Res Judicata--Collateral Estoppel--Identity of Parties--Privity--Governmental Agents.
The agents of the same government are in privity with each other for purposes of collateral estoppel, since they represent not their own rights but the right of the government.

([6])
Judgments § 96--Res Judicata--Collateral Estoppel--Matters Concluded-- Questions of Law.
A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice.

([7])
State of California § 11--Fiscal Matters--Reimbursement to County for State-mandated Costs--New Programs.
A "new program," for purposes of determining whether the program is subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6, is one which carries out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

([8])
State of California § 7--Actions--Reimbursement of County Funds for State-mandated Costs--New Programs.
In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with state executive orders to provide protective clothing and equipment to county fire fighters, the trial court properly determined that the executive orders constituted the type of "new program" that was subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6. Fire protection is a peculiarly governmental function. Also, the executive orders manifest a state policy to provide updated equipment to all fire fighters, impose unique requirements on local governments, and do not apply generally to all residents and entities in the state, but only to those involved in fire fighting.

([9])
Constitutional Law § 37--Doctrine of Separation of Powers--Violations of Doctrine--Judicial Order of Appropriation.
In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court's judgment granting the writ was not in violation of the separation of powers doctrine. The court order did not directly compel the Legislature to appropriate funds or to pay funds not yet appropriated, but merely affected an existing appropriation.

([10])
Constitutional Law § 40--Distribution of Governmental Powers--Between Branches of Government--Judicial

Power and Its Limits--Order Directing Treasurer to Pay on Already Appropriated Funds.
Once funds have been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures from such funds. Thus, a judgment which ordered the State Controller to draw warrants and directed the State Treasurer to pay on already-appropriated funds permissibly compelled performance of a ministerial duty.

([11])
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to County for State-mandated Costs.
Appropriations affected by a court order need not specifically refer to the particular expenditure in question in order to be available. Thus, in a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds appropriated for the Department of Industrial Relations for the prevention of industrial injuries and deaths of state workers were available for reimbursement, despite the fact that the funds were not specifically appropriated for reimbursement. The funds were generally related to the nature of costs incurred by the county.

([12a], [12b])
Fires and Fire Districts § 2--Statutes and Ordinances--County Compliance With State Executive Order to Provide Protective Equipment--Federal Mandate.
A county's purchase of protective clothing and equipment for its fire fighters was not the result of a federally mandated program so as to relieve the state of its obligation (Cal. Const., art. XIII B, § 6) to reimburse the county for the cost of the purchases. The county had made the purchase in compliance with a state executive order. The federal government does not have jurisdiction over local fire departments and there are no applicable federal standards for local government structural fire fighting clothing and equipment. Hence, the county's obedience to the state executive orders was not federally mandated.

([13])
Statutes § 20--Construction--Judicial Function--Legislative Declarations.
The interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility.

([14a], [14b])
Statutes § 10--Title and Subject Matter--Single Subject Rule.
In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters (Cal. Admin. Code, tit. 8, §§ 3401-3409), the trial court properly invalidated, as violating the single subject rule, the budget control language of Stats. 1981, ch. 1090, § 3. The express purpose of ch. 1090 was to increase funds available for reimbursing certain claims. The budget control language, on the other hand, purported to make the reimbursement provisions of Rev. & Tax. Code, § 2207, and former Rev. & Tax. Code, § 2231, unavailable to the county. Because the budget control language did not reasonably relate to the bill's stated purpose, it was invalid.

([15])
Statutes § 10--Title and Subject Matter--Single Subject Rule.
The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in a statute's title. The rule's primary purpose is to prevent "logrolling" in the enactment of laws, which occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which might otherwise not have passed had the legislative mind been directed to them. However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose.

([16])
Statutes § 5--Operation and Effect--Retroactivity--Reimbursement to County for State-mandated Costs.
The budget control language of Stats. 1981, ch. 1090, § 3, which purported to make the reimbursement provisions of Rev. & Tax. Code, § 2207 and former Rev. & Tax. Code, § 2231, unavailable to a county seeking reimbursement (Cal. Const., art. XIII B, § 6) for expenditures made in purchasing state-required protective clothing and equipment for county fire fighters (Cal. Admin. Code, tit. 8, §§ 3401-3409), was invalid as a retroactive disclaimer of the county's right to reimbursement for debts incurred in prior years.

([17])
State of California § 13--Fiscal Matters--Limitations on Disposal-- Reimbursement to Counties for State-mandated Costs.
The budget control language of § 28.40 of the 1981 Budget Act and § 26.00 of the 1983 and 1984 Budget Acts did not exonerate the state from its constitutional and statutory obligations to reimburse a county for the expenses incurred in complying with a state mandate to purchase protective clothing and equipment for county fire fighters. The language was invalid in that it violated the single subject rule, attempted to amend existing statutory law, and was unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget.

([18])
Constitutional Law § 4--Legislative Power to Create Workers' Compensation System--Effect on County's Right to Reimbursement.
Cal. Const., art. XIV, § 4, which vests the Legislature with unlimited plenary power to create and enforce a complete workers' compensation system, does not affect a county's right to state reimbursement for costs incurred in complying with state-mandated safety orders.

([19])
Constitutional Law § 7--Mandatory, Directory, and Self-executing Provisions--Subvention Provisions--County Reimbursement for State-mandated Costs.
The subvention provisions of Cal. Const., art. XIII B, § 6, operate so as to require the state to reimburse counties for state-mandated costs incurred between January 1, 1975, and June 30, 1980. The amendment, which became effective on July 1, 1980, provided that the Legislature "may, but need not," provide reimbursement for mandates enacted before January 1, 1975. Nevertheless, the Legislature must reimburse mandates passed after that date, even though the state did not have to begin reimbursement until the effective date of the amendment.

([20])
Mandamus and Prohibition § 5--Mandamus--Conditions Affecting Issuance--Exhaustion of Administrative Remedies--County Reimbursement for State-mandated Costs.
A county's right of action in traditional mandamus to compel reimbursement for state-mandated costs did not accrue until the county had exhausted its administrative remedies. The exhaustion of remedies occurred when it became unmistakably clear that the legislative process was complete and that the state had breached its duty to reimburse the county.

([21])
Mandamus and Prohibition § 13--Mandamus--Conditions Affecting Issuance--Existence and Adequacy of Other Remedy.
A party seeking relief by mandamus is not required to exhaust a remedy that was not in existence at the time the action was filed.

([22a], [22b])
State of California § 7--Actions--Reimbursement to County for State-mandated Costs--County's Right to Offset Fines and Forfeitures Due to State.
In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment for county fire fighters, the trial court did not err in authorizing the county to satisfy its claims by offsetting fines and forfeitures due to the state. The order did not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters.

([23])
Equity § 5--Scope and Types of Relief--Offset.
The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike or balance, holding himself owing or entitled only to the net difference. Although this doctrine exists independent of statute, its governing principle has been partially codified in Code Civ. Proc., § 431.70 (limited to cross-demands for money).

([24])
State of California § 7--Actions--Reimbursement to County for State-mandated Costs--State's Use of Statutory Offset Authority.
In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court did not err in enjoining the exercise of the state's statutory offset authority (Gov. Code, § 12419.5) until the county was fully reimbursed. In view of the state's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating the county's collection efforts from occurring.

([25])
State of California § 7--Actions--Reimbursement to County for State-mandated Costs--State's Right to Revert or Dissipate Undistributed Appropriations.
In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court properly enjoined, and was not precluded by Gov. Code, § 16304.1, from enjoining, the state from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy the court's judgment in favor of the county.

([26])
Parties § 2--Indispensable Parties--County Auditor Controller--County Action to Collect Reimbursement From State.
In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the county auditor-controller was not an indispensable party whose absence would result in a loss of the trial court's jurisdiction. The auditor-controller was an officer of the county and was subject to the direction and control of the county board of supervisors. He was indirectly represented in the proceedings because his principal, the county, was the party litigant. Additionally, he claimed no personal interest in the action and his pro forma absence in no way impeded complete relief

([27])
Parties § 2--Indispensable Parties--Fines and Forfeitures--County Action to Collect Reimbursement From State.
In an action brought by a county for a writ of mandate to compel reimbursement by the state for costs expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds created by the collected fines and forfeitures which the county was allowed to offset to satisfy its claims against the state were not "indispensable parties" to the litigation. The action was not an in rem proceeding, and the ownership of a particular stake was not in dispute. Complete relief could be afforded without including the specified funds as a party.

([28])
Interest § 4--Interest on Judgments--County Action for Reimbursement of State-mandated Costs--State Reliance on Invalid Statute.
An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest on damages under Civ. Code, § 3287, subd. (a). Thus, in an action brought by a county for writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state could not avoid its obligation to pay interest on the funds by relying on invalid budget control language which purported to restrict payment on reimbursement claims.

([29])
Appellate Review § 127--Review--Scope and Extent--Interpretation of Statutes.
An appellate court is not limited by the interpretation of statutes given by the trial court.

([30])
Appellate Review § 162--Determination of Disposition of Cause-- Modification--Action Against State--Appropriation.
In an action against the state, an appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts.

COUNSEL
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De Witt Clinton, County Counsel, Amanda F. Susskind, Deputy County Counsel, Ross & Scott, William D. Ross and Diana P. Scott, for Plaintiffs and Respondents.

EAGLESON, J.

These consolidated appeals arise from three separate trial court proceedings concerning the heretofore unsuccessful efforts of various local agencies to secure reimbursement of state-mandated costs.

Case No. 2d Civ. B006078 (Carmel Valley et al. case) was the first matter decided by the trial court. The memorandum of decision in that case was judicially noticed by the trial court which heard the consolidated matters in 2d Civ. B011941 (Rincon et al. case) and 2d Civ. B011942 (County of Los Angeles case). Issues common to all three cases will be discussed together ***530** under the County of Los Angeles appeal, while issues

unique to the other two appeals will be considered separately.

We identify the parties to the various proceedings in footnote 1.[1] For literary convenience, however, we will refer to all appellants as the State and all respondents as the County unless otherwise indicated.

Appeal In Case No. 2 Civil B011942

(County of Los Angeles Case)

Facts and Procedural History

County employs fire fighters for whom it purchased protective clothing and equipment, as required by title 8, California Administrative Code, sections 3401-3409, enacted in 1978 (executive orders). County argues that it is entitled to State reimbursement for these expenditures because they constitute a state-mandated "new program" or "higher level of service." County relies on Revenue and Taxation Code section 2207[2] and former ***531** section 2231,[3] and California Constitution, article XIII B, section 6[4] to support its claim.

County filed a test claim with the State Board of Control (Board) for these costs incurred during fiscal years 1978-1979 and 1979-1980.[5] After hearings were held on the matter, the Board determined on November 20, 1979, that there was a state mandate and that County should be reimbursed. State did not seek judicial review of this quasi-judicial decision of the Board.

Thereafter, a local government claims bill, Senate Bill Number 1261 (Stats. 1981, ch. 1090, p. 4191) (S.B. 1261) was introduced to provide appropriations to pay some of County's claims for these state-mandated costs. This bill was amended by the Legislature to delete all appropriations for the payment of these claims. Other claims of County not provided for in S.B. 1261 were contained in another local government claims bill, Assembly Bill Number 171 (Stats. 1982, ch. 28, p. 51) (A.B. 171). The appropriations in this bill were deleted by the Governor. Both pieces of legislation, sans appropriations, were enacted into law.[6]

On September 21, 1984, following these legislative rebuffs, County sought reimbursement by filing a petition for writ of mandate (Code Civ. Proc., § 1085) and complaint for declaratory relief. After appropriate responses were filed and a hearing was held, the court executed a judgment on February 6, 1985, granting a peremptory writ of mandate. A writ of mandate was issued and other findings and orders made. It is from this judgment of ***532** February 6, 1985, that State appeals. The relevant portions of the judgment are set forth verbatim below.[7] ***533**

Contentions

State advances two basic contentions. It first asserts that the costs incurred by County are not state mandated because they are not the result of a "new program," and do not provide a "higher level of service." Either or both of these requirements are the sine qua non of reimbursement. Second, assuming a "new program" or "higher level of service" exists, portions of the trial court order aimed at assisting the reimbursement process were made in excess of the court's jurisdiction.

These contentions are without merit. We modify and affirm all three judgments.

Discussion

I

Issue of State Mandate

The threshold question is whether County's expenditures are state mandated. The right to reimbursement is triggered when the local agency incurs "costs mandated by the state" in either complying with a "new program" or providing "an increased level of service of an existing program."[8] State advances many theories as to why the Board erred in concluding that these expenditures are state-mandated costs. One of these arguments is whether the executive orders are a "new program" as that phrase has been recently defined by our Supreme Court in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202]. ***534**

As we shall explain, State has waived its right to challenge the Board's findings and is also collaterally estopped from doing so. Additionally, although State is not similarly precluded from raising issues presented by the *State of California* case, we conclude that the executive orders are a "new program" within the meaning of article XIII B, section 6.

A. *Waiver*

([1a])We initially conclude that State has waived its right to contest the Board's findings. ([2])Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention

to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has has been waived. (*Medico-Dental etc. Co. v. Horton & Converse* (1942) 21 Cal.2d 411, 432 [132 P.2d 457]; *Loughan v. Harger-Haldeman* (1960) 184 Cal.App.2d 495, 502-503 [7 Cal.Rptr. 581].) A right that is waived is lost forever. (*L.A. City Sch. Dist. v. Landier Inv. Co.* (1960) 177 Cal.App.2d 744, 752 [2 Cal.Rptr. 662].) The doctrine of waiver applies to rights and privileges afforded by statute. (*People v. Murphy* (1962) 207 Cal.App.2d 885, 888 [24 Cal.Rptr. 803].)

([1b])State now contends to be an aggrieved party and seeks to dispute the Board's findings. However it failed to seek judicial review of that November 20, 1979 decision (Code Civ. Proc., § 1094.5) as authorized by former Revenue and Taxation Code section 2253.5. The three-year statute of limitations applicable to such review has long since passed. (*Green v. Obledo* (1981) 29 Cal.3d 126, 141, fn. 10 [172 Cal.Rptr. 206, 624 P.2d 256]; Code Civ. Proc., § 338, subd. 1.)

In addition, State, through its agents, acquiesced in the Board's findings by seeking an appropriation to satisfy the validated claims. (Former Rev. & Tax. Code, § 2255, subd. (a).) On September 30, 1981, S.B. 1261 became law. On February 12, 1982, A.B. 171 was enacted. Appropriations had been stripped from each bill. State did not then seek review of the Board determinations even though time remained before the three-year statutory period expired. This inaction is clearly inconsistent with any intent to contest the validity of the Board's decision and results in a waiver.

B. *Administrative Collateral Estoppel*

([3a])We next conclude that State is collaterally estopped from attacking the Board's findings. ([4])Traditionally, collateral estoppel has been applied to bar relitigation of an issue decided in a prior court proceeding. In order for the doctrine to apply, the issues in the two proceedings must ***535** be the same, the prior proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved. (*People v. Sims* (1982) 32 Cal.3d 468, 484 [186 Cal.Rptr. 77, 651 P.2d 321].)

The doctrine was extended in *Sims* to apply to a final adjudication of an administrative agency of statutory creation so as to preclude relitigation of the same issues in a subsequent criminal case. Our Supreme Court held that collateral estoppel applies to such prior adjudications where three requirements are met: (1) the administrative agency acted in a judicial capacity; (2) it resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims. (*Id.* at p. 479.) All of the elements of administrative collateral estoppel are present here.

([3b])The Board was created by the state Legislature to exercise quasi-judicial powers in adjudging the validity of claims against the State. (*County of Sacramento v. Loeb* (1984) 160 Cal.App.3d 446, 452 [206 Cal.Rptr. 626].) At the time of the hearings, the Board proceedings were the sole administrative remedy available to local agencies seeking reimbursement for state-mandated costs. (Former Rev. & Tax. Code, § 2250.) Board examiners had the power to administer oaths, examine witnesses, issue subpoenas, and receive evidence. (Gov. Code, § 13911.) The hearings were adversarial in nature and allowed for the presentation of evidence by the claimant, the Department of Finance, and any other affected agency. (Former Rev. & Tax. Code, § 2252.)

The record indicates that the state mandate issues in this case were fully litigated before the Board. A representative of the state Division of Occupational Safety and Health and the Department of Industrial Relations testified as to why County's costs were not state mandated. Representatives of the various claimant fire districts in turn offered testimony contradicting that view. The proceedings culminated in a verbatim transcript and a written statement of the basis for the Board's decision.

State complains, however, that some of the traditional elements of the collateral estoppel doctrine are missing. In particular, State argues that it was not a party to the Board hearings and was not in privity with those state agencies which did participate.

([5])"[T]he courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government. [Fn. omitted.]" (*Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382, 398 [29 Cal.Rptr. 657, 380 P.2d 97].) As we stated in our introduction of the parties in this case, the party ***536** known as "State" is merely a shorthand reference to the various state agencies and officials named as defendants below. Each of these defendants is an agent of the State of California and had a mutual interest in the Board proceedings. They are thus in privity with those state agencies which did participate below (e.g., Occupational Safety and Health Division).

It is also clear that even though the question of whether a cost is state mandated is one of law (*City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781 [200

Cal.Rptr. 642]), subsequent litigation on that issue is foreclosed here. ([6])A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 230 [123 Cal.Rptr. 1, 537 P.2d 1250]; *Beverly Hills Nat. Bank v. Glynn* (1971) 16 Cal.App.3d 274, 286-287 [93 Cal.Rptr. 907]; Rest.2d Judgments, § 28, p. 273.)[9]

([3d])Here, the basic issues of state mandate and the amount of reimbursement arose out of County's required compliance with the executive orders. In either forum-Board or court-the claims and the evidentiary and legal determination of their validity would be considered in similar fashion.

Furthermore, a determination of conclusiveness would not work an injustice. As we have noted, the Board was statutorily created to consider the validity of the various claims now being litigated. Processing of reimbursement claims in this manner was the only administrative remedy available to County. If we were to grant State's request and review the Board's determination de novo, we would, in any event, adhere to the well-settled principle of affording "great weight" to "the contemporaneous administrative construction of the enactment by those charged with its enforcement ...." (*Coca-Cola Co. v. State Bd. of Equalization* (1945) 25 Cal.2d 918, 921 [156 P.2d 1].)

There is no policy reason to limit the application of the collateral estoppel doctrine to successive court proceedings. In *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 679 [159 Cal.Rptr. 56], the doctrine was applied to bar relitigation in a subsequent civil proceeding of a zoning issue previously decided by a city board of permit appeals. We similarly hold that the questions of law decided by the Board are binding in all of the subsequent civil proceedings presented here. State therefore is collaterally ***537** estopped to raise the issues of state mandate and amount of reimbursement in this appeal.

C. *Executive Orders-A "New Program" Under Article XIII B, Section 6*

([7])The recent decision by our Supreme Court in *County of Los Angeles v. State of California, supra.*, 43 Cal.3d at p. 49 presents a new issue not previously considered by the Board or the trial court. That question is whether the executive orders constitute the type of "program" that is subject to the constitutional imperative of subvention under article XIII B, section 6.[10] We conclude that they are.

In *State of California*, the Court concluded that the term "program" has two alternative meanings: "programs that carry out the governmental function of providing services to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Id.* at p. 56, italics added.) Although only one of these findings is necessary to trigger reimbursement, both are present here.

([8])First, fire protection is a peculiarly governmental function. (*County of Sacramento v. Superior Court* (1972) 8 Cal.3d 479, 481 [105 Cal.Rptr. 374, 503 P.2d 1382].) "Police and fire protection are two of the most essential and basic functions of local government." (*Verreos v. City and County of San Francisco* (1976) 63 Cal.App.3d 86, 107 [133 Cal.Rptr. 649].) This classification is not weakened by State's assertion that there are private sector fire fighters who are also subject to the executive orders. Our record on this point is incomplete because the issue was not presented below. Nonetheless, we have no difficulty in concluding as a matter of judicial notice that the overwhelming number of fire fighters discharge a classical governmental function.[11] ***538**

The second, and alternative, prong of the *State of California* definition is also satisfied. The executive orders manifest a state policy to provide updated equipment to all fire fighters. Indeed, compliance with the executive orders is compulsory. The requirements imposed on local governments are also unique because fire fighting is overwhelmingly engaged in by local agencies. Finally, the orders do not apply generally to all residents and entities in the State but only to those involved in fire fighting.

These facts are distinguishable from those presented in *State of California*. There, the court held that a state-mandated increase in workers' compensation benefits did not require state subvention because the costs incurred by local agencies were only an incidental impact of laws that applied generally to all state residents and entities (i.e., to all workers and all governmental and nongovernmental employers). Governmental employers in that setting were indistinguishable from private employers who were obligated through insurance or direct payment to pay the statutory increases.

State of California only defined the scope of the word

"program" as used in California Constitution, article XIII B, section 6. We apply the same interpretation to former Revenue and Taxation Code section 2231 even though the statute was enacted much earlier. The pertinent language in the statute is identical to that found in the constitutional provision and no reason has been advanced to suggest that it should be construed differently. In any event, a different interpretation must fall before a constitutional provision of similar import. (*County of Los Angeles v. Payne* (1937) 8 Cal.2d 563, 574 [66 P.2d 658].)

II

Issue of Whether Court Orders Exceeded Its Jurisdiction

A. *The Court Has Not Ordered an Appropriation in Violation of the Separation of Powers Doctrine*

([9])State begins its general attack on the judgment by citing the longstanding principle that a court order which directly compels the Legislature to appropriate funds or to pay funds not yet appropriated violates the separation of powers doctrine. (Cal. Const., art. III, § 3; art. XVI, § 7; *Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935].)[12] State ***539** observes (and correctly so) that the relevant constitutional (art. XIII B, § 6) and statutory (Rev. & Tax. Code, § 2207 & former § 2231) provisions are not appropriations measures. (See *City of Sacramento v. California State Legislature* (1986) 187 Cal.App.3d 393, 398 [231 Cal.Rptr. 686].) Since State otherwise discerns no manifest legislative intent to appropriate funds to pay County's claims (*City & County of S. F. v. Kuchel* (1948) 32 Cal.2d 364, 366 [196 P.2d 545]), it concludes that the judgment unconstitutionally compels performance of a legislative act.

State further argues that the judiciary's ability to reach an existing agency-support appropriation (State Department of Industrial Relations) (fn. 7, ¶ 1, *ante*) has been approved in only two contexts. First, the court can order payment from an existing appropriation, the expenditure of which has been legislatively prohibited by an unconstitutional or unlawful restriction. (*Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852, 856 [183 Cal.Rptr. 475].) Second, once an adjudication has finally determined the rights of the parties, the court may compel satisfaction of the judgment from a current unexpended, unencumbered appropriation which administrative agencies routinely have used for the purpose in question. (*Mandel v. Myers, supra.*, 29 Cal.3d at p. 544.) State insists that these facts are not present here.

County rejoins that a writ of traditional mandate (Code Civ. Proc., § 1085) is the correct method of compelling State to perform a clear and present ministerial legal obligation. (*County of Sacramento v. Loeb, supra.*, 160 Cal.App.3d at pp. 451-452.) The ministerial obligation here is contained in California Constitution, article XIII B, section 6 and in Revenue and Taxation Code section 2207 and former section 2231. These provisions require State to reimburse local agencies for state-mandated costs.

We reject State's general characterization of the judgment by noting that it only affects an existing appropriation. It declares (fn. 7, ¶ 1, *ante*) that only funds already "*appropriated* by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund" shall be spent for reimbursement of County's state-mandated costs. (Italics added.) There is absolutely no language purporting to require the Legislature to enact appropriations or perform any other act that might violate separation of powers principles. ([10])By simply ordering the State Controller to draw warrants and directing the State Treasurer to pay on already appropriated funds (fn. 7, ¶ 2, *ante*), the judgment permissibly compels performance of a ministerial duty: "[O]nce funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures ***540** from such funds. [Citations.]" (*Mandel v. Myers, supra.*, 29 Cal.3d at p. 540.)

As we will discuss in further detail below, the subject funds (fn. 7, ¶ 1, *ante*) were saddled with an unconstitutional restriction (fn. 7, ¶ 7, *ante*). However, *Mandel* establishes that such a restriction does not necessarily infect the entire appropriation. There, the Legislature had improperly prohibited the use of budget funds to pay a court-ordered and administratively approved attorney's fees award. The court reasoned that as long as appropriated funds were "reasonably available for the expenditures in question, the separation of powers doctrine poses no barrier to a judicial order directing the payment of such funds." (*Id.* at p. 542.) The court went on to find that money in a general "operating expenses and equipment" fund was, by both the Budget Act's terms and prior administrative practice, reasonably available to pay the attorney's fees award.

Contrary to State's argument, *Mandel* does not require that past administrative practice support a judgment for reimbursement from an otherwise available appropriation. Although there was evidence of a prior administrative practice of paying counsel fees from funds in the

"operating expenses and equipment" budget, this fact was not the main predicate of the court's holding. Rather, the decisive factor was that the budget item in question functioned as a "catchall" appropriation in which funds were still reasonably available to satisfy the State's adjudicated debt. (*Id.* at pp. 543-544.)

Another illustration of this principle is found in *Serrano v. Priest* (1982) 131 Cal.App.3d 188 [182 Cal.Rptr. 387]. Plaintiffs in that case secured a judgment against the State of California for $800,000 in attorney's fees. The judgment was not paid, and subsequent proceedings were brought against State to satisfy the judgment. The trial court directed the State Controller to pay the $800,000 award, plus interest, from funds appropriated by the Legislature for "operating expenses and equipment" of the Department of Education, Superintendent of Public Instruction and State Board of Education. (*Id.* at p. 192.) This court affirmed that order even though there was no evidence that the agencies involved had ever paid court-ordered attorney's fees from that portion of the budget. Relying on *Mandel*, we concluded that funds were reasonably available from appropriations enacted in the Budget Act in effect at the time of the court's order, as well as from similar appropriations in subsequent budget acts.

([11])State also incorrectly asserts that the appropriations affected by the court's order must specifically refer to the particular expenditure in question in order to be available. This notion was summarily dismissed in *Mandel v. Myers, supra.*, 29 Cal.3d at pp. 543-544. Likewise, in *Committee to Defend* ***541** *Reproductive Rights v. Cory, supra.*, 132 Cal.App.3d at pp. 857-858, the court decreed that payments for Medi-Cal abortions could properly be ordered from monies appropriated for other Medi-Cal services, even though this use had been specifically prohibited by the Legislature.

Applying these various principles here, we note that the judgment (fn. 7, ¶ 2, *ante*) identified funds in account numbers 8350-001-001, 8350-001-452, 8350-001-453 and 8350-001-890 as being available for reimbursement. Within these 1984-1985 account appropriations for the Department of Industrial Relations were monies for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers. The evidence clearly showed that the remaining balances on hand would cover the cost of reimbursement. Since it is conceded that the fire fighting protective clothing and equipment in this case was purchased to prevent deaths and injuries to fire fighters, these funds, although not specifically appropriated for the reimbursement in question, were generally related to the nature of costs incurred by County and are therefore reasonably available for reimbursement.

B. *Legislative Disclaimers, Findings and Budget Control Language Are No Defense to Reimbursement*

As a general defense against the order to reimburse, State insists that the Legislature has itself concluded that the claimed costs are not reimbursable. This determination took the combined form of disclaimers, findings and budget control language. State interprets this self-serving legislation, as well as the legislative and gubernatorial deletions, as forever sweeping away State's obligation to reimburse the state-mandated costs at issue. Consequently, any order that ignores these restrictions on payment would amount to a court-ordered appropriation. As we shall conclude, these efforts are merely transparent attempts to do indirectly that which cannot lawfully be done directly.

The seminal legislation that gave rise to the 1978 executive orders was enacted by Statutes 1973, chapter 993, and is labeled the California Occupational Safety and Health Act (Cal/OSHA). It is modeled after federal law and is designed to assure safe working conditions for all California workers. A legislative disclaimer appearing in section 106 of that bill reads: "No appropriation is made by this act ... for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on ...." The stated reason for this decision not to appropriate was that the cost of implementing the act was "minimal on a statewide basis in relation to the effect on local tax rates." (Stats. 1973, ch. 993, § 106, p. 1954.) ***542**

Again, in 1974, the Legislature stated: "Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section, nor shall there be an appropriation made by this act, because the Legislature finds that this act and any executive regulations or safety orders issued pursuant thereto merely implement federal law and regulations." (Stats. 1974, ch. 1284, § 106, p. 2787.) This statute amended section 106 of Statutes 1973, chapter 993, and was a post facto change in the stated legislative rationale for not providing reimbursement.

Presumably because of the large number of reimbursement claims being filed, the Legislature subsequently used budget control language to confirm that compliance with the executive orders should not trigger reimbursement. Some of this legislation was effective September 30, 1981, as part of a local agency and school district reimbursement bill. The control

language provided that "[t]he Board of Control shall not accept, or submit to the Legislature, any more claims pursuant to ... Sections 3401 to 3409, inclusive, of Title 8 of the California Administrative Code." (Stats. 1981, ch. 1090, § 3, p. 4193.)[13]

Further control language was inserted in the 1981, 1983 and 1984 Budget Acts. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This language prohibits encumbering appropriations to reimburse costs incurred under the executive orders, except under certain limited circumstances.

([12a])State first challenges the trial court's finding that expenditures mandated by the executive orders were not the result of a federally mandated program (fn. 7, ¶ 8, *ante*), despite the legislative finding in Statutes 1974, chapter 1284, section 106. We agree with the court's decision that there was no federal mandate.

The significance of this no-federal-mandate finding is revealed by examining past changes in the statutory definition of state-mandated costs. As thoroughly discussed in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182, 196-197 [203 Cal.Rptr. 258] disapproved on other grounds in *County of Los Angeles v. State of California*, *supra*., 43 Cal.3d at p. 58, fn. 10, the concept of federally mandated costs has provided local agencies with a financial escape valve ever since passage of the "Property Tax Relief Act of 1972." (Stats. 1972, ch. 1406, § 1, p. 2931.) That act limited local governments' power to levy property taxes, while requiring that they be reimbursed by the State for providing compulsory increased levels of service or ***543** new programs. However, under Revenue and Taxation Code section 2271, "costs mandated by the federal government" were not subject to reimbursement and local governments were permitted to levy taxes in addition to the maximum property tax rate to pay such costs.

On November 6, 1979, the limitation on local government's ability to raise property taxes, and the duty of the State to reimburse for state-mandated costs, became a part of the California Constitution through the initiative process. Article XIII B, section 6, enacted at that time, directs state subvention similar in nature to that required by the preexisting provisions of Revenue and Taxation Code section 2207 and former section 2231. As a defense against this duty to reimburse local agencies, the Legislature began to insert disclaimers in bills which mandated costs on local agencies. It also amended Revenue and Taxation Code section 2206 to expand the definition of nonreimbursable "costs mandated by the federal government" to include the following: "costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state."

In applying this definition here, State offers nothing more than the bare legislative finding contained in Statutes 1974, chapter 1284, section 106. State contends that a federally mandated cost cannot, by definition, be a state-mandated cost. Therefore, if the cost is federally mandated, local agency reimbursement is not required. ([13])**(See fn. 14.)** Although State's argument is correct in the abstract, neither the facts nor federal law supports the underlying assumption that there is a federal mandate.[14]

([12b])Both the Board and the court had in evidence a letter from a responsible official of the federal Occupational Safety and Health Administration (OSHA). The letter emphasizes the independence of state and federal OSHA standards: "OSHA does not have jurisdiction over the fire departments of any political subdivision of a state whether the state has elected to have its own state plan under the OSHA act or not .... [¶] More specifically, in 1978, the State of California promulgated standards applicable to fire departments in California. Therefore, California standards, rather than ***544** federal OSHA standards, are applicable to fire departments in that state ...." This theme is also reflected in a section of OSHA which expressly disclaims jurisdiction over local agencies such as County. (29 U.S.C. § 652(5).) Accordingly, as a matter of law, there are no federal standards for local government structural fire fighting clothing and equipment.

In short, while the Legislature's enactment of Cal/OSHA to comply with federal OSHA standards is commendable, it certainly was not compelled. Consequently, County's obedience to the 1978 executive orders is not federally mandated.

([14a])The trial court also properly invalidated the budget control language in Statutes 1981, chapter 1090, section 3 (fn. 7, ¶ 7, *ante*) because it violated the single subject rule.[15] This legislative restriction purported to make the reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231 unavailable to County.

([15])The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in the statute's title. The rule's primary purpose is to prevent "log-rolling" in the enactment of laws. This disfavored practice occurs where

a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which otherwise might not have passed had the legislative mind been directed to them. (*Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, 1196 [219 Cal.Rptr. 664].) However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose. (*Metropolitan Water Dist. v. Marquardt* (1963) 59 Cal.2d 159, 172-173 [28 Cal.Rptr. 724, 379 P.2d 28].)

([14b])The stated purpose of chapter 1090 is to increase funds available for reimbursing certain claims. It describes itself as an "act making an appropriation to pay claims of local agencies and school districts for additional reimbursement for specified state-mandated local costs, awarded by the State Board of Control, and declaring the urgency thereof, to take effect immediately." (Stats. 1981, ch. 1090, p. 4191.) There is nothing in this introduction ***545** alerting the reader to the fact that the bill prohibits the Board from entertaining claims pursuant to the Cal/OSHA executive orders. The control language does not modify or repeal these orders, nor does it abrogate the necessity for County's continuing compliance therewith. It simply places County's claims reimbursement process in limbo.

This special appropriations bill is similar in kind to appropriations in an annual budget act. Observations that have been made in connection with the enactment of a budget bill are appropriate here. "[T]he annual budget bill is particularly susceptible to abuse of [the single subject] rule. 'History tells us that the general appropriation bill presents a special temptation for the attachment of riders. It is a necessary and often popular bill which is certain of passage. If a rider can be attached to it, the rider can be adopted on the merits of the general appropriation bill without having to depend on its own merits for adoption.' [Citation.]" (*Planned Parenthood Affiliates v. Swoap, supra.*, 173 Cal.App.3d at p. 1198.) Therefore, the annual budget bill must only concern the subject of appropriations to support the annual budget and may not constitutionally be used to substantively amend or change existing statutory law. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 394 [211 Cal.Rptr. 758, 696 P.2d 150].) We see no reason to apply a less stringent standard to a special appropriations bill. Because the language in chapter 1090 prohibiting the Board from processing claims does not reasonably relate to the bill's stated purpose, it is invalid.

([16])The budget control language in chapter 1090 is also invalid as a retroactive disclaimer of County's right to reimbursement for debts incurred in prior years. This legislative technique was condemned in *County of Sacramento v. Loeb, supra.*, 160 Cal.App.3d at p. 446. There, the Legislature had enacted a Government Code section which prohibited using appropriations for any purpose which had been denied by any formal action of the Legislature. The State attempted to use this code section to uphold a special appropriations bill which had deleted County's Board-approved claims for costs which were incurred prior to the enactment of the code section. The court held that the code section did not apply retroactively to defeat County's claims: "A retroactive statute is one which relates back to a previous transaction and gives that transaction a legal effect different from that which it had under the law when it occurred ... 'Absent some clear policy requiring the contrary, statutes modifying liability in civil cases are not to be construed retroactively."' (*Id.* at p. 459, quoting *Robinson v. Pediatric Affiliates Medical Group, Inc.* (1979) 98 Cal.App.3d 907, 912 [159 Cal.Rptr. 791].) Similarly, the control language in chapter 1090 does not apply retroactively to County's prior, Board-approved claims. ***546**

([17])Finally, the control language in section 28.40 of the 1981 Budget Act and section 26.00[16] of the 1983 and 1984 Budget Acts does not work to defeat County's claims. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This section is comprised of both substantive and procedural provisions. We are concerned primarily with those portions that purport to exonerate State from its constitutionally and statutorily imposed obligation to reimburse County's state-mandated costs.

The writ of mandate directed compliance with the procedural provisions of these sections and is not a point of dispute on appeal. Subsection (a) affords the Legislature one last opportunity to appropriate funds which are to be encumbered for the purpose of paying state-mandated costs, an invitation repeatedly rejected. Subsection (b) directs that the Department of Finance notify the chairpersons of the appropriate committees in each house and chairperson of the Joint Legislative Budget Committee of the need to encumber funds. Presumably, the objective of this procedure is to give the Legislature another opportunity to amend or repeal substantive legislation requiring local agencies to incur state-mandated costs. Again, the Legislature declined to

act. Legislative action pursuant to subsection (b) could arguably ameliorate the plight of local agencies prospectively, but would be of no practical assistance to a local agency creditor seeking reimbursement for costs already incurred.

The first portion of each section, however, imposes a budgetary restriction on encumbering appropriated funds to reimburse for state-mandated costs arising out of compliance with the executive orders, absent a specific appropriation pursuant to subparagraph (b). For the reasons stated above, this substantive language is invalid under the single subject rule. It attempts to amend existing statutory law and is unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget. (*Association for Retarded Citizens v. Department of Developmental Services, supra.*, 38 Cal.3d at p. 394.) Now unfettered by invalid restrictions, the appropriations involved in this case are reasonably available for reimbursement. ***547**

C. *The Legislature's Plenary Power to Regulate Worker Safety Does Not Affect the Right to Reimbursement*

([18])State contends that article XIV, section 4 of the California Constitution vests the Legislature with unlimited plenary power to create and enforce a complete workers' compensation system. It postulates that the Legislature may determine that the interest in worker safety and health is furthered by requiring local agencies to bear the costs of safety devices. This non sequitur is advanced without citation of authority.

Article XIV, section 4 concerns the power to enact workers' compensation statutes and regulations. It does not focus on the issue of reimbursement for state-mandated costs, which is covered by Revenue and Taxation Code section 2207 and former section 2231, and article XIII B, section 6. Since these latter provisions do not effect a pro tanto repeal of the Legislature's plenary power over workers' compensation law (see *County of Los Angeles v. State of California, supra.*, 43 Cal.3d 46), they do not conflict with article XIV, section 4.

Moreover, even though the reimbursement issue has come before the Legislature repeatedly since 1972, no law has been enacted to exempt compliance with workers' compensation executive orders from the mandatory reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231. Likewise, article XIII B, section 6 does not provide an exception to the obligation to reimburse local agencies for compliance with these safety orders.

D. *Pre-1980 Claims Are Reimbursable Under Article XIII B, Section 6, Effective July 1, 1980*

([19])State further argues that to the extent County's claims for fiscal years 1978-1979 and 1979-1980 are predicated on the subvention provisions of article XIII B, section 6, they fall within a "window period" of nonreimbursement. This assertion emanates from section 6, subdivision (c), which states that the Legislature "[m]ay, but need not," provide reimbursement for mandates enacted before January 1, 1975. State reasons that because the constitutional amendment did not become effective until July 1, 1980, claims for costs incurred between January 1, 1975 and June 30, 1980, need not be reimbursed.

This notion was rejected in *City of Sacramento v. State of California, supra.*, 156 Cal.App.3d at p. 182 on behalf of local agencies seeking reimbursement of unemployment insurance costs mandated by a 1978 statute. Basing its decision on well-settled principles of constitutional interpretation ***548** and upon a prior published opinion of the Attorney General, the court interpreted section 6, subdivision (c) as follows: "[T]he Legislature *may* reimburse mandates enacted prior to January 1, 1975, and *must* reimburse mandates passed after that date, but does not have to begin such reimbursement until the effective date of article XIII B (July 1, 1980)." (*Id.* at p. 191, italics in original.) In other words, the amendment operates on "window period" mandates even though the reimbursement process may not actually commence until later.

We agree with this reasoning and find costs incurred by County under the 1978 executive orders subject to reimbursement under the Constitution.

E. *Claims Under Revenue and Taxation Code Section 2207 and Former Section 2231 Are Not Time-barred*

([20])State collaterally asserts that to the extent County bases its claims on Revenue and Taxation Code section 2207 and former section 2231, they are barred by Code of Civil Procedure sections 335 and 338, subdivision 1. This omnibus challenge to the order directing payment has no merit.

Code of Civil Procedure section 335 is a general introductory section to the statute of limitations for all matters except recovery of real property. Code of Civil Procedure section 338, subdivision 1 requires "[a]n action upon a liability created by statute" to be commenced within three years.

A claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete. (*County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 77 [222 Cal.Rptr. 750].) Here, County pursued its remedy before the Board and prevailed. Thereafter, as required by law, appropriate legislation was introduced. Both the Board hearings and the subsequent efforts to secure legislative appropriations were part of the legislative process. (Former Rev. & Tax. Code, § 2255, subd. (a).) It was not until the legislation was enacted sans appropriations on September 30, 1981 (S.B. 1261) and February 12, 1982 (A.B. 171) that it became unmistakably clear that this process had ended and State had breached its duty to reimburse. At these respective moments of breach, County's right of action in traditional mandamus accrued. County's petition was filed on September 21, 1984, within the three-year statutory period.[17] (*Lerner v. Los Angeles City Board of Education, supra.*, 59 Cal.2d at p. 398.) ***549**

F. *Government Code Section 17612's Remedy for Unfunded Mandates Does Not Supplant the Court's Order*

State continues its general attack on the order directing payment by arguing that the Legislature has "defined" the remedy available to a local agency if a mandate is unfunded. That remedy is found in Government Code section 17612, subdivision (b) and reads: "If the Legislature deletes from a local government claims bill funding for a mandate, the local agency ... *may* file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Italics added.) (See also former Rev. & Tax. Code, § 2255, subd. (c), eff. Oct. 1, 1982.)

State hints that this procedure is the only remedy available to a local agency if funding is not provided. At oral argument, State admitted that this declaration of enforceability and injunction against enforcement would be prospective only. This remedy would provide no relief to local agencies which have complied with the executive orders.

We conclude that Government Code section 17612, subdivision (b) is inapplicable here because it did not become operative until January 1, 1985. It was not in place when the Board rendered its decision on November 20, 1979; when funding was deleted from S.B. 1261 (Sept. 30, 1981) and A.B. 171 (Feb. 12, 1982); or when this litigation commenced on September 21, 1984. ([21])A party is not required to exhaust a remedy that was not in existence at the time the action was filed. (*Ross v. Superior Court* (1977) 19 Cal.3d 899, 912, fn. 9 [141 Cal.Rptr. 133, 569 P.2d 727].) To abide by this post facto legislation now would condone legislative interference in a specific controversy already assigned to the judicial branch for resolution. (*Serrano v. Priest, supra.*, 131 Cal.App.3d at p. 201.)

Also, this remedy is purely a discretionary course of action. By using the permissive word "may," the Legislature did not intend to override article XIII B, section 6 and Revenue and Taxation Code section 2207 and former section 2231. These constitutional and statutory imprimaturs each impose upon the State an obligation to reimburse for state-mandated costs. Once that determination is finally made, the State is under a clear and present ministerial duty to reimburse. In the absence of compliance, traditional mandamus lies. (Code Civ. Proc., § 1085.)[18] ***550**

G. *The Court's Order Properly Allows County the Right of Offset*

([22a])As the first in a series of objections to portions of the judgment which assist in the reimbursement process, State argues that the court has improperly authorized County to satisfy its claims by offsetting fines and forfeitures due to State. (Fn. 7, ¶ 5, *ante*.) The fines and forfeitures are those found in Penal Code sections 1463.02, 1463.03, 1463.5a and 1464; Government Code sections 13967, 26822.3 and 72056; Fish and Game Code section 13100; Health and Safety Code section 11502; and Vehicle Code sections 1660.7, 42004 and 41103.5.[19]

Broadly speaking, these statutes require County to periodically transfer all or part of the fines and forfeitures collected by it for specified law violations to the State Treasury. They are to be held there "to the credit" of various state agencies, or for payment into specific funds. State contends that since these statutes require mandatory, regular transfers and do not expressly permit diversion for other purposes, the court had no power to allow County to offset. State cites no authority for this contention.

([23])The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike a balance, holding himself owing or entitled only to the net difference. (*Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352, 362 [113 Cal.Rptr. 449, 521 P.2d 441, 65 A.L.R.3d 1266].) Although this doctrine exists independent of statute, its governing principle has been partially codified (Code Civ. Proc., § 431.70) (limited to cross-demands for money).

The doctrine has been applied in favor of a local agency against the State. In *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576[159 Cal.Rptr.1], for example, the court of appeal upheld a trial court's decision to grant a writ of mandate that ordered funds awarded the County under a favorable judgment to be offset against its current liabilities to the State under the Medi-Cal program. The court stated that such an order does not interfere with the "Legislature's control over the 'submission, approval and enforcement of budgets....'" (*Id.* at p. 592, quoting Cal. Const., art. IV, § 12, subd. (e).)

([22b])The order herein likewise does not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters. The identified ***551** fines and forfeitures are collected by the County for statutory law violations. Some of these funds remain with the County, while others are transferred to the State. State's portions are uncertain as to amount and date of transfer. State does not come into actual possession of these funds until they are transferred. State's holding of these funds "to the credit" of a particular agency, or for payment to a specific fund, does not commence until their receipt. Until that time, they are unencumbered, unrestricted and subject to offset.

H. *State's Use of its Statutory Offset Authority Was Properly Enjoined*

([24])State further contends that the trial court exceeded its jurisdiction by enjoining the exercise of State's statutory offset authority until County is fully reimbursed. (Fn. 7, ¶ 11, *ante*.)[20] This order complemented that portion of the order discussed, *infra.*, which allowed County to temporarily offset fines and forfeitures as an aid in the reimbursement process.

State correctly observes that it has not unlawfully used its offset authority during the course of this dispute. However, State has not needed to do so because it has adopted other means of avoiding payment on County's claims. In view of State's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating County's collection efforts from occurring. (See *County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568 [200 Cal.Rptr. 394].)

I. *The Injunction Against Reversion or Dissipation of Undisbursed Appropriations Is Proper*

([25])State continues that the order (fn. 7, ¶ 4, *ante*) enjoining it from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy this court's judgment, violates Government Code section 16304.1.[21] This section reverts undisbursed ***552** balances in any appropriation to the fund from which the appropriation was made. No authority is cited for State's proposition. To the contrary, *County of Sacramento v. Loeb*, *supra.*, 160 Cal.App.3d at pp. 456-457 expressly confirms this type of ancillary remedy as a legitimate exercise of the court's authority to assist in collecting on an adjudicated debt, the payment of which has been delayed all too long.

That portion of the order restraining reversion is particularly innocuous because it only affects undisbursed balances in an appropriation. At the time of reversion, it is crystal clear that these remaining funds are unneeded for the primary purpose for which appropriated; otherwise, they would not exist. Moreover, that portion of the order restraining dissipation of the reimbursement award sum in a manner that would make it unavailable to satisfy a court's judgment is similarly a proper exercise of the court's authority. By not reimbursing County for the state-mandated costs, State would be contravening its constitutional and statutory obligations to subvent. To the extent it is not reimbursed, County would be compelled, contrary to law, to bear the cost of complying with a state-imposed obligation.

J. *The Auditor Controller and the Specified Funds Are Not Indispensable Parties*

([26], [27])State next contends that the Auditor Controller of Los Angeles County and the "specified" fines and forfeitures County was allowed to offset are indispensable parties. Failure to join them in the action or to serve them with process purportedly renders the trial court's order void as in excess of its jurisdiction.[22] State cites only the general statutory definition of an indispensable party (Code Civ. Proc., § 389) to support this assertion.

The Auditor Controller is an officer of the County and is subject to the ***553** direction and control of the County board of supervisors. (Gov. Code, § 24000, subds. (d), (e), 26880; L.A. County Code, § 2.10.010.) He is indirectly represented in these proceedings because his principal, the County, is the party litigant. Additionally, he claims no personal interest in the fines and forfeitures and his pro forma absence in no way impedes complete relief.

The funds created by the collected fines and forfeitures also are not indispensable parties. This is not an in rem proceeding, and the ownership of a particular stake is not

in dispute. Rather, this is an action to compel a ministerial obligation imposed by law. Complete relief may be afforded without including the specified funds as a party.

K. *County is Entitled to Interest*

([28])State insists that an award of interest to County unfairly penalizes State for not paying claims which it was prohibited by law from paying under Statutes 1981, chapter 1090, section 3. This argument is unavailing.

Civil Code section 3287, subdivision (a) allows interest to any person "entitled to recover damages certain, or capable of being made certain by calculation...." Interest begins on the day that the right to recover vests in the claimant. By its own terms, this section applies to any judgment debtor, "including the state...or any political subdivision of the state."

The judgment orders interest at the legal rate from September 30, 1981, for reimbursement funds originally contained in S.B. 1261, and from February 12, 1982, for the funds originally contained in A.B. 171. These are the respective dates that the bills were enacted without appropriations. As we concluded earlier, County's cause of action did not arise and its right to recover did not vest until this legislative process was complete. County offers no authority to suggest that any other vesting date is appropriate.

Furthermore, State cannot avoid its obligation to pay interest by relying on the invalid budget control language in Statutes 1981, chapter 1090, section 3. "An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest under Civil Code section 3287, subdivision (a)." (*Olson v. Cory* (1983) 35 Cal.3d 390, 404 [197 Cal.Rptr. 843, 673 P.2d 720].)

Appeal in Case No. 2 Civil B011941

(Rincon et al. Case)

The procedural history and legal issues raised in the *Rincon et al.* appeal are essentially similar to those discussed in the County of Los Angeles matter. ***554**

County, although not a party to this underlying trial court proceeding, filed a test claim with the Board. All parties agree that County represented the interests of the named respondents here.

The Board action resulted in a finding of state-mandated costs. It further found that Rincon et al. were entitled to reimbursement in the amount of $39,432. After the Legislature and the Governor, respectively, deleted the funding from the two appropriations bills, S.B. 1261 and A.B. 171, Rincon et al. filed a petition for writ of mandate and declaratory relief. This action was consolidated for hearing in the trial court with the action in B011942 (County of Los Angeles matter). The within judgment was also signed, filed and entered on February 6, 1985. The reimbursement order was directed against the 1984-1985 budget appropriations. State appeals from that judgment.

The court here included a judicial determination that the Board, or its successors, hear and approve the claims of certain other respondents for costs incurred in connection with the state-mandated program. (Fn. 7, ¶ 9, *ante*.) This special directive was necessary because the claims of these respondents (petitioners below) have not yet been determined.[23] Since we have ruled that State is barred by the doctrines of waiver and administrative collateral estoppel from raising the state mandate issue, the validity of these claims becomes a question of law susceptible to but one conclusion, and mandamus properly lies. (*County of Sacramento v. Loeb, supra.*, 160 Cal.App.3d at p. 453.) This portion of the order also underscores, for the Board's edification, the determination that the statutory restriction on the Board authority to proceed is invalid.[24]

Once again, our determinations and conclusions in the County of Los Angeles matter are equally applicable here.

Appeal in Case No. 2 Civil B006078

(Carmel Valley et al.)

Again, the procedural history and legal issues raised in this appeal are essentially similar to those discussed in the County of Los Angeles matter.

County filed a test claim with the Board. All parties agree that the County represented the interests of the named respondents here. ***555**

On December 17, 1980, the Board found that a state mandate existed and that specific amounts of reimbursement were due several respondents totalling $159,663.80. Following the refusal of the Legislature to appropriate funds for reimbursement, Carmel Valley et al. filed a petition for writ of mandate and declaratory relief on January 3, 1983. Judgment was entered on May 23, 1984. The reimbursement order was directed against 1983-1984 budget appropriations.

The judgment differs from the other two because it does

not decree a specific reimbursement amount. The trial court determined that even though the Board had approved the claims, the State was not precluded from contesting that determination. The court's reasons were that the State, in its answer, had denied that the money claimed was actually spent, and that Board approval had not been implemented by subsequent legislation. The court concluded that the reimbursement process, of which the Board action was an intrinsic part, was "aborted."

We disagree with this portion of the court's analysis. The moment S.B. 1261 and A.B. 171 were enacted into law without appropriations, Carmel Valley et al. had exhausted their administrative remedies and were entitled to seek a writ of mandate. At the time of trial, State was barred by the doctrines of waiver and administrative collateral estoppel from contesting the state mandate issue or the amount of reimbursement. The trial court therefore should have rendered a judgment for the amount of reimbursement. Having failed to do so, this fact-finding responsibility falls upon this court. Although we ordinarily are not equipped to handle this function, the writ of mandate in this case identifies the amount of the approved claims as $159,663.80. We accordingly will amend the judgment to reflect that amount.

The trial court also predicated its judgment for Carmel Valley et al. solely on the basis of Revenue and Taxation Code section 2207 and former section 2231. In doing so, the court did not have the benefit of the decision in *City of Sacramento v. State of California*, *supra.*, 156 Cal.App.3d at p. 182.[25] That case held that mandates passed after January 1, 1975, must be reimbursed pursuant to article XIII B, section 6 of the California Constitution, but that reimbursement need not commence until July 1, 1980. In light of this rule, we conclude that the trial court's decision ordering reimbursement is also supported by article XIII B, section 6. ***556**

State raises another point specific to this particular appeal. In its answer to the writ petition, State admitted that the local agency expenditures were state mandated. Consequently, the issue was not contested at the trial court level. However, State vigorously contends here that it is not bound by its trial court admissions because the state mandate issue is purely a question of law.

([29])State is correct in contending that an appellate court is not limited by the interpretation of statutes given by the trial court. (*City of Merced v. State of California*, *supra.*, 153 Cal.App.3d at p. 781.) However, State's victory on this point is Pyrrhic. Regardless of how the issue is characterized, State is precluded from contesting the Board findings on appeal because of the independent application of the doctrines of waiver and administrative collateral estoppel. These doctrines would also have applied at the trial court level if State's answer had raised the issue of state mandate in the first instance.

We also reject State's argument, advanced for the first time on appeal, that the executive orders of 1978 initially implement legislation enacted prior to January 1, 1975, and that state reimbursement is therefore discretionary. (Cal. Const., art. XIII B, § 6, subd. (c).) Again, State is barred by the doctrines of waiver and administrative collateral estoppel from arguing that costs incurred under the executive orders are not subject to reimbursement.

State continues that the *Carmel Valley* judgment against the Department of Industrial Relations is erroneous. Since the department was never made a party in the suit, nor served with process, the resulting judgment reflects a denial of due process and is in excess of the court's jurisdiction. (See Code Civ. Proc., § 389; fn. 22, *ante*.)

This assertion is but a variant of the same argument advanced in the County of Los Angeles case, *supra.*, which we rejected as meritless. The department is part of the State of California. (Lab. Code, § 50.) State extensively argued the department's position and even offered into evidence a declaration from the chief of fiscal accounting of the department. As stated earlier, agents of the same government are in privity with each other. (*People v. Sims*, *supra.*, 32 Cal.3d at p. 487.)

Ross v. Superior Court, *supra.*, 19 Cal.3d at p. 899 demonstrates how, through the notion of privity, a government agent can be held in contempt for knowingly violating a court order issued against another agent of the same government. There, a court in an earlier proceeding had decided that defendant Department of Health and Welfare must pay unlawfully withheld welfare benefits to qualified recipients. The County Board of Supervisors, ***557** who were not parties to this action, knew about the court's order but refused to comply. The Supreme Court affirmed a trial court decision holding the Board in contempt for violating the order directing payment. The court reasoned that, as an agent of the Department of Health and Welfare, the Board did not collectively or individually need to be named as a party in order to be bound by a court order of which they had actual knowledge.

The determinations and conclusions in the County of Los Angeles case are likewise applicable here.

Modification of Judgments in All Three Appeals

The trial court judgments ordering reimbursement from specific account appropriations were entered many months ago. We will affirm these judgments and thereby validate the trial courts' determination that funds already appropriated for the State Department of Industrial Relations were reasonably available for payment at the time of the courts' orders.

Due to the passage of time, we requested State at oral argument to confirm whether the appropriations designated in the respective judgments are still available for encumbrance. State's counsel responded by rearguing that the weight of the evidence did not support the trial courts' findings that specific funds were reasonably available for reimbursement. Counsel further hinted that the funds may not actually be available.

We hope that counsel for the State is mistaken. But in order to emphasize our strong and unequivocal determination that the local agency petitioners be promptly reimbursed, we will take judicial notice of the enactment of the 1985-1986 Budget Act (Stats. 1985, ch. 111) and the 1986-1987 Budget Act (Stats. 1986, ch. 186). (*Serrano v. Priest, supra.*, 131 Cal.App.3d at p. 197.) Both acts appropriate money for the State Department of Industrial Relations and fund the identical account numbers referred to in the trial courts' judgments. They are:

Account Numbers	1985-1986 Budget Act	1986-1987 Budget Act
8350-001-001	$94,673,000	$106,153,000
8350-001-452	2,295,000	2,514,000
8350-001-453	2,859,000	2,935,000
8350-001-890	16,753,000	17,864,000

([30])An appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts. (*Serrano v. Priest, supra.*, 131 Cal.App.3d at pp. 198, 201.) We do so here with respect to all three judgments. ***558**

Disposition

2d Civ. B011942 (*County of Los Angeles Case*)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The words "Fish and Game Code Section 13100" are deleted from paragraph 5.

(3) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

***2d Civ. B011941* (*Rincon et al. Case*)**

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

***2d Civ. B006078* (*Carmel Valley et al. Case*)**

The judgment is modified as follows: ***559**

(1) The following sentences are added to paragraph 2: "The reimbursement amounts total $159,663.80. If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

Ashby, Acting P. J., and Hastings, J., concurred.

A petition for a rehearing was denied March 17, 1987, and appellant's petition for review by the Supreme Court was denied May 14, 1987. Eagleson, J., did not participate therein. ***560**

Footnotes

1 *2d Civ. B006078*: The petitioners below and respondents on appeal are Carmel Valley Fire Protection District, City of Anaheim, Aptos Fire Protection District, Citrus Heights Fire Protection District, Fair Haven Fire Protection District, City of Glendale, City of San Luis Obispo, County of Santa Barbara and Ventura County Fire Protection District.
The respondents below and appellants here are State of California, Kenneth Cory and Jesse Marvin Unruh.
2d Civ. B011941: The petitioners below and respondents on appeal are Rincon Del Diablo Municipal Water District, Twenty-Nine Palms Water District, Alpine Fire Protection District, Bonita-Sunnyside Fire Protection District, Encinitas Fire Protection District, Fallbrook Fire Protection District, City of San Luis Obispo, Montgomery Fire Protection District, San Marcos Fire Protection District, Spring Valley Fire Protection District, Vista Fire Protection District and City of Coronado.
Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, State Board of Control, Kenneth Cory, State Controller, Jesse Marvin Unruh, State Treasurer, and Mark H. Bloodgood, Auditor-Controller, County of Los Angeles.
2d Civ. B011942: The County of Los Angeles is the petitioner below and respondent on appeal. Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, Kenneth Cory, and Jesse Marvin Unruh.
All respondents on appeal are conceded to be "local agencies," as defined in Revenue and Taxation Code section 2211.

2 The pertinent parts of Revenue and Taxation Code section 2207 provide: " 'Costs mandated by the state' means any incureased costs which a local agency is required to incur as a result of the following" [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or a n incureased level of service of an existing program: [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program; [¶] (c) Any executive order isued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973 ..."

3 The pertinent parts of former Revenue and Taxation Code section 2231, subdivision (a) provide: "The state shall reimburse each local agency for all 'costs mandated by the state', as defined in Section 2207." This section was repealed (Stats. 1986, ch. 879, § 23), and replaced by Government Code section 17561. We will refer to the earlier code section.

4 The pertinent parts of section 6, article XIII B of the California Constitution, enacted by initiative measure, provide: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." This constitutional amendment became effective July 1, 1980.

5 County filed its test claim pursuant to former Revenue and Taxation Code section 2218, which was repealed by Statutes 1986, chapter 879, section 19.
Additionally, the Board is no longer in existence. The Commission on State Mandates has succeeded to these functions. (Gov. Code, §§ 17525, 17630.)

6 The final legislation did include appropriations for other local agencies on other types of approved claims.

7 "1. The Court adjudges and declares that funds appropriated by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund may properly be and should be spent for the reimbursement of state-mandated costs incurred by Petitioner as established in this action.
"2. A peremptory writ of mandamus shall issue under the seal of this Court, commanding Respondent State of California, through its Department of Finance, to give notification in writing as specified in Section 26.00 of the Budget Act of 1984 (Chapter 258, Statutes of 1984) of the necessity to encumber funds in conformity [with]this order and, unless the Legislature approves a bill that would enact a general law, within 30 days of said notification that would obviate the necessity of such payment, Respondent Kenn[e]th Cory, the State Controller of the State of California, or his successors in office, if any, shall draw warrants on funds appropriated for the State Department of Industrial Relations for the 1984-85 Budget Year in account numbers 8350-001-001, 8350-001-452, 8350-001-453, and 8350-001-890 as implemented in Chapter 258 Statutes of 1984, sufficient to satisfy the claims of Petitioner, plus interest, as set forth in the motion and accompanying writ of mandamus. Said writ shall also issue against Jessie [*sic*] Marvin Unruh, the State Treasurer of the State of California, and his successors in office, if any, commanding him to make payment on the warrants drawn by Respondent Kenneth Cory.
"3. Pending the final disposition of this proceeding, or the payment of the applicable reimbursement claims and interest as set forth herein, Respondents, and each of of [*sic*] them, their successors in office, agents, servants and employees and all persons acting in concert [or] participation with them, are hereby enjoined and restrained from directly or indirectly expending from the 1984-85 General Fund Budget of the State Department of Industrial Relations as is more particularly described in paragraph number 2 hereinabove, any sums greater than that which would leave in said budget at the conclusion of the 1984-85 fiscal year an amount less than the reimbursement amounts on the aggregate amount of $307,685 in this case, together with interest at the legal rate through payment of said reimbursement amounts. Said amounts are hereinafter referred to collectively as the 'reimbursement award sum'.
"4. Pending the final disposition of this proceeding or the payment of the reimbursement award sum at issue herein, Respondents, and each of them, their successors in office, agents, servants and employees, and all persons acting in concert or participation with them, are hereby enjoined and restrained from directly or indirectly reverting the reimbursement award sum from the General Fund line-item accounts of the Department of Industrial Relations to the General Funds of the State of California and from otherwise dissipating the reimbursement award sum in a manner that would make it unavailable to satisfy this Court's judgment.
"5. In addition to the foregoing relief, Petitioner is entitled to offset amounts sufficient to satisfy the claims of Petitioner, plus interest, against funds held by Petitioner as fines and forfeitures which are collected by the local Courts, transferred to the Petitioner and remitted to Respondents on a monthly basis. Those fines and forfeitures are levied, and their distribution provided, as set forth in Penal Code Sections 1463.02, 1463.03, 14[6] 3.5[a], and 1464; Government Code Sections 13967, 26822.3 and 72056, Fish and Game Code Section 13100; Health and Safety Code Section 11502 and Vehicle Code Sections 1660.7, 42004, and 41103.5.
"6. The Court adjudges and declares that the State has a continuing obligation to reimburse Petitioner for costs incurred in fiscal years subsequent to its claim for expenditures in the 1978-79 and 1979-80 fiscal years as set forth in the petition and the accompanying motion for the issuance of a writ of mandate.
"7. The Court adjudges and declares that deletion of funding and prohibition against accepting claims for expenditures incurred as a result of the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 as contained in Section 3 of Chapter 109[0], Statutes of 1981 were invalid and unconstitutional.
"8. The Court adjudges and declares that the expenditures incurred by Petitioner as a result of the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 were not the result of any federally mandated program.
"9. A peremptory writ of mandamus shall issue under the seal of this Court commanding Respondent State Board of

Control, or its successor-in-interest, to hear and approve the claims of Petitioner for costs incurred in complying with the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 subsequent to fiscal year 1979-80.
. . . . ."
"11. The Court adju[d]ges and declares that the State Respondents are prohibited from offsetting, or attempting to implement an offset against moneys due and owing Petitioner until Petitioner is completely reimbursed for all of its costs in complying with the state mandate of Title 8, California Administrative Code Sections 3401 through 3409."

8 This language is taken from Revenue and Taxation Code section 2207 and former section 2231. Article XIII B, section 6 refers to "higher" level of service rather than "increased" level of service. We perceive the intent of the two provisions to be identical. The parties also use these words interchangeably.

9 As it happened, the entire Board determination involved a question of law since the dollar amount of the claimed reimbursement was not disputed.

10 State is not precluded from raising this new issue on appeal. Questions of law decided by an administrative agency invoke the collateral estoppel doctrine only when a determination of conclusiveness will not work an injustice. Likewise, the doctrine of waiver is inapplicable if a litigant has no actual or constructive knowledge of his rights. Since the *State of California* rule had not been announced at the time of the Board or trial court proceedings herein, the doctrines of waiver and collateral estoppel are inapplicable to State on this particular issue. Both parties have been afforded additional time to brief the matter.

11 County suggests that to the extent private fire brigades exist, they are customarily part-time individuals who perform the function on a part-time basis. As such, they are excluded by the balance of the definitional term in title 8, California Administrative Code section 3402, which provides, in pertinent part: "... The term [fire fighter] does not apply to emergency pick-up labor or other persons who may perform first-aid fire extinguishment as collateral to their regular duties."

12 Article III, section 3 of the California Constitution provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."
Article XVI, section 7 of the California Constitution provides: "Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant."

13 When Governor Brown deleted the appropriations from A.B. 171, he stated that he was relying on the pronouncements in Statutes 1974, chapter 1284 and Statutes 1981, chapter 1090.

14 We address this subject only because the trial court found that the costs were not federally mandated. Actually, State cannot raise this issue on appeal because of the waiver and administrative collateral estoppel doctrines. We note, however, where there is a quasi-judicial finding that a cost is state mandated, there is an implied finding that the cost is not federally mandated; the two concepts are mutually exclusive.
Moreover, our task is aided by the fact that interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility. (*City of Sacramento v. State of California*, *supra.*, 156 Cal.App.3d at pp. 196-197.)

15 Article IV, section 9 of the California Constitution reads: "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended."

16 Each of these sections contains the following language: "No funds appropriated by this act shall be encumbered for the purpose of funding any increased state costs or local governmental costs, or both such costs, arising from the issuance of an executive order as defined in section 2209 of the Revenue and Taxation Code or subject to the provisions of section 2231 of the Revenue and Taxation Code, unless (a) such funds to be encumbered are appropriated for such purpose, or (b) notification in writing of the necessity of the encumbrance of funds available to the state agency, department, board, bureau, office, or commission is given by the Department of Finance, at least 30 days before such encumbrance is made, to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or such lesser time as the chairperson of the committee, or his or her designee, determines."

17 Technically, Statute has waived the statute of limitations defense because it was not raised in its answer. (*Ventura County Employees' Retirement Association v. Pope* (1978) 87 Cal.App.3d 938, 956 [151 Cal.Rptr. 695].)

18 We leave undecided the question of whether this type of legislation could ever be held to override California Constitution, article XIII B, section 6. The Constitution of the State is supreme. Any statute in conflict therewith is invalid. (*County of Los Angeles v. Payne*, *supra.*, 8 Cal.2d at p. 574.)
Similarly, former Revenue and Taxation Code section 2255, subdivision (c) cannot abrogate the constitutional directive to reimburse.

19 At oral argument, County conceded that the order authorizing offset of Fish and Game Code section 13100 fines and forfeitures is inappropriate. These collected funds must be spent exclusively for protection, conservation, propagation or preservation of fish, game, mollusks, or crustaceans, and for administration and enforcement of laws relating thereto, or for any such purpose. (Cal. Const., art. XVI, § 9; 20 Ops. Cal. Atty. Gen. 110 (1952).)

20 Government Code section 12419.5 provides: "The Controller may, in his discretion, offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The Controller may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant.... The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided." (See also *Tyler v. State of California* (1982) 134 Cal.App.3d 973, 975-976 [185 Cal.Rptr. 49].)

21 Government Code section 16304.1 provides: "Disbursements in liquidation of encumbrances may be made before or during the two years following the last day an appropriation is available for encumbrance.... Whenever, during [such two-year period], the Director of Finance determines that the project for which the appropriation was made is completed and that a portion of the appropriation is not necessary for disbursements, such portion shall, upon order of the Director of Finance, revert to and become a part of the fund from which the appropriation was made. Upon the expiration of two years...following the last day of the period of its availability, the undisbursed balance in any appropriation shall revert to and become a part of the fund from which the appropriation was made...."

22 Code of Civil Procedure section 389, subdivision (a) provides: "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party."

23 Responding to the budget control language directing it to refuse to process these claims, the Board declined to hear these matters.

24 Because certain claims have not yet been processed, we assume that the issue of the amount of reimbursement may still be at large. Our record is not clear on this point.

25 The decision in *City of Sacramento*, *supra.*, was filed just one day before the trial court signed the written order in this case. The Revenue and Taxation Code sections on which the court relied were operational before the costs claimed in this case were incurred.

35 Cal.4th 613
Supreme Court of California

CITY OF BURBANK, Plaintiff and Appellant,
v.
STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Appellants.
City of Los Angeles, Plaintiff and Respondent,
v.
State Water Resources Control Board et al., Defendants and Appellants.

Nos. S119248, B151175, B152562.
|
April 4, 2005.
|
Rehearing Denied June 29, 2005.*

Synopsis
Background: Cities filed petitions for writs of mandate challenging pollutant limitations in wastewater discharge permits issued by regional water quality control boards. The Superior Court, Los Angeles County, Nos. BS060957 and BS060960, Dzintra I. Janavs, J., set aside permits. Regional board and state water resources control board appealed. The Court of Appeal consolidated the cases and reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Kennard, J., held that:

[1] regional board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, and

[2] when imposing more stringent pollutant restrictions that those required by federal law, regional board may take economic factors into account.

Judgment of Court of Appeal affirmed, and matter remanded.

Brown, J., filed concurring opinion.

Opinion, 4 Cal.Rptr.3d 27, superseded.

West Headnotes (5)

[1] **Environmental Law**
Purpose

Clean Water Act is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.

12 Cases that cite this headnote

[2] **Environmental Law**
Conditions and limitations
States
Environment; nuclear projects

Regional water quality control board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, despite statute directing board to take such factors into consideration, because the federal constitutional supremacy clause requires state law to yield to federal law. U.S.C.A. Const. Art. 6, cl. 2; Federal Water Pollution Control Act Amendments of 1972, §§ 101 et seq., 301(a), (b)(1)(B, C), 402(a)(1, 3), as amended, 33 U.S.C.A. §§ 1251 et seq., 1311(a), (b)(1)(B, C), 1342(a)(1, 3); West's Ann.Cal.Water Code §§ 13000 et seq., 13241(d), 13263, 13377.

See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, §§ 68, 69; 8 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 23:54; Cal. Jur. 3d, Pollution and Conservation Laws, § 126.

16 Cases that cite this headnote

[3] **Statutes**
Purpose and intent

When construing any statute, the court's task is to determine the Legislature's intent when it enacted the statute so as to adopt the construction that best effectuates the purpose of the law.

13 Cases that cite this headnote

[4] **States**
Conflicting or conforming laws or regulations

Under the federal Constitution's supremacy clause, a state law that conflicts with federal law is without effect. U.S.C.A. Const. Art. 6, cl. 2.

Cases that cite this headnote

[5] **Environmental Law**
Conditions and limitations

When imposing more stringent pollutant restrictions in a wastewater discharge permit than those required by federal law, a regional water quality control board may take into account the economic effects of doing so. Federal Water Pollution Control Act Amendments of 1972, §§ 101 et seq., 101(b), 510, as amended, 33 U.S.C.A. §§ 1251 et seq., 1251(b), 1370; West's Ann.Cal.Water Code §§ 13000 et seq., 13241(d), 13263, 13377.

19 Cases that cite this headnote

Attorneys and Law Firms

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Fulbright & Jaworski, Colin Lennard, Patricia Chen, Los Angeles; Archer Norris and Peter W. McGaw, Walnut Creek, for California Association of Sanitation Agencies as Amicus Curiae on behalf of Plaintiffs and Appellants.

Opinion

KENNARD, J.

***618 **864** Federal law establishes national water quality standards but allows the states to enforce their own water quality laws so long as they comply with federal standards. Operating within this federal-state framework, California's nine Regional Water Quality Control Boards establish water quality policy. They also issue permits for the discharge of treated wastewater; these permits specify the maximum allowable concentration of chemical pollutants in the discharged wastewater.

The question here is this: When a regional board issues a permit to a wastewater treatment facility, must the board take into account the facility's costs of complying with the board's restrictions on pollutants in the wastewater to be discharged? The trial court ruled that California law required a regional board to weigh the economic burden on the facility against the expected environmental benefits of reducing pollutants in the wastewater discharge. The Court of Appeal disagreed. On petitions by the municipal operators of three wastewater treatment facilities, we granted review.

We reach the following conclusions: Because both California law and federal law require regional boards to comply with federal clean water standards, and because the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than the applicable federal standards require. When, however, a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law requires, California law allows the board to take into account economic ****865** factors, including the wastewater discharger's cost of compliance. We remand this case for further proceedings to determine whether the pollutant limitations in the permits challenged here meet or exceed federal standards.

*619 I. STATUTORY BACKGROUND

The quality of our nation's waters is governed by a "complex statutory and regulatory scheme ... that implicates both federal and state administrative responsibilities." (*PUD No. 1 of Jefferson County v. Washington Department of Ecology* (1994) 511 U.S. 700, 704, 114 S.Ct. 1900, 128 L.Ed.2d 716.) We first discuss California law, then federal law.

A. California Law

In California, the controlling law is the Porter–Cologne Water Quality Control Act (Porter–Cologne Act), which was enacted in 1969. (Wat.Code, § 13000 et seq., added by Stats.1969, ch. 482, § 18, p. 1051.)[1] Its goal is "to attain the highest water *****307** quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (§ 13000.) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise "the principal state agencies with primary responsibility for the coordination and control of water quality." (§ 13001.) As relevant here, one of those regional boards oversees the Los Angeles region (the Los Angeles Regional Board).[2]

Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards "formulate and adopt water quality control plans for all areas within [a] region" (§ 13240). The regional boards' water quality plans, called "basin plans," must address the beneficial uses to be protected as well as water quality objectives, and they must establish a program of implementation. (§ 13050, subd. (j).) Basin plans must be consistent with "state policy for water quality control." (§ 13240.)

B. Federal Law

[1] In 1972, Congress enacted amendments (Pub.L. No. 92–500 (Oct. 18, 1972) 86 Stat. 816) to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), which,

as amended in 1977, is commonly known as the Clean ***620** Water Act. The Clean Water Act is a "comprehensive water quality statute designed 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' " (*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology, supra,* 511 U.S. at p. 704, 114 S.Ct. 1900, quoting 33 U.S.C. § 1251(a).) The Act's national goal was to eliminate by the year 1985 "the discharge of pollutants into the navigable waters" of the United States. (33 U.S.C. § 1251(a)(1).) To accomplish this goal, the Act established "effluent limitations," which are restrictions on the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents"; these effluent limitations allow the discharge of pollutants only when the water has been satisfactorily treated to conform with federal water quality standards. (33 U.S.C. §§ 1311, 1362(11).)

Under the federal Clean Water Act, each state is free to enforce its own water quality laws so long as its effluent limitations are not "less stringent" than those set out in the Clean Water Act. (33 U.S.C. § 1370.) This led the California Legislature in 1972 to amend the state's Porter–Cologne Act "to ensure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act." (§ 13372.)

****866** Roughly a dozen years ago, the United States Supreme Court, in *Arkansas v. Oklahoma* (1992) 503 U.S. 91, 112 S.Ct. 1046, 117 L.Ed.2d 239, described the distinct roles of the state and federal agencies in enforcing water quality: "The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' 33 U.S.C. § 1251(a). Toward *****308** this end, [the Clean Water Act] provides for two sets of water quality measures. 'Effluent limitations' are promulgated by the [Environmental Protection Agency (EPA)] and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources.[3] See §§ 1311, 1314. '[W]ater quality standards' are, in general, promulgated by the States and establish the desired condition of a waterway. See § 1313. These standards supplement effluent limitations 'so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.' *EPA v. California ex rel. State Water Resources Control Bd.,* 426 U.S. 200, 205, n. 12, 96 S.Ct. 2022, 2025, n. 12, 48 L.Ed.2d 578 (1976).

***621** "The EPA provides States with substantial guidance in the drafting of water quality standards. See generally 40 CFR pt. 131 (1991) (setting forth model water quality standards). Moreover, [the Clean Water Act] requires, *inter alia,* that state authorities periodically review water quality standards and secure the EPA's approval of any revisions in the standards. If the EPA recommends changes to the standards and the State fails to comply with that recommendation, the Act authorizes the EPA to promulgate water quality standards for the State. 33 U.S.C. § 1313(c)." (*Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046.)

Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)

With this federal and state statutory framework in mind, we now turn to the facts of this case.

II. FACTUAL BACKGROUND

This case involves three publicly owned treatment plants that discharge wastewater under NPDES permits issued by the Los Angeles Regional Board.

The City of Los Angeles owns and operates the Donald C. Tillman Water Reclamation Plant (Tillman Plant), which serves the San Fernando Valley. The City of Los Angeles also owns and operates the Los Angeles–Glendale Water Reclamation Plant (Los Angeles–Glendale Plant), which processes wastewater from areas within the City of Los Angeles and the independent cities of Glendale and Burbank. Both the Tillman Plant and the Los Angeles–Glendale Plant discharge wastewater directly into the Los Angeles River, now a concrete-lined flood control channel that runs through the City of Los Angeles, ending at the Pacific Ocean. The State Board and the Los Angeles Regional Board consider the Los Angeles River to be a navigable water of the United States for purposes of the federal Clean Water Act.

The third plant, the Burbank Water Reclamation Plant (Burbank Plant), is owned and operated by the City of

Burbank, ***309 serving residents and businesses within that city. The Burbank Plant discharges wastewater into the Burbank Western Wash, which drains into the Los Angeles River.

*622 All three plants, which together process hundreds of millions of gallons of sewage **867 each day, are tertiary treatment facilities; that is, the treated wastewater they release is processed sufficiently to be safe not only for use in watering food crops, parks, and playgrounds, but also for human body contact during recreational water activities such as swimming.

In 1998, the Los Angeles Regional Board issued renewed NPDES permits to the three wastewater treatment facilities under a basin plan it had adopted four years earlier for the Los Angeles River and its estuary. That 1994 basin plan contained general narrative criteria pertaining to the existing and potential future beneficial uses and water quality objectives for the river and estuary.[4] The narrative criteria included municipal and domestic water supply, swimming and other recreational water uses, and fresh water habitat. The plan further provided: "All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life." The 1998 permits sought to reduce these narrative criteria to specific numeric requirements setting daily maximum limitations for more than 30 pollutants present in the treated wastewater, measured in milligrams or micrograms per liter of effluent.[5]

The Cities of Los Angeles and Burbank (Cities) filed appeals with the State Board, contending that achievement of the numeric requirements would be too costly when considered in light of the potential benefit to water quality, and that the pollutant restrictions in the NPDES permits were unnecessary to meet the narrative criteria described in the basin plan. The State Board summarily denied the Cities' appeals.

Thereafter, the Cities filed petitions for writs of administrative mandate in the superior court. They alleged, among other things, that the Los Angeles Regional Board failed to comply with sections 13241 and 13263, part of California's Porter–Cologne Act, because it did not consider the economic burden on the Cities in having to reduce substantially the pollutant content of their discharged wastewater. They also alleged that compliance with the pollutant restrictions set out in the NPDES permits issued by the regional *623 board would greatly increase their costs of treating the wastewater to be discharged into the Los Angeles River. According to the City of Los Angeles, its compliance costs would exceed $50 million annually, representing more than 40 percent of its entire budget for operating its four wastewater treatment plants and its sewer system; the City of Burbank estimated its added costs at over $9 million annually, a nearly 100 percent increase above its $9.7 million annual budget for wastewater treatment.

***310 The State Board and the Los Angeles Regional Board responded that sections 13241 and 13263 do not require consideration of costs of compliance when a regional board issues a NPDES permit that restricts the pollutant content of discharged wastewater.

The trial court stayed the contested pollutant restrictions for each of the three wastewater treatment plants. It then ruled that sections 13241 and 13263 of California's Porter–Cologne Act required a regional board to consider costs of compliance not only when it adopts a basin or water quality plan but also when, as here, it issues an NPDES permit setting the allowable pollutant content of a treatment plant's discharged wastewater. The court found no evidence that the Los Angeles Regional Board had considered economic factors at either stage. Accordingly, the trial court granted the Cities' petitions for writs of mandate, and it ordered the Los Angeles Regional Board to vacate the contested restrictions on pollutants in the wastewater discharge permits issued to the three municipal plants here and to conduct hearings **868 to consider the Cities' costs of compliance before the board's issuance of new permits. The Los Angeles Regional Board and the State Board filed appeals in both the Los Angeles and Burbank cases.[6]

The Court of Appeal, after consolidating the cases, reversed the trial court. It concluded that sections 13241 and 13263 require a regional board to take into account "economic considerations" when it adopts water quality standards in a basin plan but not when, as here, the regional board sets specific pollutant restrictions in wastewater discharge permits intended to satisfy those standards. We granted the Cities' petition for review.

*624 III. DISCUSSION

A. Relevant State Statutes

The California statute governing the issuance of *wastewater permits* by a regional board is section 13263, which was enacted in 1969 as part of the Porter–Cologne Act. (See 26 Cal.Rptr.3d pp. 306–307, 108 P.3d p. 865, *ante*.) Section 13263 provides in relevant part: "*The*

regional board, after any necessary hearing, *shall prescribe requirements as to the nature of any proposed discharge* [of wastewater]. *The requirements* shall implement any relevant water quality control plans that have been adopted, and *shall take into consideration* the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and *the provisions of Section 13241*." (§ 13263, subd. (a), italics added.)

Section 13241 states: "Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

*****311** "(a) Past, present, and probable future beneficial uses of water.

"(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

"(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.

"(d) *Economic considerations.*

"(e) The need for developing housing within the region.

"(f) The need to develop and use recycled water." (Italics added.)

The Cities here argue that section 13263's express reference to section 13241 requires the Los Angeles Regional Board to consider section 13241's listed factors, notably "[e]conomic considerations," before issuing NPDES permits requiring specific pollutant reductions in discharged effluent or treated wastewater.

[2] ***625** Thus, at issue is language in section 13263 stating that when a regional board "prescribe[s] requirements as to the nature of any proposed discharge" of treated wastewater it must "take into consideration" certain factors including "the provisions of Section 13241." According to the Cities, this statutory language requires that a regional board make an independent evaluation of the section 13241 factors, including "economic considerations," before restricting the pollutant content in an NPDES permit. This was the view expressed in the trial court's ruling. The Court of Appeal rejected that view. It held that a regional board need consider the section 13241 factors only when it adopts a basin or water quality plan, but not when, as in this case, it issues a wastewater discharge ****869** permit that sets specific numeric limitations on the various chemical pollutants in the wastewater to be discharged. As explained below, the Court of Appeal was partly correct.

B. Statutory Construction

[3] When construing any statute, our task is to determine the Legislature's intent when it enacted the statute "so that we may adopt the construction that best effectuates the purpose of the law." (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715, 3 Cal.Rptr.3d 623, 74 P.3d 726; *Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 268, 121 Cal.Rptr.2d 203, 47 P.3d 1069.) In doing this, we look to the statutory language, which ordinarily is "the most reliable indicator of legislative intent." (*Hassan, supra*, at p. 715, 3 Cal.Rptr.3d 623, 74 P.3d 726.)

As mentioned earlier, our Legislature's 1969 enactment of the Porter–Cologne Act, which sought to ensure the high quality of water in this state, predated the 1972 enactment by Congress of the precursor to the federal Clean Water Act. Included in California's original Porter–Cologne Act were sections 13263 and 13241. Section 13263 directs regional boards, when issuing wastewater discharge permits, to take into account various factors, including those set out in section 13241. Listed among the section 13241 factors is "[e]conomic considerations." (§ 13241, subd. (d).) The plain language of sections 13263 and 13241 indicates the Legislature's intent in 1969, when these statutes were enacted, that a regional board consider the cost of compliance when setting effluent limitations in a wastewater discharge permit.

Our construction of sections 13263 and 13241 does not end with their plain statutory language, however. We must also analyze them in the context of the statutory scheme of which they are a part. *****312** (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043, 12 Cal.Rptr.3d 343, 88 P.3d 71.) Like sections 13263 and 13241, section 13377 is part of the Porter–Cologne Act. But unlike the former two statutes, section 13377 was ***626** not enacted until 1972, shortly after Congress, through adoption of the Federal Water Pollution Control Act Amendments, established a comprehensive water quality policy for the nation.

[4] Section 13377 specifies that wastewater discharge permits issued by California's regional boards must meet the federal standards set by federal law. In effect, section 13377 forbids a regional board's consideration of any economic hardship on the part of the permit holder if doing so would result in the dilution of the requirements set by Congress in the Clean Water Act. That act prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants such as those before us here must comply with the act's clean water standards, regardless of cost (see *id.*, §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3)). Because section 13263 cannot authorize what federal law forbids, it cannot authorize a regional board, when issuing a wastewater discharge permit, to use compliance costs to justify pollutant restrictions that do not comply with federal clean water standards.[7] Such a construction of section 13263 would not only be inconsistent with federal law, it would also be inconsistent with the Legislature's ****870** declaration in section 13377 that all discharged wastewater must satisfy federal standards.[8] This was also the conclusion of the Court of Appeal. Moreover, under the federal Constitution's supremacy clause (art. VI), a state law that conflicts with federal law is " 'without effect.' " (*Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407; *Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 923, 12 Cal.Rptr.3d 262, 88 P.3d 1.) To comport with the principles of federal supremacy, California law cannot authorize this ***627** state's regional boards to allow the discharge of pollutants into the navigable waters of the United States in concentrations *****313** that would exceed the mandates of federal law.

Thus, in this case, whether the Los Angeles Regional Board should have complied with sections 13263 and 13241 of California's Porter–Cologne Act by taking into account "economic considerations," such as the costs the permit holder will incur to comply with the numeric pollutant restrictions set out in the permits, depends on whether those restrictions meet or exceed the requirements of the federal Clean Water Act. We therefore remand this matter for the trial court to resolve that issue.

C. Other Contentions

The Cities argue that requiring a regional board at the wastewater discharge permit stage to consider the permit holder's cost of complying with the board's restrictions on pollutant content in the water is consistent with federal law. In support, the Cities point to certain provisions of the federal Clean Water Act. They cite section 1251(a)(2) of title 33 United States Code, which sets, as a national goal "*wherever attainable*," an interim goal for water quality that protects fish and wildlife, and section 1313(c)(2)(A) of the same title, which requires consideration, among other things, of waters' "*use and value* for navigation" when revising or adopting a "water quality standard." (Italics added.) These two federal statutes, however, pertain not to permits for wastewater discharge, at issue here, but to establishing water quality standards, not at issue here. Nothing in the federal Clean Water Act suggests that a state is free to disregard or to weaken the federal requirements for clean water when an NPDES permit holder alleges that compliance with those requirements will be too costly.

[5] At oral argument, counsel for amicus curiae National Resources Defense Council, which argued on behalf of California's State Board and regional water boards, asserted that the federal Clean Water Act incorporates state water policy into federal law, and that therefore a regional board's consideration of economic factors to justify greater pollutant concentration in discharged wastewater would conflict with the federal act even if the specified pollutant restrictions were not less stringent than those required under federal law. We are not persuaded. The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to "enforce any effluent limitation" that is not "*less stringent* " than the federal standard (*id.* § 1370, italics added). It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit ***628** a state—when imposing effluent limitations that are *more stringent* than required by federal law—from taking into account the economic effects of doing so.

Also at oral argument, counsel for the Cities asserted that if the three municipal wastewater treatment facilities ceased releasing their treated wastewater into the concrete channel that makes up the Los Angeles River, it would (other than during the rainy season) contain no water at all, and thus would not be a "navigable water" of the ****871** United States subject to the Clean Water Act. (See *Solid Waste Agency v. United States Army Corps of Engineers* (2001) 531 U.S. 159, 172, 121 S.Ct. 675, 148 L.Ed.2d 576 ["The term 'navigable' has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made."].) It is unclear when the Cities first raised this issue. The Court of Appeal did

not discuss it in its opinion, and the Cities did not seek rehearing on this ground. (See *****314** Cal. Rules of Court, rule 28(c)(2).) Concluding that the issue is outside our grant of review, we do not address it.

CONCLUSION

Through the federal Clean Water Act, Congress has regulated the release of pollutants into our national waterways. The states are free to manage their own water quality programs so long as they do not compromise the federal clean water standards. When enacted in 1972, the goal of the Federal Water Pollution Control Act Amendments was to *eliminate* by the year 1985 the discharge of pollutants into the nation's navigable waters. In furtherance of that goal, the Los Angeles Regional Board indicated in its 1994 basin plan on water quality the intent, insofar as possible, to remove from the water in the Los Angeles River toxic substances in amounts harmful to humans, plants, and aquatic life. What is not clear from the record before us is whether, in limiting the chemical pollutant content of wastewater to be discharged by the Tillman, Los Angeles–Glendale, and Burbank wastewater treatment facilities, the Los Angeles Regional Board acted only to implement requirements of the federal Clean Water Act or instead imposed pollutant limitations that exceeded the federal requirements. This is an issue of fact to be resolved by the trial court.

DISPOSITION

We affirm the judgment of the Court of Appeal reinstating the wastewater discharge permits to the extent that the specified numeric limitations on chemical pollutants are necessary to satisfy federal Clean Water Act requirements for treated wastewater. The Court of Appeal is directed to remand this ***629** matter to the trial court to decide whether any numeric limitations, as described in the permits, are "more stringent" than required under federal law and thus should have been subject to "economic considerations" by the Los Angeles Regional Board before inclusion in the permits.

WE CONCUR: GEORGE, C.J., BAXTER, WERDEGAR, CHIN, and MORENO, JJ.

Concurring Opinion by BROWN, J.

I write separately to express my frustration with the apparent inability of the government officials involved here to answer a simple question: How do the federal clean water standards (which, as near as I can determine, are the state standards) prevent the state from considering economic factors? The majority concludes that because "the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than applicable federal standards require." (Maj. opn., *ante,* 26 Cal.Rptr.3d at p. 306, 108 P.3d at p. 864.) That seems a pretty self-evident proposition, but not a useful one. The real question, in my view, is whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions that *meet* the clean water standards in more cost-effective and economically efficient ways. I can see no reason why a federal law—which purports to be an example of cooperative federalism—would decree such a result. I do not think the majority's reasoning is at fault here. Rather, the agencies involved seemed to have worked hard to make this simple question impenetrably obscure.

A brief review of the statutory framework at issue is necessary to understand my concerns.

*****315 **872 I. Federal Law**

"In 1972, Congress enacted the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), commonly known as the Clean Water Act (CWA) [Citation.] ... [¶] Generally, the CWA 'prohibits the discharge of any pollutant except in compliance with one of several statutory exceptions. [Citation.]' ... The most important of those exceptions is pollution discharge under a valid NPDES [National Pollution Discharge Elimination System] permit, which can be issued either by the Environmental Protection Agency (EPA), or by an EPA-approved state permit program such as California's. [Citations.] NPDES permits are valid for five years. [Citation.] [¶] Under the CWA's NPDES permit program, the states are required to develop *water quality standards.* [Citations.] A water quality standard 'establish[es] the desired condition of a waterway.' [Citation.] A water quality standard for any ***630** given waterway, or 'water body,' has two components: (1) the designated beneficial uses of the water body and (2) the *water quality criteria* sufficient to protect those uses. [Citations.] [¶] Water

quality criteria can be either *narrative* or *numeric.* [Citation.]" (*Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1092–1093, 1 Cal.Rptr.3d 76.)

With respect to satisfying water quality standards, "a polluter must comply with *effluent limitations.* The CWA defines an effluent limitation as 'any restriction established by a State or the [EPA] Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.' [Citation.] 'Effluent limitations are a means of *achieving* water quality standards.' [Citation.] [¶] NPDES permits establish effluent limitations for the polluter. [Citations.] CWA's NPDES permit system provides for a two-step process for the establishing of effluent limitations. First, the polluter must comply with *technology-based effluent limitations,* which are limitations based on the best available or practical technology for the reduction of water pollution. [Citations.] [¶] Second, the polluter must also comply with more stringent *water quality-based effluent limitations* (WQBEL's) where applicable. In the CWA, Congress 'supplemented the "technology-based" effluent limitations with "water quality-based" limitations "so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.' " [Citation.] [¶] The CWA makes WQBEL's applicable to a given polluter whenever WQBEL's are 'necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations....' [Citations.] Generally, NPDES permits must conform to state water quality laws insofar as the state laws impose more stringent pollution controls than the CWA. [Citations.] Simply put, WQBEL's implement water quality standards." (*Communities for a Better Environment v. State Water Resources Control Bd., supra,* 109 Cal.App.4th at pp. 1093–1094, 1 Cal.Rptr.3d 76, fns. omitted.)

This case involves water quality-based effluent limitations. As set forth above, "[u]nder the CWA, states have the primary role in promulgating water quality standards." (*Piney Run Preservation Ass'n v. Commrs. of Carroll Co.* (4th Cir.2001) 268 F.3d 255, 265, fn. 9.) "Under the CWA, the water quality standards referred to in section 301 [see 33 U.S.C. § 1311] are primarily the states' handiwork." *****316** (*American Paper Institute, Inc. v. U.S. Envtl. Protection Agency* (D.C.Cir.1993) 996 F.2d 346, 349 (*American Paper*).) In fact, upon the 1972 passage of the CWA, "[s]tate water quality standards in effect at the time ... were deemed to be the initial water quality benchmarks for CWA purposes.... The states were to revisit and, if ***631** necessary, revise those initial standards at least once every three years." (*American Paper,* at p. 349.) Therefore, "once a water quality standard has been promulgated, section 301 of the CWA requires all NPDES permits for point sources to incorporate discharge limitations necessary to satisfy that standard." (*American Paper,* at p. 350.) Accordingly, it appears that in most instances, ****873** state water quality standards are identical to the federal requirements for NPDES permits.

II. State Law

In California, pursuant to the Porter–Cologne Water Quality Control Act (Wat.Code, § 13000 et seq.; Stats.1969, ch. 482, § 18, p. 1051; hereafter Porter–Cologne Act), the regional water quality control boards establish water quality standards—and therefore federal requirements for NPDES permits—through the adoption of water quality control plans (basin plans). The basin plans establish water quality objectives using enumerated factors—including economic factors—set forth in Water Code section 13241.

In addition, as one court observed: "The Porter–Cologne Act ... established nine regional boards to prepare water quality plans (known as basin plans) and issue permits governing the discharge of waste. (Wat.Code, §§ 13100, 13140, 13200, 13201, 13240, 13241, 13243.) The Porter–Cologne Act identified these permits as 'waste discharge requirements,' and provided that the waste discharge requirements must mandate compliance with the applicable regional water quality control plan. (Wat.Code, §§ 13263, subd. (a), 13377, 13374.)[¶] Shortly after Congress enacted the Clean Water Act in 1972, the California Legislature added Chapter 5.5 to the Porter–Cologne Act, for the purpose of adopting the necessary federal requirements to ensure it would obtain EPA approval to issue NPDES permits. (Wat.Code, § 13370, subd. (c).) As part of these amendments, the Legislature provided that the state and regional water boards 'shall, as required or authorized by the [Clean Water Act], issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions [of the Clean Water Act], together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.' (Wat.Code, § 13377.) Water Code section 13374 provides

that '[t]he term "waste discharge requirements" as referred to in this division is the equivalent of the term "permits" as used in the [Clean Water Act].' [¶] California subsequently obtained the required approval to issue NPDES permits. [Citation.] Thus, the waste discharge requirements issued by the regional water boards ordinarily also serve as NPDES permits under federal law. (Wat.Code, § 13374.)" (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128.)

***632** Applying this federal-state statutory scheme, it appears that throughout this entire process, the Cities of Burbank and Los Angeles (Cities) were unable to have economic factors considered because the Los Angeles Regional Water Quality Control Board (Board)—the body responsible to enforce the statutory framework—failed to comply with its statutory mandate.

*****317** For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirement set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. As a result, the Board appears to be playing a game of "gotcha" by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to do so.

Moreover, the Board acknowledges that it has neglected other statutory provisions that might have provided an additional opportunity to air these concerns. As set forth above, pursuant to the CWA, "[t]he states were to revisit and, if necessary, revise those initial standards at least once every three years—a process commonly known as triennial review. [Citation.] Triennial reviews consist of public hearings in which current water quality standards are examined to assure that they 'protect the public health or welfare, enhance the quality of water and serve the purposes' of the Act. [Citation.] Additionally, the CWA ****874** directs states to consider a variety of competing policy concerns during these reviews, including a waterway's 'use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes.' " (*American Paper, supra*, 996 F.2d at p. 349.)

According to the Cities, "[t]he last time that the narrative water quality objective for toxicity contained in the Basin Plan was reviewed and modified was 1994." The Board does not deny this claim. Accordingly, the Board has failed its duty to allow public discussion—including economic considerations—at the required intervals when making its determination of proper water quality standards.

What is unclear is why this process should be viewed as a contest. State and local agencies are presumably on the same side. The costs will be paid by taxpayers and the Board should have as much interest as any other agency in fiscally responsible environmental solutions.

***633** Our decision today arguably allows the Board to continue to shirk its statutory duties. The majority holds that when read together, Water Code sections 13241, 13263, and 13377 do not allow the Board to consider economic factors when issuing NPDES permits to satisfy federal CWA requirements. (Maj. opn., *ante*, 26 Cal.Rptr.3d at pp. 311–312, 108 P.3d at pp. 869–870.) The majority then bifurcates the issue when it orders the Court of Appeal "to remand this matter to the trial court to decide whether any numeric limitations, as described in the permits, are 'more stringent' than required under federal law and thus should have been subject to 'economic considerations' by the Los Angeles Regional Board before inclusion in the permits." (*Id.* at p. 314, 108 P.3d at p. 871.)

The majority overlooks the feedback loop established by the CWA, under which federal standards are linked to state-established water quality standards, including narrative water quality criteria. (See 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d)(1) (2004).) Under the CWA, NPDES permit requirements include the state narrative criteria, which are incorporated into the Board's basin plan under the description "no toxins in toxic amounts." As far as I can determine, NPDES permits *****318** designed to achieve this narrative criteria (as well as designated beneficial uses) will usually implement the state's basin plan, while satisfying federal requirements as well.

If federal water quality standards are typically identical to state standards, it will be a rare instance that a state exceeds its own requirements and economic factors are taken into consideration.[1] In light of the Board's initial failure to consider costs of compliance and its repeated failure to conduct required triennial reviews, the result here is an unseemly bureaucratic bait-and-switch that we should not endorse. The likely outcome of the majority's decision is that the Cities will be economically burdened to meet standards imposed on them in a highly

questionable manner.[2] In these times of tight fiscal budgets, it is difficult to imagine imposing additional financial burdens on municipalities without at least allowing them to present alternative views.

Based on the facts of this case, our opinion today appears to largely retain the status quo for the Board. If the Board can actually demonstrate that only the precise limitations at issue here, implemented in only one way, will achieve the desired water standards, perhaps its obduracy is justified. That case has yet to be made.

***634** Accordingly, I cannot conclude that the majority's decision is wrong. The analysis ****875** may provide a reasonable accommodation of conflicting provisions. However, since the Board's actions "make me wanna holler and throw up both my hands,"[3] I write separately to set forth my concerns and concur in the judgment—*dubitante*.[4]

All Citations

35 Cal.4th 613, 108 P.3d 862, 26 Cal.Rptr.3d 304, 60 ERC 1470, 35 Envtl. L. Rep. 20,071, 05 Cal. Daily Op. Serv. 2861, 2005 Daily Journal D.A.R. 3870

Footnotes

* Brown, J., did not participate therein.

1 Further undesignated statutory references are to the Water Code.

2 The Los Angeles water region "comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages." (§ 13200, subd. (d).)

3 A "point source" is "any discernable, confined and discrete conveyance" and includes "any pipe, ditch, channel ... from which pollutants ... may be discharged." (33 U.S.C. § 1362(14).)

4 This opinion uses the terms "narrative criteria" or descriptions, and "numeric criteria" or effluent limitations. Narrative criteria are broad statements of desirable water quality goals in a water quality plan. For example, "no toxic pollutants in toxic amounts" would be a narrative description. This contrasts with numeric criteria, which detail specific pollutant concentrations, such as parts per million of a particular substance.

5 For example, the permits for the Tillman and Los Angeles–Glendale Plants limited the amount of fluoride in the discharged wastewater to 2 milligrams per liter and the amount of mercury to 2.1 micrograms per liter.

6 Unchallenged on appeal and thus not affected by our decision are the trial court's rulings that (1) the Los Angeles Regional Board failed to show how it derived from the narrative criteria in the governing basin plan the specific numeric pollutant limitations included in the permits; (2) the administrative record failed to support the specific effluent limitations; (3) the permits improperly imposed daily maximum limits rather than weekly or monthly averages; and (4) the permits improperly specified the manner of compliance.

7 The concurring opinion misconstrues both state and federal clean water law when it describes the issue here as "whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions *that meet the clean water standards in more cost-effective and economically efficient ways.*" (Conc. Opn. of Brown, J., *post,* 26 Cal.Rptr.3d p. 314, 108 P.3d at p. 871, some italics added.) This case has nothing to do with meeting federal standards in more cost effective and economically efficient ways. State law, as we have said, allows a regional board to consider a permit holder's compliance cost to *relax* pollutant concentrations, as measured by numeric standards, for pollutants in a wastewater discharge permit. (§§ 13241 & 13263.) Federal law, by contrast, as stated above in the text, "prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants such as those before us here must comply with the [federal] act's *clean water standards, regardless of cost* (see *id.,* §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3))." (Italics added.)

8 As amended in 1978, section 13377 provides for the issuance of waste discharge permits that comply with federal clean water law "together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." We do not here decide how this provision would affect the cost-consideration requirementsof sections 13241 and 13263 when more stringent effluent standards or limitations in a permit are justified for some reason independent of compliance with federal law.

1 (But see *In the Matter of the Petition of City and County of San Francisco, San Francisco Baykeeper et al.* (Order No. WQ 95–4, Sept. 21, 1995) 1995 WL 576920.)

2 Indeed, given the fact that "water quality standards" in this case are composed of broadly worded components (i.e., a narrative criteria and "designated beneficial uses of the water body"), the Board possessed a high degree of discretion in setting NPDES permit requirements. Based on the Board's past performance, a proper exercise of this discretion is uncertain.

3 Marvin Gaye (1971) "Inner City Blues."

4 I am indebted to Judge Berzon for this useful term. (See *Credit Suisse First Boston Corp. v. Grunwald* (9th Cir.2005) 400 F.3d 1119 (conc. opn. of Berzon, J.).)

12 Cal.App.5th 178
Court of Appeal,
Fourth District, Division 1, California.

COASTAL ENVIRONMENTAL RIGHTS FOUNDATION, Plaintiff and Appellant,
v.
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, Defendant and Respondent.

D070171
|
Filed 5/8/2017

Synopsis
Background: Environmental interest group filed petition for writ of mandamus challenging Regional Water Quality Control Board's approval of a National Pollutant Discharge Elimination System (NPDES) general permit for public displays of fireworks over the region's surface waters. The Superior Court, San Diego County, No. 37-2014-00038672-CU-WM-CTL, Timothy B. Taylor, J., denied the petition, and interest group appealed.

Holdings: The Court of Appeal, Huffman, Acting P.J., held that:

[1] trial court properly applied the independent judgment standard of review;

[2] use of visual monitoring and best practices management to assess compliance complied with Clean Water Act requirements;

[3] Board had reasonable basis to conclude that best management practices would adequately control and abate the discharge of residual pollutant waste from public fireworks events;

[4] evidence supported decision not to require monitoring for individual large and intermediate level shows; and

[5] general permit did not violate California Ocean Plan's prohibition of waste discharges to areas of special biological significance.

Affirmed.

West Headnotes (19)

[1] **Environmental Law**
Reporting, notice, and monitoring requirements

The Clean Water Act requires every National Pollutant Discharge Elimination System (NPDES) permittee to monitor its discharges into the navigable waters of the United States in a manner sufficient to determine whether it is in compliance with the relevant NPDES permit; that is, an NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance. Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(a)(2); 40 C.F.R. § 122.44(i)(1).

Cases that cite this headnote

[2] **Environmental Law**
Reporting, notice, and monitoring requirements

The permitting agency has wide discretion and authority to determine monitoring requirements in National Pollutant Discharge Elimination System (NPDES) permits issued pursuant to the Clean Water Act. Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(a)(2); 40 C.F.R. § 122.48(b).

Cases that cite this headnote

[3] **Environmental Law**
Water pollution

In exercising its independent judgment, a trial court conducting mandamus review of a final decision or order of a regional water quality control board must afford a strong presumption of correctness concerning the administrative

findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence. Cal. Civ. Proc. Code § 1094.5(c); Cal. Water Code § 13330(e).

1 Cases that cite this headnote

[4] **Appeal and Error**
What constitutes substantial evidence

In substantial evidence review, the reviewing court defers to the factual findings made below; it does not weigh the evidence presented by both parties to determine whose position is favored by a preponderance, but instead it determines whether the evidence the prevailing party presented was substantial, or, as it is often put, whether any rational finder of fact could have made the finding that was made below, and if so, the decision must stand.

Cases that cite this headnote

[5] **Administrative Law and Procedure**
Presumptions
Administrative Law and Procedure
Substantial evidence
Administrative Law and Procedure
Weight of evidence

Under the independent judgment standard, while the trial court begins its review with a presumption that the administrative findings are correct, it does not defer to the fact finder below and accept its findings whenever substantial evidence supports them; instead, it must weigh all the evidence for itself and make its own decision about which party's position is supported by a preponderance.

Cases that cite this headnote

[6] **Administrative Law and Procedure**
Fact Questions

Under the independent judgment standard for reviewing an administrative decision, the question is not whether any rational fact finder could make the finding below, but whether the reviewing court believed the finding actually was correct.

Cases that cite this headnote

[7] **Appeal and Error**
De novo review

Question of whether the trial court applied the correct standard of review is a question of law reviewed de novo.

1 Cases that cite this headnote

[8] **Environmental Law**
Water pollution

Trial court properly applied the independent judgment standard of review when considering mandamus petition challenging Regional Water Quality Control Board's approval of a National Pollutant Discharge Elimination System (NPDES) general permit for public displays of fireworks over the region's surface waters; court initially set forth the correct independent judgment standard, and while court later set forth the "substantial evidence" standard and stated that it chose "to defer to the far superior expertise" of the Board, court clearly independently reviewed and weighed the evidence, including differences in scale, frequency, and location of fireworks shows. Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(a)(2); Cal. Water Code § 13330(e); Cal. Civ. Proc. Code § 1094.5(c); 40 C.F.R. § 122.28(a)(1).

Cases that cite this headnote

[9] **Environmental Law**
Water pollution

Record reflected that trial court independently and fully examined petition for writ of mandamus challenging Regional Water Quality Control Board's approval of a National Pollutant Discharge Elimination System (NPDES) general permit for public displays of fireworks over the region's surface waters and recognized that environmental group alleged separate causes of action concerning monitoring of all fireworks discharges within the jurisdiction and the other concerning two particular shows; while court stated petition focused on two shows, it also discussed other shows within the region, and found that group failed to show Board abused its discretion by relying on visual monitoring and detailed best management practices to demonstrate compliance with permit terms for "all dischargers." Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(a)(2); 40 C.F.R. § 122.28(a)(1); Cal. Water Code § 13330(e); Cal. Civ. Proc. Code § 1094.5(c).

Cases that cite this headnote

[10] **Environmental Law**
Scope of review

Court of Appeal reviewing trial court's denial of petition for writ of mandamus challenging Regional Water Quality Control Board's approval of a National Pollutant Discharge Elimination System (NPDES) general permit for public displays of fireworks over the region's surface waters would review trial court's factual determinations under the substantial evidence standard and its legal determinations under the de novo standard. Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(a)(2); Cal. Water Code § 13330(e).

Cases that cite this headnote

[11] **Administrative Law and Procedure**
Deference to agency in general
Administrative Law and Procedure
Scope

Court of Appeal is not bound by the legal determinations made by the state or regional agencies or by the trial court, but it must give appropriate consideration to an administrative agency's expertise underlying its interpretation of an applicable statute.

Cases that cite this headnote

[12] **Environmental Law**
Reporting, notice, and monitoring requirements

Use of visual monitoring and best practices management to assess compliance with National Pollutant Discharge Elimination System (NPDES) general permit for public displays of fireworks over the region's surface waters complied with Clean Water Act requirements; Regional Water Quality Control Board considered various factors, including existing monitoring data which showed that it was unlikely that any single fireworks event smaller than major Fourth of July and Labor Day events would causes exceedances in water quality criteria, and Board also considered that water fallout area affected by fireworks residue could vary and wide dispersion of firework constituents from wind, tidal effects, and other factors made detection of residual firework pollutant waste difficult. Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(a)(2); 40 C.F.R. §§ 122.44(i)(1), 122.48(b); Cal. Water Code § 13377.

Cases that cite this headnote

[13] **Environmental Law**
Reporting, notice, and monitoring requirements

Permitting agency has wide discretion in

developing and imposing monitoring requirements for a National Pollutant Discharge Elimination System (NPDES) permit issued under the Clean Water Act and can rely on visual monitoring in appropriate contexts. Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(a)(2); 40 C.F.R. §§ 122.44(i)(1), 122.48(b); Cal. Water Code § 13377.

Cases that cite this headnote

[14] **Environmental Law**
Compliance and Enforcement

Regional Water Quality Control Board, when approving National Pollutant Discharge Elimination System (NPDES) general permit for public displays of fireworks over the region's surface waters, had reasonable basis to conclude that best management practices would adequately control and abate the discharge of residual pollutant waste from public fireworks events; data from theme park, which had used best management practices and monitored the effects of its own fireworks displays, which themselves presented exceptional and maximum pollutant circumstances, showed little evidence of pollutants within the receiving water column at levels above applicable water quality criteria, and general permit required additional best management practices. Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(a)(2); 40 C.F.R. §§ 122.44(i)(1), 122.48(b); Cal. Water Code § 13377.

Cases that cite this headnote

[15] **Environmental Law**
Reporting, notice, and monitoring requirements

Evidence supported decision of the Regional Water Quality Control Board, when approving National Pollutant Discharge Elimination System (NPDES) general permit for public displays of fireworks over the region's surface waters, not to require monitoring for individual large and intermediate level shows based on data from theme park's regular 200 pound fireworks shows; events took place once per year on Fourth of July, theme park's own large events, which used 1000 pounds of fireworks, showed only one element exceeded instantaneous water quality criteria after large events, which was in part due to shallow location of bay with restricted circulation, and theme park's regular events did not result in pollutants within the receiving water column at levels above applicable water quality criteria. Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(a)(2); 40 C.F.R. §§ 122.44(i)(1), 122.48(b); Cal. Water Code § 13377.

Cases that cite this headnote

[16] **Environmental Law**
Oceans
Environmental Law
Discharge of pollutants

Regional Water Quality Control Board's approval of a National Pollutant Discharge Elimination System (NPDES) general permit for public displays of fireworks over the region's surface waters, which included approval of Fourth of July discharges into two areas of special biological significance, did not violate California Ocean Plan's prohibition of waste discharges to such areas; Plan provided exception for limited-term activities, discharges complied with limited-term activity because they occurred only once per year and did not permanently degrade water quality, and permit specifically subjected events to the best management practices imposed on all dischargers and special conditions to comply with the Plan. Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(a)(2); 40 C.F.R. §§ 122.44(i)(1), 122.48(b); Cal. Water Code §§ 13170.2(a), 13377.

Cases that cite this headnote

[17] **Statutes**
General and specific terms and provisions; ejusdem generis

The principle of ejusdem generis instructs that when a statute contains a list or catalogue of items, a court should determine the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items similar in nature and scope.

Cases that cite this headnote

[18] **Statutes**
General and specific terms and provisions; ejusdem generis

Ejusdem generis applies whether specific words follow general words in a statute or vice versa; in either event, the general term or category is restricted to those things that are similar to those which are enumerated specifically.

Cases that cite this headnote

[19] **Appeal and Error**
Verdict, Findings, Sufficiency of Evidence, and Judgment

A judgment correct on any legal basis need not be overturned because the court relied on an allegedly erroneous reason.

See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 892 et seq.

Cases that cite this headnote

****599** (Super. Ct. No. 37-2014-00038672-CU-WM-CTL) APPEAL from a judgment of the Superior Court of San Diego County, Timothy B. Taylor, Judge. Affirmed.

Attorneys and Law Firms

Coast Law Group, Marco A. Gonzalez and Livia B. Beaudin, Encinitas, for Plaintiff and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Robert W. Byrne, Carol A. Squire, Deborah M. Fletcher and Josh Caplan, Deputy Attorneys General, for Defendant and Respondent.

Opinion

HUFFMAN, Acting P.J.

***180** This case concerns residual pollutant discharges from public fireworks displays over the waters of the United States within the jurisdiction of the California Regional Water Quality Control Board, San Diego ****600** Region (the Regional Board), which includes a large portion of San Diego County, portions of south Orange County, and the southwestern portion ***181** of Riverside County (San Diego Region). The Regional Board approved a National Pollutant Discharge Elimination System (NPDES) general permit for public displays of fireworks over the region's surface waters (the Fireworks Permit). Coastal Environmental Rights Foundation (CERF) appeals from the trial court's denial of its petition for writ of mandamus challenging the approval of the Fireworks Permit. CERF contends: (1) the trial court applied the wrong standard of review in denying its petition, (2) the Fireworks Permit violates federal law regarding water quality monitoring, and (3) the Fireworks Permit violates prohibitions in the State Water Resources Control Board's (the State Water Board) 2009 California Ocean Plan concerning discharges in areas of special biological significance (ASBS). We reject CERF's arguments and affirm the judgment.

BACKGROUND

Before setting forth the factual background of this particular case, it is helpful to summarize the statutory framework regulating water quality.

A. Statutory Framework

In 1969, the California Legislature enacted the Porter-Cologne Water Quality Control Act (Porter-Cologne Act) to control water quality. (Wat. Code,[1] § 13000.) "The Porter-Cologne Act created the

State Water Board to formulate statewide water quality policy and established nine regional boards to prepare water quality plans (known as basin plans) and issue permits governing the discharge of waste." (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128 (*Building Industry*).) Under the Porter-Cologne Act, "[a] person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state" must file a report with the appropriate regional board. (§ 13260, subd. (a)(1).) The regional board then prescribes waste discharge requirements, which must implement any applicable water quality control plans and take into consideration the beneficial uses to be protected. (§ 13263, subd. (a).)

In 1972, the United States Congress substantially amended the Federal Water Pollution Control Act "by mandating compliance with various minimum technological effluent standards established by the federal government and creating a comprehensive regulatory scheme to implement these laws. [Citation.] The objective of this law, now commonly known as the Clean Water Act, was to 'restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' " ***182** (*Building Industry, supra,* 124 Cal.App.4th at p. 872, 22 Cal.Rptr.3d 128.) The Clean Water Act established a permitting system for regulating discharges of pollutants into waters of the United States. (*Ibid.*) "The Clean Water Act employs the basic strategy of prohibiting pollutant emissions from 'point sources' unless the party discharging the pollutants obtains a permit, known as an NPDES permit." (*Ibid.*, fn. omitted.)

NPDES permits are issued by the United States Environmental Protection Agency or by a state that has an approved water quality program. (*Building Industry, supra,* 124 Cal.App.4th at p. 873, 22 Cal.Rptr.3d 128.) California obtained the required approval to issue its own NPDES permits. (*Id.* at p. 875, 22 Cal.Rptr.3d 128.) ****601** Thus, shortly after Congress enacted the Clean Water Act, the California Legislature amended the Porter-Cologne Act to authorize state issuance of NPDES permits. (*Ibid.*) Under the amended Porter-Cologne Act, regional water boards must "issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions [of the Clean Water Act], together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." (§ 13377.)

[1] [2]Under federal regulations implementing the NPDES system of the Clean Water Act, each NPDES permit must include monitoring requirements. (40 C.F.R. §§ 122.1(a), 122.44(i).)[2] Specifically, "the Clean Water Act *requires* every NPDES permittee to monitor its discharges into the navigable waters of the United States in a manner sufficient to determine whether it is in compliance with the relevant NPDES permit. 33 U.S.C. § 1342(a)(2); 40 C.F.R. § 122.44(i)(1) .... That is, an NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance." (*Natural Resources Defense Council, Inc. v. County of Los Angeles* (9th Cir. 2013) 725 F.3d 1194, 1207.) All permits must specify "[r]equired monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity, including, when appropriate, continuous monitoring." (40 C.F.R. § 122.48(b).) The permitting agency "has wide discretion and authority to determine monitoring requirements in NPDES permits." (*Natural Resources Defense Council, Inc. v. U.S. E.P.A.* (9th Cir. 1988) 863 F.2d 1420, 1434 (*NRDC v. EPA*).)

The State Water Board and the regional boards have the primary responsibility for the coordination and control of water quality. (§ 13001.) To meet this responsibility, the State Water Board adopted a water quality control plan for the ocean waters of the state, known as the California Ocean Plan. (§ 13170.2, subd. (a).) The California Ocean Plan protects "beneficial uses" ***183** of the ocean waters, including industrial water supply, recreation, navigation, fishing, mariculture, preservation and enhancement of areas designated as ASBS, rare and endangered species, marine habitat, fish migration, fish spawning, and shellfish harvesting. (California Ocean Plan, § I.A.) ASBS "are those areas designated by the State Water Board as ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable." (California Ocean Plan, Appen. I.)

In general, waste should not be discharged in ASBS. "Discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas." (California Ocean Plan, § E.1.) However, "Regional Boards may approve waste discharge requirements or recommend certification for limited-term (i.e. weeks or months) activities in ASBS. Limited-term activities include, but are not limited to, activities such as maintenance/repair of existing boat facilities, restoration of sea walls, repair of existing storm water pipes, and replacement/repair of existing bridges. Limited-term activities may result in temporary and short-term changes in existing water quality. Water quality degradation shall be limited to the shortest possible time. The activities must not

permanently degrade water quality or ****602** result in water quality lower than that necessary to protect existing uses, and all practical means of minimizing such degradation shall be implemented." (California Ocean Plan, § III.E.2.)

B. The Fireworks Permit

Fireworks are pyrotechnic devices that produce noise, light, smoke, and floating materials. They can be grouped into general categories: (1) aerial shells (paper and cardboard spheres or cylinders filled with pyrotechnic materials), (2) low level comet and multishot devices, and (3) set piece displays mounted on the ground. Fireworks have various chemical constituents that burn at high temperatures when the firework is detonated. The chemical constituents separate from the firework's casing and internal shell components. A combustion residue is produced in the form of smoke, airborne particulates, chemical pollutants, and debris, including paper, cardboard, wires and fuses. The combustion residue and unignited pyrotechnic material, including duds and misfires, can fall into surface waters. The area impacted by fireworks residue can vary depending on wind speed and direction, size of the shells, the angle of the mortar placement, the type and height of fireworks explosions, and other environmental factors.

Before the Regional Board began considering the Fireworks Permit at issue in this case, discharges associated with fireworks in the San Diego Region were largely unregulated. At the time, only SeaWorld had obtained an ***184** individual fireworks discharge permit.[3] In May 2011, after issuing three drafts of the permit and considering public comments, the Regional Board adopted the Fireworks Permit. The Fireworks Permit applies to any person discharging pollutant waste from the public display of fireworks to surface waters in the San Diego Region. The Fireworks Permit includes various discharge prohibitions, including that "[t]he discharge of residual firework pollutant waste shall not cause, have a reasonable potential to cause, or contribute to exceedances of any applicable criterion promulgated by [the United States Environmental Protection Agency] pursuant to section 303 of the [Clean Water Act], or water quality objective adopted by the State Water Board or San Diego Regional Water Board."

The Fireworks Permit requires any fireworks discharger seeking coverage under the permit to file a notice of intent no later than 60 days before the fireworks event. The discharger must also submit a "Fireworks Best Management Practices Plan" to reduce pollutant discharges associated with the fireworks (Management Plan). The Management Plan must address the following elements: (1) use of alternative fireworks that burn cleaner and reduce pollutant waste in surface waters, (2) firing ranges designed to eliminate or reduce pollutant waste discharges to waters of the United States, (3) collection, removal, and management of particulate matter and debris from ignited and unignited pyrotechnic material no later than 24 hours following a public display of fireworks, (4) if the fireworks are launched from barges or floating platforms, the discharger must address related concerns, including set up, dismantling, and cleanup to minimize pollutant discharges to the waters, (5) management and disposal of hazardous fireworks waste immediately following public displays of fireworks, (6) collection and disposal of nonhazardous solid waste, (7) packaging, transportation, storage, setup, ****603** and handling of fireworks in a manner to prevent or minimize pollutant waste from entering surface waters, and (8) locating residual firework pollutant waste discharges a sufficient distance from ASBS.

The Fireworks Permit also addressed monitoring and reporting requirements for dischargers of fireworks. SeaWorld, a "Category 1" discharger, must perform receiving water and sediment monitoring and sampling. SeaWorld had conducted monitoring for sediment and water quality since 2001 in accordance with the terms of its individual NPDES permit. SeaWorld, unlike most other fireworks dischargers, conducts an average of 110 to 120 fireworks events per year. Those events occur in the same general location in Mission Bay. Thus, SeaWorld's fireworks likely represent the maximum firework pollutant loading conditions and cumulative effects on a surface water body.

***185** Under the Fireworks Permit, "Category 2" dischargers, which include essentially all dischargers other than SeaWorld, are not required to perform the same monitoring and sampling as Category 1 dischargers. Instead, the Regional Board required Category 2 dischargers to conduct visual monitoring and submit a postevent report form detailing the types of fireworks used and confirming that the surface waters were inspected and cleaned of pollutants within 24 hours following the fireworks display.

The Fireworks Permit also included special provisions for the continuation of two once per year fireworks shows in or near ASBS. These two fireworks shows are Independence Day fireworks events at Scripps Park in La Jolla and Heisler Park in Orange County. The La Jolla event has occurred approximately one quarter mile from

the La Jolla ASBS since 1984. It is an event that runs 20 to 25 minutes and includes less than 500 pounds of pyrotechnic material discharged into the air over or adjacent to the La Jolla ASBS. The Heisler Park event runs approximately 15 minutes and includes 600 pounds of pyrotechnic material discharged over or adjacent to the Heisler Park ASBS. Approximately 20 to 46 percent of the Heisler Park firing range is over land.

The Regional Board determined the Independence Day public fireworks displays in or near the La Jolla ASBS and the Heisler Park ASBS are limited-term short duration activities that qualify for an exception to the general rule prohibiting discharges in ASBS. The Regional Board limited the La Jolla and Heisler Park approvals to single, annual Independence Day fireworks displays at each location with net explosive weight of fireworks under 1,000 pounds of pyrotechnic material. Further, the Regional Board required that the areal extent of the firing range in ASBS be limited to the maximum extent practicable to prevent or reduce residual firework pollutant waste discharges to ASBS. The Fireworks Permit also specifies that the residual pollutant waste discharges at the two locations cannot permanently alter natural water quality conditions in the ASBS receiving waters. Temporary changes to natural ocean water quality conditions are permissible if beneficial uses are protected.

C. Administrative and Superior Court Proceedings

After the Regional Board approved the Fireworks Permit, CERF appealed the approval to the State Water Board. The State Water Board did not take action on CERF's appeal for more than three years. In July 2014, CERF filed a petition for writ of mandate against the State Water Board challenging the State Water Board's failure to act on CERF's appeal. In October ****604** 2014, the State Water Board denied CERF's appeal.

***186** In November 2014, CERF filed a petition for writ of mandate in the superior court challenging the Regional Board's approval of the Fireworks Permit. In its first amended petition, CERF alleged the Regional Board violated the Clean Water Act by failing to require monitoring of the type, interval, and frequency sufficient to yield data representative of the monitored activity and sufficient to assess dischargers' compliance with the Fireworks Permit. CERF also alleged the Regional Board violated the Water Code and the California Ocean Plan by approving discharges to the La Jolla ASBS and Heisler Park ASBS.

In its tentative decision, the trial court set forth its standard of review by stating: "Code of Civil Procedure section 1094.5 provides that a trial court reviewing the decision of an administrative agency must exercise its independent judgment in reviewing the evidence; and that an 'abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence.' [Citation.] 'Weight of the evidence' is synonymous with 'preponderance.' [Citation.]" The trial court then went on to describe the substantial evidence standard of review.

At the hearing on the matter, the Regional Board sought to clarify the standard of review the court had utilized in making its ruling. The Regional Board pointed out that there was an inconsistency in the court's tentative ruling because the court set forth the independent review standard but then went on to discuss the substantial evidence standard. The Regional Board asked the court to confirm that it conducted an independent review of the matter. The trial court responded by stating, "I don't know how you could read this tentative ruling and not conclude that I independently reviewed the facts of this case." The court went on to state that it "drill[ed] down on this, read the record, ... and [made its] own conclusions." The trial court pointed to a portion of the tentative ruling in which the court discussed the difference between once per year fireworks shows and SeaWorld's numerous shows that occur at the same location. The court stated, "Does that sound like somebody who is just taking the Regional Board's word for it. I think I went further than you."

After considering the administrative record and conducting an oral hearing, the trial court confirmed its tentative ruling as the final ruling of the court and denied the petition. The court found CERF had failed to meets it burden to establish the Regional Board abused its discretion by "rely[ing] on visual monitoring and detailed [best management practices] to demonstrate compliance with the permit's terms for all dischargers other than SeaWorld." The court concluded the Regional Board appropriately imposed different conditions and distinguished between annual event fireworks dischargers and dischargers that conduct more frequent shows, such as those put on by ***187** SeaWorld up to 150 times per year over the same part of Mission Bay. The trial court stated that it "[chose] to defer to the far superior expertise of the [Regional Board] in matters relating to water quality." The court also found that CERF did not "carry its burden to demonstrate an abuse of discretion by the [Regional Board] in finding the 'Ocean Plan' exceptions applied to the limited Fourth of July shows at or near La Jolla Cove and Heisler Park." Lastly, as a separate and

independent ground for denying the petition, the court determined the Water Code and Clean Water Act include an implied "Independence Day Exception" for Fourth of July fireworks shows.

****605** DISCUSSION

I

THE TRIAL COURT'S STANDARD OF REVIEW

CERF argues the trial court applied an incorrect standard of review in considering CERF's challenge to the Regional Board's approval of the Fireworks Permit that did not require every permittee to conduct receiving water monitoring to assess compliance with the permit. We reject CERF's argument.

[3]"A party aggrieved by a final decision or order of a regional board ... may obtain review of the decision or order of the regional board in the superior court by filing in the court a petition for writ of mandate." (§ 13330, subd. (b).) The petition for writ of mandate is governed by Code of Civil Procedure section 1094.5, subdivision (c), and "the court shall exercise its independent judgment on the evidence." (§ 13330, subd. (e).) " 'In exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.' " (*Building Industry, supra*, 124 Cal.App.4th at p. 879, 22 Cal.Rptr.3d 128.) An "abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence." (Code Civ. Proc., § 1094.5, subd. (c).)

[4] [5] [6]The independent judgment standard in which the trial court determines whether administrative findings are supported by the weight of the evidence differs from the substantial evidence standard of review. (*Alberda v. Board of Retirement of Fresno County Employees' Retirement Assn.* (2013) 214 Cal.App.4th 426, 435, 153 Cal.Rptr.3d 823 (*Alberda*).) "In substantial evidence review, the reviewing court defers to the factual findings made below. It does not weigh the evidence presented by both parties to determine whose position is favored by a preponderance. Instead, it determines whether ***188** the evidence the prevailing party presented was substantial—or, as it is often put, whether any rational finder of fact could have made the finding that was made below. If so, the decision must stand." (*Ibid.;* italics omitted.) In contrast, under the independent judgment standard, "the trial court begins its review with a presumption that the administrative findings are correct, it does not defer to the fact finder below and accept its findings whenever substantial evidence supports them. Instead, it must weigh all the evidence for itself and make its own decision about which party's position is supported by a preponderance. [Citation.] The question is not whether any rational fact finder could make the finding below, but whether the reviewing court believed the finding actually was correct." (*Ibid.*; italics omitted.)

[7]"The question presented in this case—whether the trial court applied the correct standard of review—is a question of law. We review questions of law de novo." (*Alberda, supra*, 214 Cal.App.4th at p. 434, 153 Cal.Rptr.3d 823.)

[8]CERF argues the trial court improperly applied the substantial evidence standard of review and "deferred almost wholesale to the [Regional] Board's 'expertise' " on the permitting decision. CERF acknowledges that the trial court initially recited the correct independent judgment standard of review, but notes that the trial court went on to cite and discuss the substantial evidence standard. Relying on ****606** *Alberda, supra*, 214 Cal.App.4th at pages 433 through 436, 153 Cal.Rptr.3d 823, and *Rodriguez v. City of Santa Cruz* (2014) 227 Cal.App.4th 1443, 1453-1455, 174 Cal.Rptr.3d 826 (*Rodriguez*), CERF contends the trial court's references to the substantial evidence standard require reversal.

In *Alberda*, the petitioner filed a petition for writ of mandate to set aside respondent's denial of his application for a service connected disability retirement. (*Alberda, supra*, 214 Cal.App.4th at p. 428, 153 Cal.Rptr.3d 823.) After the trial court denied the petition, petitioner appealed, arguing the trial court had applied an incorrect standard of review. (*Ibid.*) In that case, the trial court started its decision by stating the correct independent judgment standard of review. (*Id.* at p. 434, 153 Cal.Rptr.3d 823.) However, the trial court went on to state that " 'substantial evidence supports the hearing officer's decision.' " (*Ibid.*) In discussing the merits of the case, the court continued to use the phrase "substantial evidence" numerous times and cited to authority applying the substantial evidence standard. (*Id.* at pp. 434-435, 153 Cal.Rptr.3d 823.) Based on the trial court's statement of the law coupled with its "statements throughout the statement of decision that 'substantial evidence supports' the hearing officer's decision or findings," the Court of

Appeal concluded it was "likely the trial court applied the substantial evidence standard of review rather than the independent judgment standard." (*Id.* at p. 435, 153 Cal.Rptr.3d 823.) Accordingly, the Court of Appeal remanded the matter to the trial court to reconsider under the independent judgment standard of review. (*Id.* at p. 436, 153 Cal.Rptr.3d 823.)

***189** Similarly, in *Rodriguez*, a police officer petitioned for writ of mandate after the city denied his application for industrial disability retirement. (*Rodriguez, supra*, 227 Cal.App.4th at p. 1445, 174 Cal.Rptr.3d 826.) The trial court denied the petition. (*Ibid.*) On appeal, petitioner claimed the trial court applied an incorrect standard of review. (*Ibid.*) The trial court had referenced "sufficient evidence" once without citation to authority. (*Id.* at p. 1453, 174 Cal.Rptr.3d 826.) However, "the statement of decision [left the Court of Appeal] with the distinct impression that the trial court likely did not apply the independent judgment standard in making its decision." (*Ibid.*) The Court of Appeal "reach[ed] that conclusion based on the fact that each time the court referenced the correct independent judgment standard, it also incorrectly stated that the [administrative law judge's] decision was entitled to 'deference.' " (*Ibid.*) Further, the trial court articulated no independent findings regarding petitioner's credibility, and instead, stated that sufficient evidence supported the administrative law judge's finding that petitioner lacked credibility. (*Id.* at p. 1454, 174 Cal.Rptr.3d 826.)

Here, in contrast to *Alberda, supra*, 214 Cal.App.4th 426, 153 Cal.Rptr.3d 823 and *Rodriguez, supra*, 227 Cal.App.4th at 1446, 174 Cal.Rptr.3d 826, the trial court's order does not demonstrate that it applied an incorrect standard of review. The trial court initially set forth the correct independent judgment standard. Although the trial court later set forth the "substantial evidence" standard and stated that it chose "to defer to the far superior expertise of the [Regional Board] in matters relating to water quality," it is clear that the trial court independently reviewed and weighed the evidence. For example, the trial court considered the evidence regarding the differences in scale, frequency, and location of SeaWorld's numerous fireworks shows as compared to other fireworks dischargers. Based on the distinctions, the trial court found the Regional Board properly exercised its discretion to distinguish between ****607** SeaWorld and other dischargers and varied permit conditions accordingly. Moreover, unlike *Alberda* and *Rodriguez*, the trial court clarified during the hearing on the matter that it independently reviewed the facts, made its own conclusions, and did not "just [take] the Regional Board's word for it." Reading the record and trial court's order as a whole, the trial court's decision is distinctly different from that of the trial courts in *Alberda* and *Rodriguez*. Unlike those cases, the trial court's decision here reflected that the court applied the independent judgment standard, which the court confirmed at the oral proceedings.

[9]We also reject CERF's argument that the record reflects the trial court did not independently and fully examine CERF's petition. CERF contends the trial court did not recognize that CERF alleged two causes of action, one concerning monitoring of *all* fireworks discharges within the Regional Board's jurisdiction and the other concerning two particular shows (La Jolla and Heisler Park) in or near ASBS. While the court stated that CERF's petition focused on the La Jolla and Heisler Park shows, it also discussed other shows within the San Diego Region. Further, both parties informed the ***190** court that CERF was challenging the Fireworks Permit because it did not require receiving water monitoring for all permittees. After considering the evidence and the parties' arguments, the trial court concluded that the Regional Board did not abuse its discretion in drawing a distinction between SeaWorld's frequent shows and other dischargers. The trial court specifically concluded CERF failed to carry its burden to demonstrate the Regional Board abused its discretion "to rely on visual monitoring and detailed [best management practices] to demonstrate compliance with the permit's terms for *all dischargers* other than SeaWorld." Accordingly, the trial court considered and ruled on the Fireworks Permit as it relates to all shows in the San Diego Region.

II

MONITORING REQUIREMENTS

CERF argues that had the trial court applied the independent judgment standard, it would have concluded the Fireworks Permit does not comply with the Clean Water Act's monitoring requirements. Specifically, CERF contends the Fireworks Permit violates the Clean Water Act because it lacks monitoring sufficient to assure compliance with the permit's terms; the Regional Board had no reasonable basis to conclude the Fireworks Permit's best management practices will adequately control and abate the discharge of residual pollutant waste from public fireworks events because data from SeaWorld's monitoring of receiving waters showed exceedances of water quality standards despite implementation of best management practices; although

the Regional Board concluded large fireworks events resulted in levels of pollutants above water and sediment quality objectives, it failed to require monitoring for all large events and intermediate events for which it had no data; and the Fireworks Permit's monitoring and reporting program fails to fulfill its purpose of preventing exceedances in both San Diego Bay and Mission Bay.

[10] [11]Having found that the trial court applied the appropriate independent judgment standard, we review its factual determinations under the substantial evidence standard and its legal determinations under the de novo standard. (*Building Industry, supra*, 124 Cal.App.4th at p. 879, 22 Cal.Rptr.3d 128; *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 824, 85 Cal.Rptr.2d 696, 977 P.2d 693.) "[W]e are not ****608** bound by the legal determinations made by the state or regional agencies or by the trial court. [Citation.] But we must give appropriate consideration to an administrative agency's expertise underlying its interpretation of an applicable statute." (*Building Industry, supra*, at p. 879, 22 Cal.Rptr.3d 128.)

***191** A. Clean Water Act's Monitoring Requirements

Under federal regulations implementing the Clean Water Act, NPDES permits must have monitoring requirements "to assure compliance with permit limitations." (40 C.F.R. § 122.44(i)(1).) All permits must specify "[r]equired monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring." (40 C.F.R. § 122.48(b).)

As the permitting agency, the Regional Board has wide discretion to determine monitoring requirements. (See *NRDC v. EPA, supra*, 863 F.2d at p. 1434; *Webb v. Gorsuch* (4th Cir.1983) 699 F.2d 157, 161.)

The Clean Water Act does not specify particular monitoring methods. In *NRDC v. EPA*, the Ninth Circuit Court of Appeals considered a challenge to the EPA's approval of a NPDES permit relating to the discharge of pollutants from oil and gas operations in the Gulf of Mexico. (*NRDC v. EPA, supra*, 863 F.2d at p. 1424.) The permit "prohibit[ed] the discharge of drill cuttings generated during the use of oil-based muds because the oil within the cuttings are conventional pollutants." (*Id.* at p. 1433.) The petitioners "object[ed] to the use of a visual sheen test as a method of monitoring compliance with the prohibition on the discharge of free oil." (*Ibid.*) The visual sheen test is " 'a visual observation of the receiving water' after drilling fluids are discharged, to determine if a sheen results on the surface of the water." (*Ibid.*) The Ninth Circuit upheld the visual monitoring method because it was a " 'generally valid and useful standard' in other contexts" and the Environmental Protection Agency "has wide discretion and authority to determine monitoring requirements in NPDES permits." (*Id.* at pp. 1433-1434; see also *Webb v. Gorsuch, supra*, 699 F.2d at p. 161 ["EPA's failure to require biological monitoring was not arbitrary or capricious since the Clean Water Act gives EPA discretion to require such monitoring."].)

[12]Here, CERF objects to the use of visual monitoring to assess compliance with the Fireworks Permit. CERF contends that in order to comply with the Clean Water Act, the Fireworks Permit was required to mandate receiving water monitoring for all dischargers, such as the requirements imposed on SeaWorld, to assess whether fireworks discharges resulted in exceedances of water quality standards. The Regional Board determined that proper implementation of the best management practices set forth in the Fireworks Permit, including visual monitoring, would adequately control and abate the discharge of pollutant wastes from fireworks events over the region's surface waters.

In reaching its conclusion, the Regional Board considered various factors, including existing data from SeaWorld's monitoring, which showed that it ***192** was unlikely that any single fireworks event smaller than SeaWorld's major Fourth of July and Labor Day events would causes exceedances in water quality criteria. The Regional Board recognized, however, that the continuous discharge of fireworks from large events and cumulative discharges from smaller events could result in pollutant accumulation. The Regional Board also considered that "[t]he receiving water fallout area affected by the fireworks residue can vary ****609** depending on wind speed and direction, size of the shells, the angle of mortar placement, the type and height of firework explosions and other environmental factors." Further, wide dispersion of firework constituents from wind, tidal effects, and other factors, along with pollution from other sources, make detection of residual firework pollutant waste difficult.

[13]CERF has not pointed to any authority, and we have found none, suggesting that visual monitoring is an invalid monitoring method under the Clean Water Act. To the contrary, relevant authority indicates that the permitting agency has wide discretion in developing and imposing monitoring requirements and can rely on visual monitoring in appropriate contexts. (See *NRDC v. EPA, supra*, 863 F.2d at pp. 1433-1434.) Based on the Regional Board's wide discretion, the data before it, and the various factors impacting the dispersion and detection of

residual fireworks pollutants, we conclude the Regional Board acted reasonably in deciding to rely on best management practices and visual monitoring as a method for assessing compliance with the Fireworks Permit. CERF has failed to show that the Regional Board's decision to rely on visual monitoring and best management practices was legally or factually unsupported.

B. Best Management Practices

[14]CERF contends the Regional Board had no reasonable basis to conclude the Fireworks Permit's best management practices will adequately control and abate the discharge of residual pollutant waste from public fireworks events. Specifically, CERF argues the only available data, which was from SeaWorld's monitoring of receiving waters under SeaWorld's individual NPDES permit, showed exceedances of water quality standards despite implementation of best management practices. We reject CERF's arguments.

Under the terms of its individual NPDES permit, SeaWorld was subject to best management practices. SeaWorld's practices included sweeping the fireworks discharge zone, gathering floating debris using hand held fishnets, sweeping the surface of the fireworks barge immediately after shows to prevent solid waste and debris from being swept into the water by wind, collecting, handling and disposing of unexploded fireworks, and picking up fireworks debris on the nearby shoreline every morning following each aerial fireworks display.

***193** SeaWorld has monitored the potential effects of its fireworks displays on both water and sediments in Mission Bay since 2001 and conducted a detailed analysis in 2006. SeaWorld conducted water chemistry sampling of both its regular events, which typically involve detonation of 200 pounds of net explosive weight, and its larger Fourth of July and Labor Day events, which involve approximately 1,000 pounds of net explosive weight per event. In considering the Fireworks Permit at issue in this case, the Regional Board reviewed and considered SeaWorld's data.

SeaWorld's regular events showed little evidence of pollutants within the receiving water column at levels above applicable water quality criteria. SeaWorld's water chemistry sampling after its larger Fourth of July and Labor Day fireworks events showed receiving waters in the fallout area exceeded both water quality criteria and levels documented at reference sites. "Pollutants such as arsenic, copper, mercury, tin, zinc and phosphorous were detected at levels above water quality criteria or at elevated levels compared to the reference sites. However, only phosphorous exceeded instantaneous water quality criteria." The Regional Board concluded, based on the ****610** data before it, that it is unlikely any single fireworks event smaller than SeaWorld's Fourth of July and Labor Day events would cause exceedances of applicable water quality criteria, but cumulative discharges may cause pollutant accumulation in bay sediments.

There is no indication in the record that any exceedances in the water quality criteria resulted from ineffective best management practices. While SeaWorld was subject to best management practices under its individual NPDES permit, water chemistry sampling of SeaWorld's regular events showed little evidence of pollutants within receiving waters above applicable water quality criteria. Following large events, only one element exceeded instantaneous water quality criteria. Although there were elevated levels of pollutants within the fireworks fallout area relative to reference sites, the elevated levels were primarily after large events and below applicable water quality criteria. Further, the evidence before the Regional Board showed that other factors, such as the frequency, location, and unique characteristics of SeaWorld's events, may have impacted water quality.

Unlike typical single event dischargers, SeaWorld conducts up to 150 fireworks events per year in the same general location from a barge in Mission Bay. SeaWorld has put on more than 3,500 fireworks shows since 1985. Mission Bay is unique due to the restricted circulation of waters within the bay and the shallow depth of the bay in the vicinity of the fireworks events. As a result of these factors, the Regional Board determined SeaWorld's events represent the maximum firework pollutant loading conditions and cumulative effects on a surface water body. This conclusion was supported by the evidence.

***194** Additionally, as the Regional Board notes, the best management practices required under SeaWorld's individual NPDES permit are not identical to those contained in the Fireworks Permit at issue here. In addition to requiring fireworks dischargers to sweep debris following events, permittees under the Fireworks Permit must consider use of alternative fireworks and firing ranges to reduce pollutant waste in surface waters and management and handling of the fireworks in a manner that minimizes the risk of pollutant waste from entering surface waters.

Contrary to CERF's argument, the evidence supported the

Regional Board's decision to treat SeaWorld differently from other fireworks dischargers in the region. SeaWorld's fireworks events present exceptional and maximum pollutant circumstances because of the combined impact of their frequency, location in a shallow portion of the bay, and restricted water circulation in the area. Even with these combined factors, SeaWorld's regular events showed little evidence of pollutants above applicable water quality criteria. Based on the evidence before the Regional Board concerning water quality sampling and the difficulty in monitoring firework pollutant waste because of the wide dispersion of firework constituents from wind, tidal effects, and other factors, along with pollution from other sources, the Regional Board appropriately declined to require all dischargers to conduct receiving water monitoring.

C. Requirements Imposed on Other Large and Intermediate Level Shows

[15]CERF argues that although the Regional Board concluded large fireworks events resulted in levels of pollutants above water and sediment quality objectives, it failed to require monitoring for all ****611** large events and intermediate events for which it had no data. In particular, CERF contends the Regional Board should have required receiving water monitoring for intermediate level shows, such as those conducted in La Jolla and Heisler Park, because they exceeded the 200-pound threshold of SeaWorld's regular shows and the Regional Board did not have any data to presume the intermediate level shows would not negatively impact water quality. Pointing to the Big Bay Boom fireworks show in San Diego Bay, CERF further contends that the Regional Board should have required receiving water monitoring for all large fireworks shows other than SeaWorld's events.

CERF's arguments are not persuasive. The shows that CERF points to are limited events that take place once per year on the Fourth of July. The La Jolla and Heisler Park shows each involve 600 pounds or less of net explosive weight. Further, 20 to 46 percent of the Heisler Park show occurs over land.

***195** Although water chemistry sampling after SeaWorld's large fireworks events, which involved 1,000 pounds of net explosive weight, showed the receiving waters exceeded water quality criteria and levels documented at reference sites, SeaWorld's events had numerous unique factors that may have contributed to the results. For example, SeaWorld conducted frequent shows in the same shallow location of Mission Bay with restricted water circulation. CERF does not point to evidence that the Heisler Park and La Jolla events had the same or similar characteristics to the location and frequency of SeaWorld's events. Additionally, the water chemistry sampling showed only one element exceeded instantaneous water quality criteria after large events. SeaWorld's regular events involving 200 pounds of net explosive weight did not result in pollutants within the receiving water column at levels above applicable water quality criteria. The evidence before the Regional Board supported its conclusion that "it is unlikely that single fireworks events of a smaller size than SeaWorld's Fourth of July and Labor Day events would cause exceedances of applicable water quality criteria in the water column of receiving waters." Accordingly, the Regional Board reasonably did not subject intermediate level shows to receiving water monitoring.

Similarly, CERF's argument concerning the Big Bay Boom lacks merit. The Big Bay Boom is a Fourth of July fireworks event in San Diego Bay. It involves fireworks discharged from four barges that are more than one mile apart. CERF contends the Big Bay Boom involves 18,040 shells, making the fireworks discharged from each barge an event comparable to or exceeding SeaWorld's large Fourth of July and Labor Day events. However, at the hearing on the Fireworks Permit before the Regional Board, the producer of the Big Bay Boom stated that each barge involves approximately 850 pounds of fireworks. Thus, the Big Bay Boom is not similar to SeaWorld's Fourth of July and Labor Day events because the Big Bay Boom involves discharges from multiple barges spread out in San Diego Bay and each barge is under the 1,000 pounds discharged at SeaWorld's large events.

D. Monitoring and Reporting Program's Purpose

CERF argues the Fireworks Permit's monitoring and reporting program does not fulfill its purpose to prevent exceedances of the receiving water and sediment quality limitations in the permit for discharges in both San Diego Bay and Mission Bay. CERF's argument focuses on the lack of monitoring required for shows in San Diego Bay, such as the Big Bay ****612** Boom. Specifically, CERF contends that because of the various factors affecting a firework event's impact to receiving water, such as frequency of events, amount of fireworks per event, perchlorate oxidation, wind direction and velocity, SeaWorld's data could not be extrapolated to San Diego Bay.

***196** As we previously explained, the Big Bay Boom in

San Diego Bay is easily distinguishable from SeaWorld's fireworks events based on the frequency of SeaWorld's events and location in Mission Bay with unique characteristics. CERF does not point to any evidence to suggest that annual or limited fireworks events in San Diego Bay that do not reach the 1,000 pounds of net explosives of SeaWorld's large events would impact water or sediment quality to a degree that requires the same level of monitoring imposed on SeaWorld. Instead, the evidence before the Regional Board supports its conclusion that single fireworks events smaller than SeaWorld's Fourth of July and Labor Day events would not cause exceedances of applicable water quality criteria.

III

LA JOLLA AND HEISLER PARK ASBS

[16]CERF argues the Regional Board's approval of discharges into the La Jolla and Heisler Park ASBS violates prohibitions in the California Ocean Plan. Specifically, CERF contends the California Ocean Plan generally prohibits discharges to ASBS and, under the doctrine of *ejusdem generis*, the exception for limited-term activities does not apply to fireworks events. CERF further contends the Regional Board failed to meet the terms of the exception and the Fireworks Permit's best management practices. CERF's arguments are unavailing.

The California Ocean Plan prohibits waste discharges to ASBS. (California Ocean Plan, § III.E.1.) "Discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas." (California Ocean Plan, § III.E.1.) However, the California Ocean Plan contains an exception for limited-term activities in ASBS. "Limited-term activities include, but are not limited to, activities such as maintenance/repair of existing boat facilities, restoration of sea walls, repair of existing storm water pipes, and replacement/repair of existing bridges. Limited-term activities may result in temporary and short-term changes in existing water quality. Water quality degradation shall be limited to the shortest possible time. The activities must not permanently degrade water quality or result in water quality lower than that necessary to protect existing uses, and all practical means of minimizing such degradation shall be implemented." (California Ocean Plan, § III.E.2.)

The Regional Board utilized the "limited-term" exception to approve the annual Fourth of July public fireworks displays near the La Jolla ASBS and in the Heisler Park ASBS. The La Jolla event is a 20 to 25 minute show that takes place approximately one quarter mile from the La Jolla ASBS, but its ***197** fireworks fallout area may extend into portions of the ASBS. The Heisler Park event is a 15 minute show that takes place over or adjacent to the Heisler Park ASBS, with 20 to 46 percent of the firing range over land.

[17] [18]Relying on the principle of *ejusdem generis*, CERF contends the State Water Board intended to limit the exception for discharges in ASBS to infrastructure projects or other activities similar to maintenance/repair of existing boat facilities, restoration of sea walls, repair of ****613** existing storm water pipes, and replacement/repair of existing bridges. "The principle of *ejusdem generis* instructs that 'when a statute contains a list or catalogue of items, a court should determine the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items similar in nature and scope. [Citations.]' [Citations.] '*Ejusdem generis* applies whether specific words follow general words in a statute or vice versa. In either event, the general term or category is "restricted to those things that are similar to those which are enumerated specifically." ' " (*Pour Le Bebe, Inc. v. Guess? Inc.* (2003) 112 Cal.App.4th 810, 826-827, 5 Cal.Rptr.3d 442.)

In *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 141, 96 Cal.Rptr.2d 485, 999 P.2d 718 (*Kraus*), our high court considered whether a nonrefundable security and administrative fee was a "security" as defined by Civil Code section 1950.5. That statute defined "security" as "any payment, fee, deposit, or charge, including, but not limited to, any of the following: [four examples]." (*Kraus, supra,* at p. 139, 96 Cal.Rptr.2d 485, 999 P.2d 718.) All four examples set forth in the definition of "security" were "charges intended to secure the landlord against future tenant defaults." (*Id.* at p. 141, 96 Cal.Rptr.2d 485, 999 P.2d 718.) Applying the principle of *ejusdem generis* and reading the statute as a whole, the court concluded that "even though a security is not limited to the examples set out in [the statute], a security is limited to charges imposed to secure the landlord against future tenant defaults." (*Ibid.*)

Here, the "limited-term" exception in the California Ocean Plan provided examples of "limited-term activities," including, but not limited to, "activities such as maintenance/repair of existing boat facilities, restoration of sea walls, repair of existing storm water pipes, and replacement/repair of existing bridges."

(California Ocean Plan, § III.E.2.) First, the plain language of the exception provides that it is not limited to the particular activities set forth therein. Instead, the delineated activities are merely examples. Further, unlike *Kraus, supra*, 23 Cal.4th 116, 96 Cal.Rptr.2d 485, 999 P.2d 718, in addition to providing examples of "limited-term activities," the provision in this case sets forth various criteria for the exception to apply. For example, the activity must be for a limited-term (i.e., not more than weeks or months), water quality degradation must be for the shortest time possible, the activity must not permanently degrade water quality, and all practical means of minimizing such degradation shall be ***198** implemented. (California Ocean Plan, § III.E.2.) Reading the limited-term exception as a whole, we conclude it is not limited to short-term necessary infrastructure projects as CERF suggests. Rather, in order for the Regional Board to apply the exception, it must determine whether the activity meets the criteria for the exception to apply.

We also reject CERF's argument that the Regional Board's application of the limited-term exception to annual Fourth of July fireworks displays in or near the La Jolla ASBS and Heisler Park ASBS conflicts with the California Ocean Plan and the Fireworks Permit's best management practices. In particular, CERF contends that, contrary to the California Ocean Plan and Firework Permit's best management practices, the Regional Board made no effort to ensure that the La Jolla and Heisler Park dischargers located the events a sufficient distance from areas designated as ASBS, designed firing ranges to eliminate or reduce residual pollutant waste discharges to waters of the United States, limited the aerial extent of the firing range in the ASBS to the maximum ****614** extent practicable, limited water degradation to the shortest possible time, and implemented all practical means to minimize water degradation.

CERF fails to acknowledge that the Fireworks Permit specifically subjects the La Jolla and Heisler Park events to the best management practices imposed on all dischargers and special conditions to comply with the California Ocean Plan. Further, the Regional Board exercised its discretion to approve the events under the limited-term activity exception in the California Ocean Plan. The activities comply with the requirements of the exception because they occur only once per year, the shows would not permanently degrade water quality and the events are subject to proper implementation of best management practices in order to minimize residual firework pollutant waste discharges to ASBS.

Based on the foregoing, we conclude CERF failed to show the Regional Board's application of the limited-term activity exception to the Fourth of July events at or near the La Jolla ASBS and Heisler Park ASBS was legally or factually unsupported.

[19]Lastly, we need not reach CERF's argument that the trial court erred in finding an implied "Independence Day Exception" in the Water Code and Clean Water Act. "A judgment correct on any legal basis need not be overturned because the court relied on an allegedly erroneous reason." (*Waldsmith v. State Farm Fire & Casualty, Co.* (1991) 232 Cal.App.3d 693, 698, 283 Cal.Rptr. 607, citing *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19, 112 Cal.Rptr. 786, 520 P.2d 10.)

***199** DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal.

WE CONCUR:

NARES, J.

HALLER, J.

All Citations

12 Cal.App.5th 178, 218 Cal.Rptr.3d 596, 17 Cal. Daily Op. Serv. 5073, 2017 Daily Journal D.A.R. 5082

Footnotes

1 All further statutory references are to the Water Code unless otherwise indicated.

2 Unless otherwise stated, all references to the Code of Federal Regulations will be to the 2017 version.

3 In contrast to an individual permit, the Fireworks Permits is a "general permit." General permits cover categories of

discharges within a geographic area. (40 C.F.R. § 122.28(a)(1).)

53 Cal.3d 482, 808 P.2d 235, 280 Cal.Rptr. 92

COUNTY OF FRESNO, Plaintiff and Appellant,
v.
THE STATE OF CALIFORNIA et al., Defendants and Respondents.

No. S015637.
Supreme Court of California
Apr 22, 1991.

SUMMARY

A county filed a test claim with the Commission on State Mandates seeking, under Cal. Const., art. XIII B, § 6 (state must provide subvention of funds to reimburse local governments for costs of state- mandated programs or increased levels of service), reimbursement from the state for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (Health & Saf. Code, § 25500 et seq.). The commission found the county had the authority to charge fees to pay for the program, and the program was thus not a reimbursable state-mandated program under Gov. Code, § 17556, subd. (d), which provides that costs are not state-mandated if the agency has authority to levy a charge or fee sufficient to pay for the program. The county filed a petition for writ of mandate and a complaint for declaratory relief against the state. The trial court denied relief. (Superior Court of Fresno County, No. 379518-4, Gary S. Austin, Judge.) The Court of Appeal, Fifth Dist., No. F011925, affirmed.

The Supreme Court affirmed the decision of the Court of Appeal. The court held, as to the single issue on review, that Gov. Code, § 17556, subd. (d), was facially constitutional under Cal. Const., art. XIII B, § 6. It held art. XIII B was not intended to reach beyond taxation, and § 6 was included in art. XIII B in recognition that Cal. Const., art. XIII A, severely restricted the taxing powers of local governments. It held that art. XIII B, § 6 was designed to protect the tax revenues of local governments from state mandates that would require an expenditure of such revenues and, when read in textual and historical context, requires subvention only when the costs in question can be recovered solely from tax revenues. Accordingly, the court held that Gov. Code, § 17556, subd. (d), effectively construed the term "cost" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that such a construction is altogether sound. (Opinion by Mosk, J., with Lucas, C. J., Broussard, Panelli, Kennard, JJ., and Best (Hollis G.), J.,* concurring. Separate concurring opinion by Arabian, J.)

HEADNOTES

Classified to California Digest of Official Reports

([1])
State of California § 11--Reimbursement to Local Governments for State-mandated Costs--Costs for Which Fees May Be Levied--Validity of Exclusion.
In a proceeding by a county seeking reversal of a decision by the Commission on State Mandates that the state was not required by Cal. Const., art. XIII B, § 6, to reimburse the county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (Health & Saf. Code, § 25500 et seq.), the trial court properly found that Gov. Code, § 17556, subd. (d) (costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program), was facially constitutional. Cal. Const., art. XIII B, was intended to apply to taxation and was not intended to reach beyond taxation, as is apparent from its language and confirmed by its history. It was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues; read in its textual and historical contexts, requires subvention only when the costs in question can be recovered solely from tax revenues. Gov. Code, § 17556, subd. (d), effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that construction is altogether sound. Accordingly, Gov. Code, § 17556, subd. (d), is facially constitutional under Cal. Const., art. XIII B, § 6.

[See **Cal.Jur.3d (Rev),** Municipalities, § 361; 9 **Witkin,** Summary of Cal. Law (9th ed. 1988) Taxation, § 124.]

COUNSEL
Max E. Robinson, County Counsel, and Pamela A. Stone, Deputy County Counsel, for Plaintiff and Appellant.
B. C. Barnum, County Counsel (Kern), and Patricia J.

Randolph, Deputy County Counsel, as Amici Curiae on behalf of Plaintiff and Appellant. ***484**
John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, and Richard M. Frank, Deputy Attorney General, for Defendants and Respondents.

MOSK, J.

We granted review in this proceeding to decide whether section 17556, subdivision (d), of the Government Code (section 17556(d)) is facially valid under article XIII B, section 6, of the California Constitution (article XIII B, section 6).

Article XIII B, section 6, provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

The Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. (Gov. Code, § 17500.) It created a "quasi-judicial body" (*ibid.*) called the Commission on State Mandates (commission) (*id.*, § 17525) to "hear and decide upon [any] claim" by a local government that the local government "is entitled to be reimbursed by the state for costs" as required by article XIII B, section 6. (Gov. Code, § 17551, subd. (a).) It defined "costs" as "costs mandated by the state"- "any increased costs" that the local government "is required to incur ... as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program" within the meaning of article XIII B, section 6. (Gov. Code, § 17514.) Finally, in section 17556(d) it declared that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

For the reasons discussed below, we conclude that section 17556(d) is facially constitutional under article XIII B, section 6. ***485**

I. Facts and Procedural History

The present proceeding arose after the Legislature enacted the Hazardous Materials Release Response Plans and Inventory Act (Act). (Health & Saf. Code, § 25500 et seq.) The Act establishes minimum statewide standards for business and area plans relating to the handling and release or threatened release of hazardous materials. (*Id.*, § 25500.) It requires local governments to implement its provisions. (*Id.*, § 25502.) To cover the costs they may incur, it authorizes them to collect fees from those who handle hazardous materials. (*Id.*, § 25513.)

The County of Fresno (County) implemented the Act but chose not to impose the authorized fees. Instead, it filed a so-called "test" or initial claim with the commission (Gov. Code, § 17521) seeking reimbursement from the State of California (State) under article XIII B, section 6. After a hearing, the commission rejected the claim. In its statement of decision, the commission made the following findings, among others: the Act constituted a "new program"; the County did indeed incur increased costs; but because it had authority under the Act to levy fees sufficient to cover such costs, section 17556(d) prohibited a finding of reimbursable costs.

The County then filed a petition for writ of mandate and complaint for declaratory relief against the State, the commission, and others, seeking vacation of the commission's decision and a declaration that section 17556(d) is unconstitutional under article XIII B, section 6. While the matter was pending, the commission amended its statement of decision to include another basis for denial of the test claim: the Act did not constitute a "program" under the rationale of *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*), because it did not impose unique requirements on local governments.

After a hearing, the trial court denied the petition and effectively dismissed the complaint. It determined, inter alia, that mandate under Code of Civil Procedure section 1094.5 was the County's sole remedy, and that the commission was the sole properly named respondent. It also determined that section 17556(d) is constitutional under article XIII B, section 6. It did not address the question whether the Act constituted a "program" under *County of Los Angeles.* Judgment was entered accordingly.

The Court of Appeal affirmed. It held the Act did indeed constitute a "program" under *County of Los Angeles,*

supra, 43 Cal.3d 46. It also held section 17556(d) is constitutional under article XIII B, section 6. ***486**

([1]) We granted review to decide a single issue, i.e., whether section 17556(d) is facially constitutional under article XIII B, section 6.

II. Discussion

We begin our analysis with the California Constitution. At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new "special taxes." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)

At the November 6, 1979, Special Statewide Election, article XIII B was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

"Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes." (*City of Sacramento, supra*, 50 Cal.3d at p. 59, fn. 1.)

Article XIII B of the Constitution was intended to apply to taxation-specifically, to provide "permanent protection for taxpayers from excessive taxation" and "a reasonable way to provide discipline in tax spending at state and local levels." (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument in favor of Prop. 4, p. 18.) To this end, it establishes an "appropriations limit" for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no "appropriations subject to limitation" in excess thereof (*id.*, § 2). (See *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 446.) It defines the relevant "appropriations subject to limitation" as "any authorization to expend during a fiscal year the proceeds of taxes ...." (Cal. Const., art. XIII B, § 8, subd. (b).) It defines "proceeds of taxes" as including "all tax revenues and the proceeds to ... government from," inter alia, "regulatory licenses, user charges, and user fees *to the extent that such proceeds exceed the costs reasonably borne by* [*government*] *in providing the regulation, product, or service* ...." (Cal. Const., art. XIII B, § 8, subd. (c), italics added.) Such "excess" proceeds from "licenses," "charges," and "fees" "are but ***487** *taxes*" for purposes here. (*County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 451, italics in original.)

Article XIII B of the Constitution, however, was not intended to reach beyond taxation. That fact is apparent from the language of the measure. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4 "would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts." (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*

In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the statute provides that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a

construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that section 17556(d) is facially constitutional under article XIII B, section 6.

The County argues to the contrary. It maintains that section 17556(d) in essence creates a new exception to the reimbursement requirement of ***488** article XIII B, section 6, for self-financing programs and that the Legislature cannot create exceptions to the reimbursement requirement beyond those enumerated in the Constitution.

We do not agree that in enacting section 17556(d) the Legislature created a new exception to the reimbursement requirement of article XIII B, section 6. As explained, the Legislature effectively-and properly-construed the term "costs" as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the requirement. Therefore, they need not be explicitly excepted from its reach.

The County nevertheless argues that no matter how characterized, section 17556(d) is indeed inconsistent with article XIII B, section 6. Its contention is in substance as follows: the source of section 17556(d) is former Revenue and Taxation Code section 2253.2; at the time of Proposition 4, subdivision (b)(4) of that former section stated that the State Board of Control shall not allow a claim for reimbursement of costs mandated by the state if the legislation contains a self-financing authority; the drafters of Proposition 4 incorporated some of the provisions of former Revenue and Taxation Code section 2253.2 into article XIII B, section 6, but did not incorporate former subdivision (b)(4); their failure to do so reveals an intent to treat as immaterial the presence or absence of a "self-financing" provision; and such an intent is confirmed by the "legislative history" set out at page 55 in Spirit of 13, Inc., Summary of Proposed Implementing Legislation and Drafters' Intent: "the state may not arbitrarily declare that it is not going to comply with Section 6 ... if the state provides new compensating revenues."

In our view, the County's argument is unpersuasive. Even if we assume arguendo that the intent of those who drafted Proposition 4 is as claimed, what is crucial here is the intent of those who voted for the measure. (See *County of Los Angeles, supra*, 43 Cal.3d 46, 56.) There is no substantial evidence that the voters sought what the County assumes the drafters desired. Moreover, the "legislative history" cited above cannot be considered relevant; it was written and circulated after the passage of Proposition 4. As such, it could not have affected the voters in any way.

To avoid this result, the County advances one final argument: "Based on the authority of [section 17556(d)], the Commission on State Mandates refuses to hear mandates on the merits once it finds that the authority to charge fees is given by the Legislature. This position is taken whether or not fees can actually or legally be charged to recover the entire costs of the program." ***489**

The County appears to be making one or both of the following arguments: (1) the commission applies section 17556(d) in an unconstitutional manner; or (2) the Act's self-financing authority is somehow lacking. Such contentions, however, miss the designated mark. They raise questions bearing on the constitutionality of section 17556(d) as applied and the legal efficacy of the authority conferred by the Act. The sole issue on review, however, is the facial constitutionality of section 17556(d).

III. Conclusion

For the reasons set forth above, we conclude that section 17556(d) is facially constitutional under article XIII B, section 6.

The judgment of the Court of Appeal is affirmed.

Lucas, C. J., Broussard, J., Panelli, J., Kennard, J., and Best (Hollis G.), J.,[*] concurred.

ARABIAN, J.,

Concurring.

I concur in the determination that Government Code section 17556, subdivision (d)[1] (section 17556(d)), does not offend article XIII B, section 6, of the California Constitution (article XIII B, section 6). In my estimation, however, the constitutional measure of the issue before us warrants fuller examination than the majority allow. A literalistic analysis begs the question of whether the Legislature had the authority to act statutorily upon a subject matter the electorate has spoken to constitutionally through the initiative process.

Article XIII B, section 6, unequivocally commands that "the state shall provide a subvention of funds to reimburse

... local government for the costs of [a new] program or increased level of service" except as specified therein. Article XIII B does not define this reference to "costs." (See Cal. Const., art. XIII B, § 8.) Rather, the Legislature assumed the task of explicating the related concept of "costs mandated by the state" when it created the Commission on State Mandates and enacted procedures intended to implement article XIII B, section 6, more effectively. (See § 17500 et seq.) As part of this statutory scheme, it exempted the state from its constitutionally imposed subvention obligation under certain enumerated circumstances. Some of these exemptions the electorate expressly contemplated in approving article XIII B, section 6 (§ 17556, subds. (a), (c), & (g); see § 17514), while others are strictly of legislative formulation and derive from ***490** former Revenue and Taxation Code section 2253.2. (§ 17556, subds. (b), (d), (e), & (f).)

The majority find section 17556 valid notwithstanding the mandatory language of article XIII B, section 6, based on the circular and conclusory rationale that "the Legislature effectively-and properly-construed the term 'costs' as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the [subvention] requirement. Therefore, they need not be explicitly excepted from its reach." (Maj. opn., *ante*, at p. 488.) In my view, excluding or otherwise removing something from the purview of a law is tantamount to creating an exception thereto. When an exclusionary implication is clear from the import or effect of the statutory language, use of the word "except" should not be necessary to construe the result for what it clearly is. In this circumstance, "I would invoke the folk wisdom that if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck." (*In re Deborah C.* (1981) 30 Cal.3d 125, 141 [177 Cal.Rptr. 852, 635 P.2d 446] (conc. opn. by Mosk, J.).)

Of at least equal importance, section 17500 et seq. constitutes a legislative implementation of article XIII B, section 6. As such, the overall statutory scheme must comport with the express constitutional language it was designed to effectuate as well as the implicit electoral intent. Eschewing semantics, I would squarely and forthrightly address the fundamental and substantial question of whether the Legislature could lawfully enlarge upon the scope of article XIII B, section 6, to include exceptions not originally designated in the initiative.

I do not hereby seek to undermine the majority holding but rather to set it on a firmer constitutional footing. "[S]tatutes must be given a reasonable interpretation, one which will carry out the intent of the legislators and render them valid and operative rather than defeat them. In so doing, sections of the Constitution, as well as the codes, will be harmonized where reasonably possible, in order that all may stand." (*Rose v. State of California* (1942) 19 Cal.2d 713, 723 [123 P.2d 505]; see also *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58 [233 Cal.Rptr. 38, 729 P.2d 202].) To this end, it is a fundamental premise of our form of government that "the Constitution of this State is not to be considered as a grant of power, but rather as a restriction upon the powers of the Legislature; and ... it is competent for the Legislature to exercise all powers not forbidden ...." (*People v. Coleman* (1854) 4 Cal. 46, 49.) "Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the ***491** Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] *In other words, 'we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited.'* [Citation.] [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.' [Citations.]" (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691 [97 Cal.Rptr. 1, 488 P.2d 161], italics added.) "Specifically, the express enumeration of legislative powers is not an exclusion of others not named unless accompanied by negative terms. [Citations.]" (*Dean v. Kuchel* (1951) 37 Cal.2d 97, 100 [230 P.2d 811].)

As the majority opinion impliedly recognizes, neither the language nor the intent of article XIII B conflicts with the exercise of legislative prerogative we review today. Of paramount significance, neither section 6 nor any other provision of article XIII B prohibits statutory delineation of additional circumstances obviating reimbursement for state mandated programs. (See *Dean v. Kuchel, supra*, 37 Cal.2d at p. 101; *Roth Drugs, Inc. v. Johnson* (1936) 13 Cal.App.2d 720, 729 [57 P.2d 1022]; see also *Kehrlein v. City of Oakland* (1981) 116 Cal.App.3d 332, 338 [172 Cal.Rptr. 111].)

Furthermore, the initiative was "[b]illed as a flexible way to provide discipline in government spending" by creating appropriations limits to restrict the amount of such expenditures. (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447 [170 Cal.Rptr. 232]; see Cal. Const.,

art. XIII B, § 1.) By their nature, user fees do not affect the equation of local government spending: While they facilitate implementation of newly mandated state programs or increased levels of service, they are excluded from the "appropriations subject to limitations" calculation and its attendant budgetary constraints. (See Cal. Const., art. XIII B, § 8; see also *City Council v. South* (1983) 146 Cal.App.3d 320, 334 [194 Cal.Rptr. 110]; *County of Placer v. Corin, supra,* 113 Cal.App.3d at pp. 448-449; Cal. Const., art. XIII B, § 3, subd. (b); cf. *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1505 [246 Cal.Rptr. 21] [" 'fees not exceeding the reasonable cost of providing the service or regulatory activity for which the fee is charged and which are not levied for general revenue purposes, have been considered outside the realm of "special taxes" [limited by California Constitution, article XIII A]' "]; *Terminal Plaza Corp. v. City* ***492** *and County of San Francisco* (1986) 177 Cal.App.3d 892, 906 [223 Cal.Rptr. 379] [same].)

This conclusion fully accommodates the intent of the voters in adopting article XIII B, as reflected in the ballot materials accompanying the proposition. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246 [149 Cal.Rptr. 239, 583 P.2d 1281].) In general, these materials convey that "[t]he goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending." (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 61; *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 109- 110 [211 Cal.Rptr. 133, 695 P.2d 220].) To the extent user fees are not borne by the general public or applied to the general revenues, they do not bear upon this purpose. Moreover, by imputation, voter approval contemplated the continued imposition of reasonable user fees outside the scope of article XIII B. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Limitation of Government Appropriations, Special Statewide Elec. (Nov. 6, 1979), arguments in favor of and against Prop. 4, p. 18 [initiative "Will curb excessive user fees imposed by local government" but "will Not eliminate user fees ..."]; see *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 452.)

"The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 56; see *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66 [266 Cal.Rptr. 139, 785 P.2d 522].) "Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs." (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 61.) An exemption from reimbursement for state mandated programs for which local governments are authorized to charge offsetting user fees does not frustrate or compromise these goals or otherwise disturb the balance of local government financing and expenditure.[2] (See ***493** *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 452, fn. 7.) Article XIII B, section 8, subdivision (c), specifically includes regulatory licenses, user charges, and user fees in the appropriations limitation equation only "to the extent that those proceeds exceed the costs reasonably borne by [the governmental] entity in providing the regulation, product, or service ...."

The self-executing nature of article XIII B does not alter this analysis. "It has been uniformly held that the legislature has the power to enact statutes providing for reasonable regulation and control of rights granted under constitutional provisions. [Citations.]" (*Chesney v. Byram* (1940) 15 Cal.2d 460, 465 [101 P.2d 1106].) " ' "Legislation may be desirable, by way of providing convenient remedies for the protection of the right secured, or of regulating the claim of the right so that its exact limits may be known and understood; but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it." [Citations.]' " (*Id.,* at pp. 463-464; see also *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].) Section 17556(d) is not "merely [a] transparent attempt[] to do indirectly that which cannot lawfully be done directly." (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 541 [234 Cal.Rptr. 795].) On the contrary, it creates no conflict with the constitutional directive it subserves. Hence, rather than pursue an interpretive expedient, this court should expressly declare that it operates as a valid legislative implementation thereof.

"[Initiative] provisions of the Constitution and of charters and statutes should, as a general rule, be liberally construed in favor of the reserved power. [Citations.] As opposed to that principle, however, 'in examining and ascertaining the intention of the people with respect to the

scope and nature of those ... powers, it is proper and important to consider what the consequences of applying it to a particular act of legislation would be, and if upon such consideration it be found that by so applying it the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential and, perhaps, ... indispensable, to the convenience, comfort, and well-being of the inhabitants of certain legally established districts or subdivisions of the state or of the whole state, then in such case the courts may and should assume that the people intended no such result to flow from the application of those powers and that they do not so apply.' [Citation.]" (*Hunt v. Mayor & Council of Riverside* (1948) 31 Cal.2d 619, 628-629 [191 P.2d 426].) ***494**

This court is not infrequently called upon to resolve the tension of apparent or actual conflicts in the express will of the people.[3] Whether that expression emanates directly from the ballot or indirectly through legislative implementation, each deserves our fullest estimation and effectuation. Given the historical and abiding role of government by initiative, I decline to circumvent that responsibility and accept uncritically the Legislature's self-validating statutory scheme as the basis for approving the exercise of its prerogative. It is not enough to say a broader constitutional analysis yields the same result and therefore is unnecessary. We provide a higher quality of justice harmonizing rather than ignoring the divers voices of the people, for such is the nature of our office. ***495**

Footnotes

* Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

* Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

1 Unless otherwise indicated, all further statutory references are to the Government Code.

2 This conclusion also accords with the traditional and historical role of user fees in promoting the multifarious functions of local government by imposing on those receiving a service the cost of providing it. (Cf. *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 454 ["Special assessments, being levied only for improvements that benefit particular parcels of land, and not to raise general revenues, are simply not the type of exaction that can be used as a mechanism for circumventing these tax relief provisions. [Citation.]"].)

3 See, e.g., *Zumwalt v. Superior Court* (1989) 49 Cal.3d 167 [260 Cal.Rptr. 545, 776 P.2d 247]; *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197 [182 Cal.Rptr. 324, 643 P.2d 941]; *California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171 [148 Cal.Rptr. 875, 583 P.2d 729]; *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575 [131 Cal.Rptr. 361, 551 P.2d 1193]; *Blotter v. Farrell* (1954) 42 Cal.2d 804 [270 P.2d 481]; *Dean v. Kuchel, supra,* 37 Cal.2d 97; *Hunt v. Mayor & Council of Riverside, supra,* 31 Cal.2d 619.

127 Cal.App.4th 1544
Court of Appeal, Fifth District, California.

COUNTY SANITATION DISTRICT NO. 2 OF LOS ANGELES COUNTY et al., Plaintiffs,
Cross-defendants and Appellants,
California Association of Sanitation Agencies et al., Plaintiffs and Appellants,
v.
COUNTY OF KERN, Defendant,
Cross-complainant and Appellant;
Kern County Board of Supervisors, Defendant and Appellant;
Arvin–Edison Water Storage District et al.,
Interveners and Respondents.

No. F043095.
|
April 1, 2005.
|
Rehearing Denied April 25, 2005.

Synopsis

Background: Sanitation agencies filed petition for writ of mandate and complaint for injunctive and declaratory relief, after county passed ordinance requiring heightened treatment standards for application of sewage sludge on land located within county's jurisdiction. Agencies alleged that county violated California Environmental Quality Act (CEQA), that ordinance was an invalid exercise of police power and a violation of commerce clause, and that imposition of biosolids impact fee was unconstitutional. County filed cross-action against sanitation agencies, challenging changes made to their sewage sludge disposal programs. The Superior Court, Tulare County, No. 189564, Paul A. Vortmann, J., entered judgment in favor of county on all causes of action asserted by sanitation agencies, and entered judgment in favor of agencies on all causes of action asserted by county on its cross-action. Parties appealed.

Holdings: The Court of Appeal, Dawson, J., held that:

[1] county was required to prepare EIR under CEQA;

[2] ordinance did not discriminate against interstate commerce;

[3] biosolids impact fee was invalid to the extent it was a local fee for road use; and

[4] sanitation agencies' contract activities were within scope of their program EIR's covering their wastewater treatment projects.

Judgment on petition and complaint reversed and remanded, orders underlying judgment affirmed in part and reversed in part, and judgment on cross-action reversed and remanded.

West Headnotes (42)

[1] **Environmental Law**
Waste; hazardous materials

County ordinance requiring heightened treatment standards for the application of sewage sludge on land located within county's jurisdiction might have a significant, adverse effect on California's environment, and, therefore, county was required to prepare an environmental impact report (EIR); ordinance required alternative methods of disposal that may have had an adverse impact on the environment, and the potentially positive effects of the ordinance did not absolve county from the responsibility of preparing an EIR to analyze the potentially significant negative environmental effects. West's Ann.Cal.Pub.Res.Code §§ 21060.5, 21068.

See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 58 et seq.

3 Cases that cite this headnote

[2] **Environmental Law**
Assessments and impact statements

When a California Environmental Quality Act

(CEQA) petition challenges action of a public agency that is legislative or quasi-legislative in character, CEQA's abuse of discretion standard of review, and the procedures for traditional mandamus, are applied. West's Ann.Cal.Pub.Res.Code § 21168.5; West's Ann.Cal.C.C.P. § 1085.

3 Cases that cite this headnote

[3] **Environmental Law**
Assessments and impact statements

For purposes of analysis under the California Environmental Quality Act (CEQA), amendment or adoption of an ordinance is a legislative act subject to review under CEQA's abuse of discretion standard. West's Ann.Cal.Pub.Res.Code § 21168.5.

1 Cases that cite this headnote

[4] **Environmental Law**
Assessments and impact statements

When a court reviews an agency's decision to certify a negative declaration under the Environmental Quality Act (CEQA), the court must determine whether substantial evidence supports a "fair argument" that the project may have a significant effect on the environment. West's Ann.Cal.Pub.Res.Code §§ 21080, 21151.

5 Cases that cite this headnote

[5] **Environmental Law**
Assessments and impact statements

In proceedings under the California Environmental Quality Act (CEQA) that involve a negative declaration, the court independently reviews the record and determines whether there is substantial evidence in support of a fair argument the proposed project may have a significant environmental impact, while giving the lead agency the benefit of a doubt on any legitimate, disputed issues of credibility. West's Ann.Cal.Pub.Res.Code §§ 21080, 21151.

4 Cases that cite this headnote

[6] **Environmental Law**
Assessments and impact statements

The test in Environmental Quality Act (CEQA) proceedings that involve a negative declaration, under which the court must determine whether substantial evidence supports a fair argument that the project may have a significant effect on the environment, is a low threshold requirement for the initial preparation of an environmental impact report (EIR) that reflects a preference for resolving doubts in favor of environmental review. West's Ann.Cal.Pub.Res.Code §§ 21080, 21151.

5 Cases that cite this headnote

[7] **Environmental Law**
Assessments and impact statements

When a court reviews an agency's decision to certify a negative declaration under the Environmental Quality Act (CEQA), and determines whether substantial evidence supports a fair argument that the project may have a significant effect on the environment, deference to the agency's determination is not appropriate. West's Ann.Cal.Pub.Res.Code §§ 21080, 21151.

5 Cases that cite this headnote

[8] **Environmental Law**
Weight and sufficiency

Before an agency in proceedings under the California Environmental Quality Act (CEQA)

may rely on its purported rejection of evidence as incredible, it must first identify that evidence with sufficient particularity to allow the reviewing court to determine whether there were legitimate, disputed issues of credibility. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

1 Cases that cite this headnote

[9] **Environmental Law**
Impacting human environment
Environmental Law
Significance in general

Under the California Environmental Quality Act (CEQA), if an ordinance is proposed and the local agency has failed to study an area of possible environmental impact, a fair argument that the ordinance will cause potentially significant adverse environmental impacts, which triggers the need for an environmental impact report (EIR), may be based on the limited facts in the record; deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

4 Cases that cite this headnote

[10] **Environmental Law**
Time requirements

In proceedings under the California Environmental Quality Act (CEQA), in which county's passage of ordinance requiring heightened treatment standards for the application of sewage sludge on land located within county's jurisdiction required preparation of an environmental impact report (EIR), county was not entitled to defer preparation of the EIR; although county sought to defer preparation of the EIR based on uncertainty over how the sanitation agencies would react to ordinance, it was the passage of the ordinance itself that was the CEQA project. West's Ann.Cal.Pub.Res.Code §§ 21060.5, 21068.

1 Cases that cite this headnote

[11] **Environmental Law**
Time requirements

When a public agency is preparing an environmental impact report (EIR) and decides to defer environmental review of an action that may be taken in the future, courts analyze the decision to defer environmental review under a specific test, which provides that the discussion of a future potential action is not required in an EIR for the project if: (1) obtaining more detailed useful information is not meaningfully possible at the time when the EIR for the project is prepared, and (2) it is not necessary to have such additional information at an earlier stage in determining whether or not to proceed with the project.

2 Cases that cite this headnote

[12] **Environmental Law**
Time requirements

The idea of deferral of preparation of an environmental impact report (EIR) is subsumed in the fair argument test, which requires preparation of an EIR whenever substantial evidence supports a fair argument that a project will cause significant adverse environmental impacts, and which considers whether a potential environmental impact is speculative or reasonably foreseeable; undertaking a separate inquiry would be redundant. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

8 Cases that cite this headnote

[13] **Environmental Law**
Lack of statement

On appeal in proceedings under California Environmental Quality Act (CEQA), after

county's passage of ordinance requiring heightened treatment standards for the application of sewage sludge on land located within county's jurisdiction, in which appellate court required preparation of an environmental impact report (EIR), appropriate form of relief permitted continuation of the heightened treatment standards pending completion of the EIR; alternative of reverting to standards that were in place prior to passage of ordinance would have been disruptive to county, sanitation agencies, and members of the biosolid industries that were subject to the ordinances. West's Ann.Cal.Pub.Res.Code §§ 21060.5, 21068.

6 Cases that cite this headnote

[14] **Environmental Law**
Concurrent and Conflicting Statutes or Regulations
Environmental Law
Sewage and septic systems

Ordinance passed by county that required heightened treatment standards for the application of sewage sludge on land located within county's jurisdiction was consistent with Water Code provision, which provided that it did not restrict the authority of local government agencies to regulate the application of sewage sludge and other biological solids to land within the jurisdiction of that agency; statute referred to "sewage sludge" and not specifically Class B biosolids, which were the subject of the ordinance. West's Ann.Cal.Water Code § 13274.

5 Cases that cite this headnote

[15] **Commerce**
Environmental protection regulations
Environmental Law
Flow control measures

County's passage of ordinance requiring heightened treatment standards for the application of sewage sludge on land located within county's jurisdiction did not discriminate against interstate commerce in violation of the Commerce Clause; agencies opposed to the ordinance failed to show that it discriminated against interstate commerce, inasmuch as its provisions applied to the land application of all sewage sludge regardless of its geographical origin, and ordinance did not have a discriminatory effect by treating out-of-state economic interests differently than in-state economic interests. U.S.C.A. Const. Art. 1, § 8, cl. 3.

4 Cases that cite this headnote

[16] **Commerce**
Delegation of power by Congress

For purposes of Commerce Clause analysis, when Congress has spoken and specifically authorized state or local government action, the dormant commerce clause does not apply. U.S.C.A. Const. Art. 1, § 8, cl. 3.

1 Cases that cite this headnote

[17] **Commerce**
Powers Remaining in States, and Limitations Thereon

A local law is subject to analysis under the dormant commerce clause if (1) an article of commerce is involved and (2) Congress did not specifically authorize the adoption of such an ordinance. U.S.C.A. Const. Art. 1, § 8, cl. 3.

1 Cases that cite this headnote

[18] **Commerce**
Environmental protection regulations
Environmental Law
Flow control measures

For purposes of Commerce Clause analysis,

after county passed ordinance requiring heightened treatment standards for the application of sewage sludge on land located within county's jurisdiction, the land application of sewage sludge was an article of commerce for purposes of the commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

1 Cases that cite this headnote

[19] **Commerce**
Delegation of power by Congress

Where state or local government action is specifically authorized by Congress, and congressional intent is unmistakably clear, the regulation is not subject to the Commerce Clause even if it interferes with interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

Cases that cite this headnote

[20] **Commerce**
Powers Remaining in States, and Limitations Thereon

Unless Congress has provided otherwise, an ordinance that discriminates against interstate commerce, as opposed to one that regulates evenhandedly, is virtually always invalid under the dormant commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

Cases that cite this headnote

[21] **Commerce**
Regulation and conduct in general; particular businesses

For purposes of Commerce Clause analysis, discrimination against interstate commerce means different treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. U.S.C.A. Const. Art. 1, § 8, cl. 3.

Cases that cite this headnote

[22] **Commerce**
Powers Remaining in States, and Limitations Thereon
Commerce
Preferences and Discriminations

For purposes of Commerce Clause analysis, in addition to facial discrimination against interstate commerce, an ordinance may be discriminatory in practical effect. U.S.C.A. Const. Art. 1, § 8, cl. 3.

Cases that cite this headnote

[23] **Zoning and Planning**
Public health, safety, morals, or general welfare

In determining whether an ordinance restricting land use is a valid exercise of police power, the ordinance is valid if it is fairly debatable that the land use restriction in fact bears a reasonable relation to the general welfare. West's Ann.Cal. Const. Art. 11, § 7.

Cases that cite this headnote

[24] **Zoning and Planning**
Public health, safety, morals, or general welfare

In determining whether an ordinance restricting land use is a valid exercise of police power, and specifically whether the land use restriction in fact bears a reasonable relation to the general welfare, the "general welfare" that must be considered may extend beyond the geographical limits of the local governmental entity adopting the ordinance. West's Ann.Cal. Const. Art. 11, §

7.

1 Cases that cite this headnote

[25] **Appeal and Error**
Statutory or legislative law
Appeal and Error
Agreed or undisputed facts

The appellate court independently reviews issues of statutory construction, and the application of that construction to a set of undisputed facts, as questions of law.

Cases that cite this headnote

[26] **Environmental Law**
Exhaustion of administrative remedies

Doctrine of exhaustion of administrative remedies did not apply to claim by sanitation agencies that the biosolids impact fee imposed by county's ordinance was preempted by Vehicle Code provision; County failed to show that there was an available administrative procedure for asserting that ordinance violated Vehicle Code. West's Ann.Cal.Vehicle Code § 9400.8.

Cases that cite this headnote

[27] **Counties**
Legislative control of acts, rights, and liabilities
Environmental Law
State preemption of local laws and actions

For purposes of claim that biosolids impact fee imposed by county ordinance was preempted by Vehicle Code provision that no local agency may impose a fee for privilege of using its streets and highways, county ordinance was not authorized by Mitigation Fee Act; prohibition on certain fees in Vehicle Code was not overridden by Mitigation Fee Act, inasmuch as Vehicle Code provision expressly stated that its prohibition applied notwithstanding any other provision of law. West's Ann.Cal.Gov.Code § 66000 et seq.; West's Ann.Cal.Vehicle Code § 9400.8.

Cases that cite this headnote

[28] **Pleading**
Miscellaneous actions or proceedings

In challenging biosolids impact fee imposed pursuant to county ordinance, sanitation agencies should have been permitted to amend their pleading to assert a violation of Vehicle Code provision that restricted prohibition on certain fees for using roads and highways; evidence did not support a finding that such an amendment of the pleadings would have prejudiced the county. West's Ann.Cal.Vehicle Code § 9400.8.

Cases that cite this headnote

[29] **Pleading**
Condition of Cause and Time for Amendment

A pleading may be amended at the time of trial unless the adverse party can establish prejudice.

2 Cases that cite this headnote

[30] **Pleading**
After evidence introduced, submission of case, or rendition of judgment
Pleading
New or Different Cause of Action

Where a party is allowed to prove facts to establish one cause of action, an amendment which would allow the same facts to establish another cause of action is favored, and a trial court abuses its discretion by prohibiting such an

amendment when it would not prejudice another party.

2 Cases that cite this headnote

[31] **Pleading**
New or Different Cause of Action

As a general rule, where the evidence to support the cause of action in an amendment to a pleading is already before the court, the opposing party will not experience prejudice if the amendment is allowed.

See Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2004) ¶ 12:394 (CACIVEV Ch. 12-D).

1 Cases that cite this headnote

[32] **Municipal Corporations**
Conformity to constitutional and statutory provisions in general

If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.

Cases that cite this headnote

[33] **Municipal Corporations**
Concurrent and Conflicting Exercise of Power by State and Municipality

A conflict exists between local legislation and state law if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.

Cases that cite this headnote

[34] **Municipal Corporations**
Conformity to constitutional and statutory provisions in general

Local legislation is "duplicative" of general law, for purposes of state preemption, when it is coextensive therewith.

Cases that cite this headnote

[35] **Municipal Corporations**
Conformity to constitutional and statutory provisions in general

Local legislation is "contradictory" to general law, for purposes of state preemption, when it is inimical thereto.

Cases that cite this headnote

[36] **Municipal Corporations**
Concurrent and Conflicting Exercise of Power by State and Municipality

Local legislation enters area that is "fully occupied" by general law, for purposes of determining whether it is preempted by state law, when legislature has expressly manifested its intent to "fully occupy" area or when legislature has impliedly done so because subject matter has been so fully and completely covered by state law as to clearly indicate it has become exclusive matter of state concern, subject matter has been partially covered by state law couched in such terms as to indicate paramount state concern which will not tolerate further or additional local action, or subject matter has been partially covered by state law, and subject is of such nature that adverse effect of local ordinance on transient citizens of state outweighs possible benefit to locality.

1 Cases that cite this headnote

[37] **Automobiles**
Concurrent and conflicting regulations
Counties
Legislative control of acts, rights, and liabilities
Environmental Law
State preemption of local laws and actions

Biosolids impact fee imposed as part of county ordinance was invalid to the extent that it was a local fee for road use, inasmuch as such a fee violated Vehicle Code provision prohibiting certain fees for using roads and highways; although county asserted that fee was imposed to recover costs for repairing damage or upgrading county roads due to increase in truck traffic transporting biosolids, fee was, at least in part, a fee imposed on road use. West's Ann.Cal.Vehicle Code § 9400.8.

Cases that cite this headnote

[38] **Statutes**
Dictionaries

When reviewing a statute, a court may refer to the definitions contained in a dictionary to obtain the usual and ordinary meaning of a word.

2 Cases that cite this headnote

[39] **Counties**
Ordinances and by-laws

Upon finding that biosolids impact fee imposed as part of county ordinance was invalid, to the extent that it was a local fee for road use that violated Vehicle Code provision prohibiting such fees, the proper remedy was to uphold the fee to the extent it was valid and severable from the invalid portion; ordinance expressly stated that its provisions were severable, and remand was required to determine how to separate the valid application of funds from the invalid applications. West's Ann.Cal.Vehicle Code § 9400.8.

Cases that cite this headnote

[40] **Environmental Law**
Mootness

Question of whether contracts or contract extensions entered into by sanitation agencies relating to transportation and disposal of biosolids required some legal of review under the California Environmental Quality Act (CEQA) was moot, where those contracts had expired by the time the matter came before the Court of Appeal. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

1 Cases that cite this headnote

[41] **Environmental Law**
Mootness

The standard the appellate court applies in determining the mootness of an appeal under the California Environmental Quality Act (CEQA) is whether any effective relief can be granted the appellant. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

Cases that cite this headnote

[42] **Environmental Law**
Waste; hazardous materials

Sanitation agencies' contracts for transportation and disposal of biosolids were within the scope of their program environmental impact reports (EIR's) covering their wastewater treatment projects and, therefore, were subsequent activities in the program that should have been subjected to examination under California Environmental Quality Act (CEQA) guidelines

to determine if further CEQA review was necessary. 14 CCR § 15168(c).

4 Cases that cite this headnote

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OPINION

DAWSON, J.

***1557** This appeal concerns the validity of an ordinance that restricts the application of sewage sludge on land located within the jurisdiction of Kern County.[1] Sanitation agencies from Southern California[2] appeal adverse rulings from the trial court. The sanitation agencies contend (1) County was required to prepare an environmental impact report (EIR) under the California Environmental Quality Act (CEQA)[3] prior to adopting the ordinance, (2) the ordinance violated the commerce clause as well as other constitutional and statutory provisions, and (3) a biosolids impact fee of $3.37 per ton violated the prohibition in Vehicle Code section 9400.8 against ***1558** local fees for the privilege of using roads. County contests all of these allegations. It contends that the ordinance benefited the Kern County environment and that any potential adverse environmental impacts were too remote and speculative to justify preparing an EIR.

We hold County was required to prepare an EIR under CEQA. This is because CEQA requires the preparation of an EIR whenever substantial evidence supports a fair argument that an ordinance will cause potentially significant adverse environmental impacts. CEQA thus sets a low threshold for the required preparation of an EIR. Here, the evidence in the administrative record establishes a reasonable possibility that the ordinance will have both positive and adverse impacts on the environment in Kern County and other areas of California, principally because alternative methods of disposal must be implemented. The positive effects of a project do not absolve the public agency from the responsibility of preparing an EIR to analyze the potentially significant negative environmental effects of the project, because those negative effects might be reduced through the adoption of feasible alternatives or mitigation measures analyzed in the EIR. Therefore, County was required to prepare an EIR.

We hold also that plaintiffs have failed to show that the ordinance discriminates against interstate commerce. We reject plaintiffs' constitutional and statutory attacks on the validity of the ordinance, except that we hold the biosolids impact fee ****36** was invalid to the extent it was a local fee for road use.

We will remand with directions to the trial court to issue a writ of mandate directing County to prepare an EIR for

the ordinance, and for further proceedings to determine the extent to which the biosolids impact fee was a fee for road use. Otherwise, the rulings of the trial court in favor of County on plaintiffs' complaint will be affirmed.

County cross-appeals from the trial court's denial of its CEQA cross-claims against the sanitation agencies. We address County's contention that CEQA required those agencies to conduct an environmental examination in connection with certain biosolids disposal contracts they entered or extended near the time the ordinance in question was enacted. We hold that the agencies' contract activities were within the scope of their program EIR's covering their wastewater treatment projects and, therefore, were "[s]ubsequent activities in the program" that should have been subjected to an examination in accordance with title 14, section 15168 of the California Code of Regulations[4] to determine if further CEQA review was necessary. We ***1559** further hold that, as to expired contracts, this question is moot. Therefore, judgment on County's cross-claims will be reversed and the matter remanded to the trial court with directions to (1) conduct further proceedings to make a complete determination of which contracts have expired, (2) enter an order dismissing as moot County's causes of action that are based on contracts that have expired, and (3) issue writs of mandate under the remaining causes of action directing the appropriate sanitation agency to conduct an examination to determine if additional environmental documents must be prepared in connection with the contracts and extensions.

HISTORICAL BACKGROUND

Sewage sludge is a product of wastewater treatment. The safe and efficient disposal of sludge is a modern and worldwide concern—a by-product of population growth and modernization.[5] Recent decades have witnessed increasing governmental involvement in the effort to safely and efficiently treat sewage and dispose of sewage sludge. In the United States, efforts at regulation have involved the executive, legislative and judicial branches of government at the federal, state and local levels. This historical background briefly describes the process that reduces sewage to sewage sludge and then discusses the disposal and use of that sludge.

"Sewage sludge" is defined by federal regulations as the "solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works." (40 C.F.R. § 503.9(w) (2005).) More generally, sewage sludge refers to the mud-like deposit originating from sewage and created by the treatment processes used to decontaminate wastewater before it is released into local waterways.[6] ****37** Sewage sludge typically consists of water and 2 to 28 percent solids.[7] (68 Fed.Reg. 61084, 61086 (Oct. 24, 2003).) To illustrate, the Joint Water Pollution Control Plant located in Carson, California (Carson Plant) produces sewage sludge by detaining wastewater solids in an anaerobic digester for approximately 18 days. After digestion, the remaining solids are dewatered in a centrifuge that produces a residue that is approximately 25 percent solids. The Carson Plant refers to these residues as ***1560** "biosolids"—a term that is not defined by federal regulation, and the meaning of which varies with the context in which it is used. (Goldfarb, *Sewage Sludge, supra,* 26 B.C. Envtl. Aff. L.Rev. at p. 688.) Some use the term to mean sewage sludge that has been stabilized and disinfected for beneficial use. (*Id.*, fn. 6.) To others, the term helps emphasize the material is a recyclable resource with potential beneficial properties. (Goldfarb, *Sewage Sludge,* at p. 688.)

Scope of Sewage Sludge Production

National Production

The United States Environmental Protection Agency (EPA) recently estimated the annual production of sewage sludge from the 16,000 wastewater treatment plants in the United States at both 7 million tons and 8 million dry metric tons.[8] (Compare 68 Fed.Reg. 68813, 68817 (Dec. 10, 2003) with 68 Fed.Reg. 61086 (Oct. 24, 2003).) In 2003, the EPA estimated that approximately 60 percent of sewage sludge was treated and applied to farmland, 17 percent was buried in landfills, 20 percent was incinerated, and 3 percent was used as landfill or mine reclamation cover. (68 Fed.Reg. 68817 (Dec. 10, 2003).) The land application of sewage sludge occurred on approximately 0.1 percent of the agricultural land in the United States. (68 Fed.Reg. 61086 (Oct. 24, 2003).) Other application sites include forests, strip-mines, reclamation sites, and public spaces like parks, golf courses, and highway median strips. (*Ibid.*)

California

CASA estimated that in 1998 California produced approximately 672,330 dry tons of biosolids and approximately 67.8 percent was applied to land, 10.6 percent was composted, 9.1 percent was buried in landfills, 5.6 percent was incinerated, and 6.9 percent was put in onsite and offsite storage.[9]

***1561** The EPA estimated that in 2003 California produced 777,480 dry tons of treated sewage sludge.[10] Approximately 50 ****38** percent of this sewage sludge was applied to land, 30 percent was put in landfills, 10 percent was transported out of state, 3 percent was incinerated, and the balance was put in long-term storage or treatment or put to other uses.[11]

Conflict between urban and rural interests has caused controversy over the land application of sewage sludge in California. In 1998, approximately 73 percent of land-applied biosolids in California was applied within the geographical jurisdiction of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), a region that generated only 16.7 percent of California's total production. In contrast, the Los Angeles and San Francisco Regions generated 37.9 percent and 14.4 percent, respectively, and received less than 0.1 percent and 1.8 percent, respectively, of the total land-applied biosolids.[12] The proportion of biosolids applied to land in the Central Valley Region has decreased as a result of restrictive ordinances adopted by counties.[13]

Kern County

In 1998, approximately one-third of the biosolids applied to land in California was applied in Kern County.[14] In 1999, County estimated that one million wet tons of sewage sludge were applied to approximately 23,594 acres of irrigated agricultural land in Kern County.[15] The acreage, which was distributed among 14 noncontiguous sites, represented approximately 3 percent of the harvested cropland in Kern County.

***1562 Statutory and Regulatory Framework**

Federal

Congress enacted the Federal Water Pollution Control Act Amendments of 1972 (Pub.L. No. 92–500 (Oct. 18, 1972) 86 Stat. 896) to restore and maintain the quality of the nation's waters (33 U.S.C.A. § 1251(a)) by addressing various sources of pollution, including municipal sewage. In addition to providing extensive federal grants to finance the construction of local sewage treatment facilities, the 1972 amendments increased the role of the federal government by extending water quality standards to intrastate waters, setting technology-based effluent limitations, and implementing the water quality standards through a discharge permit system.[16] The Clean Water Act reflected the judgment of Congress ****39** that the problem of water pollution caused by the discharge of municipal sewage outweighed problems associated with treating the sewage and disposing of the sewage sludge.[17] The federal legislation stimulated the building of sewage treatment facilities which, in turn, significantly increased the national production of sewage sludge. (See *Leather Industries of America, Inc. v. E.P.A.* (D.C.Cir.1994) 40 F.3d 392, 394.)

The Clean Water Act addressed the problem of sewage sludge disposal in four ways. First, the use or disposal of sewage sludge was subjected to a permitting program (33 U.S.C.A. § 1345(a)-(c)).[18] Second, the EPA was directed to develop comprehensive regulations establishing standards for sewage sludge use and disposal (33 U.S.C.A. § 1345(d)).[19] Third, states were allowed to establish more stringent standards (33 U.S.C.A. § 1345(e)).[20] Fourth, grants were authorized for the conduct of scientific ***1563** studies, demonstration projects, and public information and education programs concerning the safe and beneficial management of sewage sludge (33 U.S.C.A. § 1345(g)).

Eventually, in 1993,[21] the EPA complied with the directive regarding regulations by promulgating Standards for the Use or Disposal of Sewage Sludge (40 C.F.R. § 503 (2005)) (Part 503), which specify that sewage sludge may be (1) applied to land, (2) placed in a surface disposal site, such as a sewage-sludge-only landfill, (3) burned in a sewage sludge incinerator, or (4) disposed of in a municipal solid waste landfill that complies with the minimum criteria set forth in 40 Code of Federal Regulations part 258. (Part 503, subparts B [land application], C [surface disposal] & E [incineration]; 40 C.F.R. § 503.4 (2005) ****40** [disposal in municipal solid waste landfill].)[22]

The land application provisions of subpart B of Part 503 establish concentration ceilings as well as annual and cumulative loading rates for arsenic, cadmium, copper, lead, mercury, nickel, selenium and zinc (40 C.F.R. § 503.13 (2005)); establish management practices for the protection of water quality and public health (40 C.F.R. § 503.14 (2005)); set the standards for the reduction of pathogens[23] and vector attraction[24] (40 C.F.R. § 503.15 (2005)); and include requirements for monitoring (40 C.F.R. § 503.16 (2005)), recordkeeping (40 C.F.R. § 503.17 (2005)), and reporting (40 C.F.R. § 503.18 (2005)).

***1564** Pathogen reduction standards contained in Part 503 are used to differentiate between Class A sewage sludge and Class B sewage sludge. (See 40 C.F.R. § 503.32 (2005).) While Class A sewage sludge is sufficiently treated to essentially eliminate pathogens, Class B sewage

sludge is treated only to substantially reduce them. As a result, the requirements for land application of Class B sewage sludge are more stringent than the requirements imposed on Class A sewage sludge.

At the time of their adoption, the EPA stated it was confident the regulations in Part 503 adequately protected the environment and public health from all reasonably anticipated adverse effects. (58 Fed.Reg. 9248, 9249 (Feb. 19, 1993).) Nevertheless, Part 503 has been described as "quite controversial."[25] Citizens and environmental organizations have questioned the adequacy of the chemical and pathogen standards contained in Part 503.[26] As a result of ****41** these concerns and the requirement in the Clean Water Act that the sewage sludge regulations be reviewed every two years, the EPA commissioned the National Research Council (NRC) of the National Academy of Sciences to independently review the scientific basis of the regulations governing the land application of sewage sludge.[27]

In July 2002, the NRC published its report—Biosolids Applied to Land: Advancing Standards and Practices—and made the following overarching findings:

> "There is no documented scientific evidence that the Part 503 rule has failed to protect public health. However, additional scientific work is needed to reduce persistent uncertainty about the potential for adverse human health effects from exposure to biosolids. There have been anecdotal ***1565** allegations of disease,[28] and many scientific advances have occurred since the Part 503 rule was promulgated. To assure the public and to protect public health, there is a critical need to update the scientific basis of the rule to (1) ensure that the chemical and pathogen standards are supported by current scientific data and risk-assessment methods, (2) demonstrate effective enforcement of the Part 503 rule, and (3) validate the effectiveness of biosolids-management practices." (NRC, Biosolids Applied to Land: Advancing Standards and Practices (July 2002) p. 3 < http://www.epa.gov/waterscience/biosolids/nas/complete.pdf > [as of Mar. 30, 2005].)

In response to the NRC report, the EPA developed a final action plan that established objectives and identified research and regulatory projects designed to strengthen its sewage sludge use and disposal program. (68 Fed.Reg. 75531, 75533 (Dec. 31, 2003); see EPA, Office of Water, Use and Disposal of Biosolids (Sewage Sludge), *supra.*) As an example of one project, the EPA intends to conduct an incident-tracking workshop to obtain input on developing a program focused on individuals who have received medical attention and suspect that they may have been affected by sewage sludge application practices, and to thereby isolate the causes of any health problems. (68 Fed.Reg. 75535 (Dec. 31, 2003).) As of the date of this opinion, the implementation of the final action plan is an ongoing process, and some of the activities have not been commenced. (See EPA, Office of Water, Use and Disposal of Biosolids (Sewage Sludge), *supra.*)

California

In response to Congress's delegation of authority to the states to issue NPDES permits (see fn. 18, *ante*), the California ****42** Legislature amended the Porter–Cologne Water Quality Control Act (Wat.Code, § 13000 et seq.) to require the State Water Board and its regional counterparts to issue discharge permits that ensure compliance with the Clean Water Act. (See Wat.Code, § 13370 et seq.) As a result, on May 14, 1973, California became the first ***1566** state to be approved by the EPA to administer the NPDES permit program. (See 54 Fed.Reg. 40664 (Oct. 3, 1989); *WaterKeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal.App.4th 1448, 1452, 126 Cal.Rptr.2d 389.)

In August 1993, as part of administering the NPDES permit program, the Central Valley Water Board adopted a general order setting the waste discharge requirements (WDR) for the use of sewage sludge as a soil amendment and approved an initial study and negative declaration in connection with that general order. Under the general order, a person wanting to apply biosolids to agricultural land could file with the Central Valley Water Board a notice of intent to comply with the general order, a filing fee, and a preapplication report and, upon receiving an approval letter from the Central Valley Water Board, could begin to apply biosolids subject to the terms and conditions in the general order. Projects using sewage sludge that did not fit the conditions contained in the general order were required to apply for individual WDR's.

On May 26, 1995, the Central Valley Water Board modified its earlier general order by adopting Order No. 95–140 titled "Waste Discharge Requirements General Order For Reuse of Biosolids and Septage on Agricultural, Forest, and Reclamation Sites." The order set minimum standards for the use of biosolids, including Class B sewage sludge, as a soil amendment.

Also in 1995, the California Legislature specifically addressed the land application of sewage sludge by adopting Water Code section 13274 (Stats.1995, ch. 613, § 1, p. 4590), which required the State Water Board or the regional boards to prescribe general WDR's for the

discharge of treated sewage sludge used as a soil amendment. (Wat.Code, § 13274, subds.(a) & (b).) Water Code section 13274 also states that it does not restrict the authority of local government agencies to regulate the application of sewage sludge to land within their jurisdiction. (*Id.*, subd. (i).)

Other California legislation affecting the disposal and use of sewage sludge is the California Integrated Waste Management Act of 1989 (§ 40000 et seq., also known as Assem. Bill No. 939 (1989–1990 Reg. Sess.); see Stats.1989, ch. 1095, § 22), which requires the use of recycling and source reduction to reduce the amount of solid waste going into landfills. (§ 41780.) More specifically, counties were required to adopt integrated waste management plans that described how 25 percent of the solid waste[29] stream would be recycled, reduced or composted ***1567** by 1995 and how 50 percent would be achieved by 2000. (See § 41780; *Kern County Farm Bureau v. County of Kern* (1993) 19 Cal.App.4th 1416, 1419, fn. 2, 23 Cal.Rptr.2d 910.) This legislation caused sewage sludge to be diverted from disposal in landfills in favor of recycling it as a fertilizer applied to agricultural land.[30] For example, in 1995 the ****43** City of Oxnard purchased 1,280 acres in Kern County for $1,174,000 as part of a program to apply its sewage sludge to agricultural land and thus reduce its use of landfills.

By 2000, several of the nine regional boards had issued WDR's for the use of biosolids as a soil amendment. To provide a single regulatory framework for the land application of treated sewage sludge in California, in August 2000, the State Water Board issued Water Quality Order No.2000–10–DWQ, entitled "General Waste Discharge Requirements for the Discharge of Biosolids to Land for Use as a Soil Amendment in Agricultural, Silvicultural, Horticultural, and Land Reclamation Activities" (General Order 2000–10).[31] General Order 2000–10 also was intended to comply with the directive in Water Code section 13274 and streamline the permitting process. The State Water Board's final program EIR relating to General Order 2000–10 was approved on June 30, 2000, and it is part of the appellate record as a result of the superior court granting a request for judicial notice. General Order 2000–10 allowed Class B biosolids to be applied to agricultural land subject to numerous conditions, including site, crop, and harvesting restrictions.

The State Water Board's approval of General Order 2000–10 and certification of the final program EIR was vacated as a result of a CEQA lawsuit brought by County. (*County of Kern v. State Water Resources Control Board* (Jan. 13, 2003, C039485, 2003 WL 135068) [nonpub. opn.].)[32] The Third Appellate District held the EIR was defective because it did not evaluate, as alternatives to General Order 2000–10, either a requirement that sewage sludge be treated to Class A standards before application as a soil amendment or a prohibition on the use of treated sewage sludge where fruits and vegetables are grown.

***1568** To comply with that decision, the State Water Board's 2004 Final PEIR for Biosolids considered, but rejected, the two alternatives specified by the Third Appellate District. Based on that final EIR, the State Water Board adopted Water Quality Order No.2004–0012 on July 22, 2004 (General Order 2004–0012).[33] General Order 2004–0012 allows Class B biosolids to be applied to agricultural land subject to numerous conditions, including site and crop restrictions.

Kern County

County first attempted to regulate the application of sewage sludge to agricultural land within its jurisdiction in August 1998, when it adopted Ordinance No. G–6528, an interim urgency ordinance which became operative on September 1, 1998, and was repealed effective December 31, 1999. Ordinance No. G–6528 allowed the application of Class A and Class B sewage sludge in Kern County by any person who ****44** obtained a permit from the County Environmental Health Services Department, paid a $7,250 application fee, and observed specified management practices, site restrictions and other requirements.

On October 19, 1999, the Kern County Board of Supervisors adopted Ordinance No. G–6638 (Ordinance G–6638) to substitute a new chapter 8.05 into the Kern County Ordinance Code. Ordinance G–6638 provided for two regulatory stages. The first stage, which lasted three years, allowed the application of Class B sewage sludge on sites that had already been approved, but precluded the approval of any new sites. The second stage was scheduled to become effective on January 1, 2003, and allowed only exceptional quality (EQ) sewage sludge[34] to be applied to land in Kern County.

Ordinance G–6638 is the subject of this appeal and its pertinent provisions are set forth, *post*, in Facts and Proceedings.

In late 2002, County adopted Ordinance No. 6931, which amended chapter 8.05 of the county code to impose a permitting requirement on the application of EQ biosolids to land within the unincorporated area of Kern County, and found that the project was exempt from CEQA pursuant to section 15308 of the Guidelines, which concerns actions by regulatory agencies to protect the

environment. This appeal does not directly involve the 2002 amendment.

***1569 Overview of California Cases Involving Land Application of Sewage Sludge**

The application of sewage sludge to land has been the topic of litigation before this and other appellate courts located in California.

This court considered the application of CEQA to Kings County's sewage sludge ordinance in *Magan v. County of Kings* (2002) 105 Cal.App.4th 468, 129 Cal.Rptr.2d 344. In that case, the Kings County Board of Supervisors determined that its ordinance regulating the application of sewage sludge to land in Kings County was categorically exempt from review under CEQA, and this court upheld that determination. (*Id.* at pp. 476–477, 129 Cal.Rptr.2d 344.)

As described earlier, in January 2003, the Third Appellate District considered County's challenge to the adequacy of the EIR the State Water Board prepared in connection with its adoption of General Order 2000–10. (*County of Kern v. State Water Resources Control Board, supra* [nonpub. opn.].) That litigation led to the certification of the State Water Board's 2004 Final PEIR for Biosolids and the adoption of General Order 2004–0012.

In *U.S. v. Cooper* (9th Cir.1999) 173 F.3d 1192, the defendant sludge hauler directly applied sludge to a local farm instead of taking the sludge to a composting site first as required by a NPDES permit issued to the City of San Diego by the regional water quality board. The sludge hauler was convicted under the Clean Water Act of knowingly violating conditions imposed by the permit on the disposal of sewage sludge. The Ninth Circuit Court of Appeals upheld the conviction and ruled, among other things, that Part 503—which encouraged the direct land application of sewage sludge, but did not require state and local governments to allow it—did not preempt the conditions in the permit that ****45** the sludge hauler violated. (*U.S. v. Cooper, supra,* at pp. 1200–1201.)

In addition to the foregoing appellate cases, the briefing in this appeal mentions other cases before state and federal trial courts concerning County's efforts to regulate the land application of sewage sludge. County contends that Shaen Magan brought two state court actions challenging Ordinance G–6638 and that the judgments entered in County's favor in those actions are now final. In addition, County represents that another state court action brought against it has been stayed by the Tulare County Superior Court pending the resolution of this appeal, and that CASA and others have sued it in a federal action attacking an amended version of the ordinance.

***1570 FACTS AND PROCEEDINGS**

In connection with its consideration and adoption of an ordinance regulating the land application of biosolids within its jurisdiction, County undertook a process that involved the public and produced an administrative record of over 25,000 pages.

In 1997, County established a Biosolids Ordinance Advisory Committee to assist in the preparation of a draft ordinance. The committee included representatives from farming organizations, sludge generators and applicators, environmental groups, County staff and other interested parties. In all, the committee held five public meetings between November 20, 1997, and April 29, 1999. Expert presentations on the scientific issues involving biosolids were received at two public hearings held by County.

In January 1998, County pursued early consultation with public agencies and interested parties to obtain comments on the potential environmental effect of its proposed form of biosolids ordinance. After revisions to the proposed ordinance, County again sought early consultation in May 1999 in connection with determining whether compliance with CEQA would require preparation of an EIR for the proposed ordinance. After the second consultation period was complete, an initial study was prepared.

On August 10, 1999, an environmental checklist form was completed which found the project—that is, enactment of the ordinance—would not have a significant effect on the environment, and which recommended the preparation of a negative declaration.

County's Planning Department prepared a proposed negative declaration for the biosolids ordinance and published the corresponding notice of availability for public review on August 13, 1999. On October 19, 1999, after the period for public review of the negative declaration expired, County enacted Ordinance G–6638 and adopted the negative declaration. Section 3 of Ordinance G–6638 amended chapter 8.05 of the Kern County Ordinance Code (Kern Code) effective January 1, 2000, to provide in part:

"**8.05.010 PURPOSE AND INTENT**

"There are numerous unanswered questions about the safety, environmental effect, and propriety of land

applying Biosolids or sewage sludge, even when applied in accordance with federal and state regulations. Biosolids may contain heavy metals, pathogenic organisms, chemical pollutants, and synthetic organic compounds, which may pose a risk to public health and the environment if improperly handled. There is a lack of adequate scientific ***1571** understanding concerning the risk land applying of Biosolids may pose to land, air and water and to human and animal health.... Consequently, in order to promote the general health, safety and welfare of Kern County and its inhabitants, it is ****46** the intent of this chapter that the land application of Biosolids shall be prohibited in the unincorporated area of Kern County.

"The County recognizes there are existing permitted sites involved in the land application of Biosolids. Consistent with the protection of private property rights under the United States and California constitutions, this ordinance contains a three year amortization period to permit the orderly discontinuation of the land application of Biosolids by January 1, 2003.

"The County also recognizes that Exceptional Quality Biosolids, as defined in this chapter, are considered by the U.S. Environmental Protection Agency to be a product ... that can be applied as freely as any other fertilizer or soil amendment to any type of land. Therefore, the provisions of this chapter do not apply to Exceptional Quality Biosolids unless specifically stated herein. Further, the provisions of this chapter do not apply to Compost, as defined herein, manufactured from Biosolids at composting facilities that are otherwise regulated by the County through Solid Waste and Conditional Use Permits.

"**8.05.020 DEFINITIONS**

"A. **Agency** means an authorized representative of the Environmental Health Services Department of the County.... [¶] ... [¶]

"E. **Biosolids** are treated solid, semi-solid or liquid residues generated during the treatment of sewage in a wastewater treatment facility that meet [certain federal requirements for pathogen reduction, vector attraction reduction and pollutant concentrations].... Biosolids as used in this chapter excludes Biosolids products that are in a bag or container packaged for routine retail sales through regular retail outlets which are primarily used for landscaping.

"F. **Biosolids Impact Fee** means the fee per ton of Biosolids charged to Biosolids applicators for mitigating the impacts to the Kern County infrastructure shown to be caused by the transport of Biosolids. Permitees which can establish the lack of impact on County infrastructure shall be exempt from payment of the fee. [¶] ... [¶]

***1572** "H. **Class A Biosolids** are Biosolids that meet the pathogen reduction requirements in 40 CFR 503.32[(a)[35]] and contain constituents in concentrations not exceeding the concentrations listed in 40 CFR 503.13, Table 1 or Table 3.

"I. **Class B Biosolids** are Biosolids that meet the pathogen reduction requirements in 40 CFR 503.32(b).

"J. **Compost** means the product resulting from the controlled biological decomposition of organic materials which may include Biosolids. Facilities where compost is produced are required to obtain Solid Waste Facilities and Conditional Use Permits as a condition of operation. Compost products are required to meet or exceed product quality criteria as established by the California Integrated Waste Management Board. [¶] ... [¶]

"M. **Exceptional Quality Biosolids** are Class A Biosolids that meet the pollutant concentrations in 40 CFR 503.13, Table 3 and have achieved a level of vector attraction reduction required by 40 CFR 503.33. Additionally, Class A Biosolids must meet both the fecal coliform and Salmonella sp. bacteria limits contained in Alternatives 1 through 6 of 40 CFR 503.32(a) to be Exceptional ****47** Quality. For the purposes of this chapter, Exceptional Quality Biosolids are in bulk form and shall not include Compost which meets or exceeds Exceptional Quality criteria. [¶] ... [¶]

"P. **Land Application** means the placement of Biosolids on agricultural land at a predetermined agronomic rate to support vegetative growth. For purposes of this chapter, placement includes the spraying or spreading of Biosolids onto the land surface, the injection of Biosolids below the surface, or the incorporation of Biosolids into the soil. [¶] ... [¶]

"R. **Permit** means a Land Application Permit issued by the Agency jointly to an Applier and all POTWs or other generators who supply Biosolids to the Applier. Such permit authorizes the Land Application of Biosolids in the County. Permits are not transferable to other parties without the prior approval of the Agency as provided in Section 8.05.040.R. [¶] ... [¶]

"T. **POTW** means publicly or privately owned treatment works that process wastewater and generate Biosolids. [¶] ... [¶]

***1573** "**8.05.030 GENERAL REQUIREMENTS**

"A. Prior to commencing any Land Application activities under this chapter, the Applier shall obtain a Permit and pay all applicable fees. Only Sites with an Existing Permit shall be eligible for issuance of a Permit under this chapter. [¶] ... [¶]

"H. Biosolids Impact Fee.

"1. There is levied by the County of Kern a fee of $3.37 per ton for each ton of Biosolids land applied within the county. The amount of the fee shall be calculated based on the monthly activity report as required by section 8.05.070(I) and is to be remitted to the Agency along with the filing of the monthly activity report. Permitees are subject to enforcement action, including revocation of the Permit, for non-payment. Where the Permitee can demonstrate the land application of Biosolids does not have an impact on County infrastructure or roads, the Agency may waive this fee.

"2. Permitees, either directly or through the wastewater treatment plant generating the Biosolids to be applied on the Permitee's property, which separately contract with the County or are determined to provide a reciprocal benefit, as determined by the Board of Supervisors, shall be exempt from this fee.

"3. Funds generated by this impact fee and other permit fees may be available to fund the following uses: Expenses associated with the inspection of properties within the County which have permits for the land application of Biosolids; development and operation of a GIS tracking system for all Biosolids land applied within the County so that there is an accurate data base containing this information; technical studies and pilot projects which provide additional data on Biosolids land application; correction of any infrastructure deficiencies directly associated with the hauling of Biosolids; and, the cost of public outreach and education programs to ensure that the standards expressed within this ordinance and contained in the federal guidance for the beneficial use of Biosolids are adhered to. The budget for the expenditure of the Biosolids Mitigation Fund on mitigating the impact of Biosolids land application within the County as set forth above, shall be prepared by the Director of the Resource Management Agency for approval by the Board of Supervisors annually. [¶] ... [¶]

"**8.05.040 PERMIT APPLICATION**

****48** "A. It shall be unlawful for any person to apply Biosolids to land within the unincorporated area of the County without obtaining a Permit from the Agency and being in compliance with the terms and conditions as stated herein.

***1574** "B. The application for a Permit shall be filed with the Agency on an application form furnished by the Agency, accompanied by an eight thousand dollar ($8,000) fee.... [¶] ... [¶]

"G. The Agency may deny an application for one (1) or more of the following reasons:

"1. Prior significant non-compliance with local, state or federal regulations or permits related to the land application of biosolids.

"2. Inadequate, incomplete, or inaccurate application information.

"3. The land application proposal would not be in conformance with the applicable requirements of this chapter. [¶] ... [¶]

"M. Fees to review and process Permit applications, appeal an action of the Agency, as specified herein, inspect Sites, engage in enforcement activities and compensate for infrastructure impacts shall be established by the Board of Supervisors. [¶] ... [¶]

"**8.05.050 MANAGEMENT PRACTICES**

"A. Transportation, Storage and Land Application of Biosolids shall not degrade the groundwater or surface water.

"B. Discharge of Biosolids to surface waters or surface water drainage courses is prohibited and all Biosolids shall be confined to within the boundaries of the Site.

"C. All irrigation tailwater on Sites utilized for Biosolids application shall be maintained on the permitted Site and shall not be allowed to flow on to adjacent properties, either by means of surface or subsurface flows. [¶] ... [¶]

"**8.05.080 INSPECTION AND ENFORCEMENT**

"A. The Agency shall inspect all Sites at least one

(1) time per week during the period when Biosolids are being applied and may inspect more frequently or at any time.

"B. The Agency may charge for services not specifically described that are rendered by personnel that are necessary for the enforcement of the provisions of this ordinance. The charge will be calculated on the per-hour fee of ***1575** seventy-five ($75.00) dollars as established in Section 8.04.100. Any laboratory analysis will be charged at the Agency's actual costs as charged by a Certified Laboratory retained by Agency for any testing.

"C. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor.

"D. In addition, any violation of this chapter may be deemed by the Agency to be a public nuisance, and may be abated, or enjoined by the Agency, irrespective of any other remedy herein provided.

"**8.05.090 EFFECTIVE DATE**

"The provisions of this chapter shall expire on December 31, 2002, unless otherwise extended by the board of supervisors."

Section 4 of Ordinance G–6638 replaced the expired version of chapter 8.05 with a new chapter 8.05 scheduled to become effective on January 1, 2003. Provision 8.05.010 was revised slightly but still stated that the chapter did not apply to EQ biosolids or compost. The definitions of EQ biosolids and compost were not changed. The substantive requirements of that new chapter 8.05 stated:

****49** "**8.05.040 BIOSOLIDS PROHIBITED**

"A. It shall be unlawful for any person to land apply Biosolids to property within the unincorporated area of the County. Any Site for which a Permit was issued prior to ... January 1, 2003 shall discontinue land application of Biosolids upon the effective date of this chapter.[36]

"B. The discharge of Biosolids to surface waters or surface water drainage courses, including wetlands and water ways, is prohibited."

Section 5 of Ordinance G–6638 declared that the provisions of Ordinance G–6638 were severable and that the invalidity of any clause or provision would not affect the validity of the other provisions of the ordinance.

***1576** On November 8, 1999, CSDLAC, OCSD, CLABS, SCAP, CASA, and RBM filed a petition for writ of mandate and complaint for injunction and declaratory relief. The first cause of action in the petition alleged County violated CEQA by approving the negative declaration and making findings that Ordinance G–6638 would not have significant impact on the environment. The second cause of action asserted the adoption of Ordinance G–6638 was an invalid exercise of police power and a violation of the commerce clause. The third cause of action alleged the imposition of the biosolids impact fee violated provisions of the California Constitution concerning taxes, as well as the equal protection and due process clauses of the United States and California Constitutions, by unfairly discriminating against vehicles carrying biosolids.[37]

On March 1, 2000, County filed its cross-action against CSDLAC, OCSD and CLABS challenging changes made in their sewage sludge disposal programs. After amendment on June 19, 2000, County's cross-action contained (1) four causes of action alleging CLABS violated CEQA by entering certain contracts and amendments relating to the disposal of biosolids generated at its facilities without performing any environmental review; (2) one cause of action alleging CSDLAC violated CEQA by failing to undertake any environmental review when it and Yakima Company amended and extended their contract for the transportation of sewage sludge from CSDLAC's facilities to Kern County for application on farm land; and (3) five causes of action alleging OCSD violated CEQA by entering biosolids management agreements or options for the purchase of real estate used in connection with the disposal or use of biosolids generated at its facilities without performing any environmental review.

The superior court granted plaintiffs' request that their CEQA cause of action be bifurcated, took all of the CEQA claims under submission on August 30, 2000, and by written ruling entered on November 22, ****50** 2000, denied the CEQA claims of all parties.

Approximately a year and a half later, the superior court heard and denied plaintiffs' motions for summary judgment, and granted County's motion for a protective order regarding depositions and written discovery requested by CSDLAC, OCSD and Shaen Magan relating to the remaining non-CEQA causes of action that challenged the validity of County's legislative act of adopting Ordinance G–6638.

***1577** On June 3, 2002, the parties agreed to present their cases by trial briefs. After considering the briefs filed by the parties, the superior court entered an order on

November 25, 2002, denying the non-CEQA claims alleged in plaintiffs' second and third causes of action. The superior court filed a statement of decision on January 7, 2003, which ruled that (1) Ordinance G–6638 was not an invalid exercise of police power or a violation of the commerce clause and (2) the biosolids impact fee passed constitutional scrutiny because it had a rational basis and was not an illegal general or special tax. On March 10, 2003, judgment was entered in favor of County on all causes of action asserted by plaintiffs and in favor of the cross-defendants on all causes of action asserted by County in its cross-action.

CSDLAC, OCSD, CLABS, CASA, RBM and SCAP timely filed an appeal. County timely filed a notice of appeal from the judgment that denied its cross-action.

DISCUSSION

[1] Plaintiffs contend County erroneously found that Ordinance G–6638 would not have a significant effect on California's environment and, therefore, County violated CEQA when it approved the negative declaration and adopted Ordinance G–6638. The superior court ruled the approval of the negative declaration was appropriate because there was no "substantial evidence of a fair argument that adoption of this ordinance, which continues to allow application of biosolids but requires [plaintiffs] to upgrade them to protect the environment, would have an adverse impact on the environment."

We hold that the preparation of an EIR was mandatory under the low threshold imposed by the fair argument standard because the administrative record contained sufficient, credible evidence that the heightened treatment standards for the application of sewage sludge to land in the unincorporated areas of Kern County might have a significant adverse effect on California's environment. Furthermore, the possibility that the net overall impact of the ordinance was beneficial did not override the requirement in CEQA for the preparation of an EIR addressing the significant adverse environmental impacts the ordinance may have caused. (Guidelines, § 15036, subd. (b).)

I. CEQA Standard of Review

A. General Principles

It is well established in CEQA proceedings that (1) the public agency is the finder of fact, (2) the superior court's findings are not binding on the appellate court, and (3) the scope and standard of review applied by ***1578** the appellate court to the agency's decision is the same as that applied by the superior court. (See §§ 21168, 21168.5; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1277, 119 Cal.Rptr.2d 402 [county's approval of a negative declaration and conditional use permit reinstated and trial court reversed].)

[2] When a CEQA petition challenges action of a public agency that is legislative or quasi-legislative in character, the standard of review contained in section 21168.5 ****51** and the procedures for traditional mandamus set forth in Code of Civil Procedure section 1085 are applied. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 566–567, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) Section 21168.5 provides:

> "In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence."

[3] Amendment or adoption of an ordinance is a legislative act subject to review under section 21168.5. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 172, fn. 2, 105 Cal.Rptr.2d 214, 19 P.3d 567 [§ 21168.5 applied to CEQA challenge to city ordinance that removed certain properties from register of historic landmarks]; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 118 Cal.Rptr. 34, 529 P.2d 66 [city's adoption of ordinances without CEQA compliance was governed by § 21168.5]; *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 488, 82 Cal.Rptr.2d 705 [county's amendment of a zoning ordinance reviewed under § 21168.5].) Accordingly, the Kern County Board of Supervisors' adoption of Ordinance G–6638 is reviewable under section 21168.5 for a prejudicial abuse of discretion.

B. Fair Argument Test

CEQA requires a governmental agency to "prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment." (§ 21100, subd. (a); see Guidelines, § 15064, subd. (a)(1).) Conversely, a negative declaration—rather than an EIR—is appropriate when the administrative record before the ***1579** governmental agency does not contain substantial evidence that the project may have a significant effect on the environment. (§ 21080, subd. (c).)

[4] [5] When a court reviews an agency's decision to certify a negative declaration, the court must determine whether substantial evidence supports a "fair argument" that the project may have a significant effect on the environment. (See §§ 21080, subds. (c) & (d), 21151; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123, 26 Cal.Rptr.2d 231, 864 P.2d 502; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150–151, 39 Cal.Rptr.2d 54 [Ct.App., 5th Dist. voided negative declaration and mandated preparation of EIR].) The determination by an appellate court under the fair argument test involves a question of law decided independent of any ruling by the superior court. (*Stanislaus Audubon Society, Inc.*, at p. 151, 39 Cal.Rptr.2d 54.) Consequently, "we independently 'review the record and determine whether there is substantial evidence in support of a fair argument [the proposed project] may have a significant environmental impact, while giving [the lead agency] the benefit of a doubt on any legitimate, disputed issues of credibility.' " (*Ibid.*, quoting *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1603, 35 Cal.Rptr.2d 470; see § 21151.)

[6] California courts, including the Fifth Appellate District, routinely describe ****52** the fair argument test as a low threshold requirement for the initial preparation of an EIR that reflects a preference for resolving doubts in favor of environmental review. (See *Stanislaus Audubon Society, Inc. v. County of Stanislaus, supra*, 33 Cal.App.4th at p. 151, 39 Cal.Rptr.2d 54; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316–1317, 8 Cal.Rptr.2d 473 [Ct.App., 1st Dist., Div. 1]; see also *No Oil, Inc. v. City of Los Angeles, supra*, 13 Cal.3d at p. 84, 118 Cal.Rptr. 34, 529 P.2d 66.)

[7] In contrast to this description of the fair argument test, County asserts that "[a]ny reasonable doubts whether substantial evidence exists must be resolved in favor of the agency's decision." This assertion is rejected because (1) it misstates the low threshold of the fair argument test and (2) the case relied upon by County did not actually involve the fair argument test or the approval of a negative declaration. (See *Marin Mun. Water Dist. v. KG Land California Corp.* (1991) 235 Cal.App.3d 1652, 1660, 1 Cal.Rptr.2d 767 [court explicitly stated it was applying the substantial evidence standard to the agency's approval of the EIR].) Where the question is the sufficiency of the evidence to support a fair argument, "deference to the agency's determination is not appropriate...." (*Sierra Club v. County of Sonoma, supra*, 6 Cal.App.4th at pp. 1317–1318, 8 Cal.Rptr.2d 473.)

***1580** A logical deduction from the formulation of the fair argument test is that, if substantial evidence establishes a reasonable possibility of a significant environmental impact, then the existence of contrary evidence in the administrative record is not adequate to support a decision to dispense with an EIR. (Guidelines, § 15064, subd. (f)(1); *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905, 60 Cal.Rptr.2d 821.) The environmental review necessary to complete an EIR prepares the agency to weigh the conflicting substantial evidence on each side of an issue and make its findings of fact.

The fair argument test also requires the preparation of an EIR where "there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial...." (Guidelines, § 15063, subd. (b)(1); see *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 614–615, 49 Cal.Rptr.2d 494.) In other words, for projects that may cause both beneficial and adverse significant impacts on the environment, preparation of an EIR is required because the consideration of feasible alternatives and mitigation measures might result in changes to the project that decrease its adverse impacts on California's environment. Consequently, the argument that an EIR was unnecessary because the net overall effect of Ordinance G–6638 was beneficial to the environment must fail, regardless of potential environmental benefits, if substantial evidence shows a reasonable possibility of one or more significant adverse environmental impacts.

C. Definitions Relevant to the Fair Argument Test

The fair argument test contains several terms that are defined further by CEQA, the Guidelines, or case law.

First, the term "substantial evidence" is defined by the

Guidelines to mean "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384, subd. (a); see *No Oil, Inc. v. City* ****53** *of Los Angeles, supra,* 13 Cal.3d at p. 75, 118 Cal.Rptr. 34, 529 P.2d 66.) CEQA specifically provides that "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact" (§ 21080, subd. (e)(1)) and excludes "argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." (*Id.,* subd. (e)(2); see Guidelines, § 15384, subd. (a).) Thus, the existence of a public controversy is not a substitute for substantial evidence. (Guidelines, § 15064, subd. (f)(4).)

***1581** Second, a project "may" have a significant effect on the environment if there is a "reasonable possibility" that it will result in a significant impact. (*No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 83, fn. 16, 118 Cal.Rptr. 34, 529 P.2d 66.)

Third, "environment" is defined by CEQA as "the physical conditions [that] exist within the area [that] will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§ 21060.5.) Section 15360 of the Guidelines explains this definition by providing:

> "The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The 'environment' includes both natural and man-made conditions."

Fourth, the phrase "significant effect on the environment" is defined as "a substantial, or potentially substantial, adverse change in the environment." (§ 21068; see Guidelines, § 15382.) "In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency." (Guidelines, § 15064, subd. (c).)

Fifth, the "significance" of an environmental effect requires the evaluation of "direct physical changes in the environment [that] may be caused by the project and reasonably foreseeable indirect physical changes in the environment [that] may be caused by the project." (Guidelines, § 15064, subd. (d); see § 21065.)[38] In this context, "direct" means "caused by and immediately related to the project." (Guidelines, § 15064, subd. (d)(1).) "Indirect" means "not immediately related to the project, but ... caused indirectly by the project" such as a physical change caused by a direct physical change. (*Id.*, subd. (d)(2).) The test for the strength of the nexus between the project and an indirect physical change is whether "that change is a reasonably foreseeable impact [that] may be caused by the project." (*Id.*, subd. (d)(3).) The "reasonably foreseeable" test excludes physical changes that are speculative or not likely to occur. (*Ibid.*)

Sixth, "effects" and "impacts" are synonymous and include (1) "[d]irect or primary effects [that] are caused by the project and occur at the same time and place" and (2) "[i]ndirect or secondary effects [that] are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable." (Guidelines, § 15358, subd. (a).) A common example of an indirect effect is the pollution that results from the growth-inducing effect of a project. (See Guidelines, §§ 15064, subd. (d)(2), 15382.)

****54 *1582 II. An EIR is Required Under the Low Threshold of the Fair** Argument Test

Plaintiffs contend the implementation of Ordinance G–6638 created a reasonable possibility of significant environmental impacts both inside and outside Kern County. Plaintiffs contend these significant impacts included (1) increased vehicle traffic, (2) increased air pollution in the form of vehicle emissions, dust and volatilization of pesticides, (3) degraded water quality from the use of alternative fertilizers, (4) increased burdens on landfills, (5) increased energy and fuel consumption, (6) increased soil erosion, (7) increased use of irrigation water, (8) increased exposure of humans to pathogens, (9) loss of habitat for small animals, and (10) loss of productivity of marginal farmland.

County contends the fair argument test was not met because (1) the relevant environment was approximately 23,594 acres of farmland[39] in Kern County where Class B biosolids were applied and (2) it was not reasonably possible that significant adverse environmental impacts would occur on that farmland. To support its first contention, County asserts that any broader sweep of the ordinance would depend on alternative methods of biosolids disposal chosen by plaintiffs, and that the environmental impacts resulting from those methods were thus too uncertain and speculative for County to evaluate. To support its second contention, County asserts EQ biosolids would serve as an adequate substitute for the Class B biosolids that could no longer be applied by

farmers.

CEQA defines the relevant geographical environment as the area where physical conditions will be affected by the proposed project. (§ 21060.5.) Consequently, the project area does not define the relevant environment for purposes of CEQA when a project's environmental effects will be felt outside the project area. (See *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 369, 110 Cal.Rptr.2d 579.) Moreover, "the purpose of CEQA would be undermined if the appropriate governmental agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area." (*Ibid.*)

We agree with County that some of the physical changes to the environment resulting from the adoption of Ordinance G–6638 would depend on the reactions of plaintiffs and others to its requirements. Consequently, we will not limit our review to a particular geographical area, but begin by examining (1) the reasonably foreseeable reactions of those affected by the heightened treatment standards, (2) how such reactions might cause physical changes to ***1583** the environment, and (3) the environmental significance of those physical changes. The two main groups directly affected by Ordinance G–6638 were sewage sludge generators and the farmers who used Class B biosolids as a fertilizer. We will analyze each group separately.

A. Reactions of Sewage Sludge Generators and Related Impacts

Under the heightened treatment standards of Ordinance G–6638, sludge generators such as CSDLAC, CLABS and OCSD that applied Class B biosolids to agricultural land in Kern County were required to either reduce their production of biosolids or dispose of their biosolids in some other way.

****55** ***1. Continued production and disposal of sewage sludge was foreseeable***

It was reasonably foreseeable that the City of Los Angeles, and the Counties of Los Angeles and Orange would continue to produce sewage sludge and would need to dispose of it. County does not dispute this point. The administrative record includes documents stating that the generation of biosolids will continue to increase along with the state's population. Therefore, at the time County certified the negative declaration, it was reasonably foreseeable that the heightened treatment standards would compel CSDLAC, CLABS, OCSD and other agencies to find a substitute for applying Class B biosolids on land within the jurisdiction of Kern County.

2. Alternative methods of disposal were reasonably foreseeable

a. Foreseeability of disposal alternatives

The following alternatives were foreseeable, because of the applicable rules of law governing the use and disposal of sewage sludge and because of information contained in the administrative record: (1) further treatment to convert Class B biosolids to EQ biosolids followed by land application, (2) land application of Class B biosolids somewhere other than Kern County, (3) incineration, or (4) disposal in a landfill.

The applicable rules of law set forth in state statute and federal regulations address land application,[40] landfilling, and incineration of sewage sludge. (See Wat.Code, § 13274, subds. (d), (f) & (g); 40 C.F.R. § 503, subparts B [land application], C [surface disposal, i.e., landfill] & E [incineration].)[41] ***1584** Also, land application of sewage sludge that has been treated to heightened standards is suggested by Ordinance G–6638 itself.

The administrative record contains a vast amount of information about the alternative methods for disposing of Class B biosolids. Part of that information was presented in comments from persons familiar with the disposal of sewage sludge. For instance, a September 13, 1999, declaration of James F. Stahl, an assistant chief engineer and assistant general manager of CSDLAC, identified the four alternatives and provided historical data showing the disposal options California had used in the past:

> "[I]n 1998 approximately 1,849 dry tons per day of sludge were generated in California. Of that amount, approximately 67.8% was land applied, while about 7% was in storage, 5.6% was incinerated, 9% was disposed of in landfills, and 10.6% [was] used in compost. In California, the most common use of land-applied biosolids is for agricultural crop production.... [A]bout one-third of all land-applied biosolids in the State of California in 1998 were applied in Kern County."[42]

A letter from the Chief of the Office of Clean Water Act Compliance of Region IX of the EPA indicated the alternatives were (1) treatment to Class A standards, (2) hauling further distances for land application, ****56** and (3) adding the organic, nitrogen-rich material to landfills. These methods and incineration were identified in the September 13, 1999, comments jointly submitted by CASA and SCAP and a June 14, 1999, letter signed by

attorneys for OCSD, CSDLAC and CLABS. In addition, a letter from the Chair of the Central Valley Water Board mentions landfilling and incineration as alternative methods of disposal.

As a result of the foregoing comments and existing law, the foreseeable alternative methods of disposal of Class B biosolids included (1) land application outside Kern County, (2) further treatment to EQ biosolids standards followed by land application, (3) landfilling and (4) incineration.

b. Reasonableness limitation on foreseeable alternatives

Next, we consider which of the foreseeable alternatives were *reasonably* foreseeable under the circumstances of this case. Under the fair argument test, the inquiry into what is reasonably foreseeable depends on whether the administrative record contains enough evidence to show a reasonable possibility that a particular alternative would be used in the future.

***1585** OCSD, CSDLAC and CLABS were among the entities affected by Ordinance G–6638 that submitted comments to County predicting how they would respond to the ordinance.

An assistant general manager of OCSD, Blake P. Anderson, stated in a September 9, 1999, declaration that OCSD intended to respond to the ordinance by (1) converting Class B biosolids to EQ biosolids and (2) hauling the portion of the Class B biosolids not converted to more distant locations for land application. At that time, OCSD was "in the process [of] developing a request for proposals in order to obtain bids for the conversion of OCSD's Class B biosolids to exceptional quality biosolids." Earlier, in comments attached to its June 14, 1999, letter, OCSD discussed the limitations on landfills in Southern California and indicated that the landfills most likely to be used to dispose of Class B biosolids were located in Arizona and Utah.

The declaration of Mr. Stahl, CSDLAC's assistant general manager, stated adoption of the ordinance would cause CSDLAC to apply its biosolids to land further away and, if the sites with permits for land application of Class B biosolids did not have sufficient capacity, to treat the biosolids to meet Class A or EQ standards. Mr. Stahl also addressed the potential alternatives of incineration and local landfilling by stating that (1) incineration was not feasible in Southern California because of its adverse impact on air quality and (2) local landfilling lacked viability because of various constraints placed on those landfills, which included the recycling requirements of the California Integrated Waste Management Act of 1989. Also, Gregory M. Adams, the head of the air quality engineering section of CSDLAC, opined that the incineration of sewage sludge in Southern California was not feasible because of its adverse impact on air quality.

A September 10, 1999, letter from CLABS stated that "[t]o date, our analysis indicates that the alternative with the highest likelihood of immediate success is the conversion of Class B biosolids to what are known as exceptional quality biosolids under the federal regulations." The letter described the testing undertaken for the conversion of Class B biosolids at its Terminal Island wastewater treatment plant and its Hyperion treatment plant and stated that it was reasonably foreseeable that within three years CLABS would be converting 100,000 wet tons per year of Class B biosolids to EQ biosolids. The letter also mentioned that the City of Los Angeles ****57** had examined potential alternative sites for land application of Class B biosolids as well as the use of a landfill in Arizona as a backup method for disposal.

***1586** The foregoing predictions by entities that would have to change their practices when the heightened treatment standards went into effect are not rendered speculative by virtue of being predictions of future methods of compliance. Predicting the physical changes a project will bring about is an inescapable part of CEQA analysis. (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 919, 100 Cal.Rptr.2d 173 [CEQA compels reasonable forecasting];[43] see *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 398–399, 253 Cal.Rptr. 426, 764 P.2d 278.)

County contends that, when it adopted Ordinance G–6638, it could only speculate as to which alternative biosolids generators would adopt when the heightened treatment standards went into effect on January 1, 2003. Determining whether alternative methods of compliance with a new ordinance are reasonably foreseeable or speculative depends on the facts in the record rather than a bright line rule of law. A bright line rule—stating that the existence of alternative means of compliance with a new rule or regulation would cause each alternative to be so uncertain that it was not reasonably foreseeable—would contradict the requirements for environmental analysis imposed by section 21159, subdivision (a). That subdivision provides that when specified agencies adopt a rule or regulation concerning pollution control, performance standards, or treatment requirements, the agency must perform "an environmental

analysis of the reasonably foreseeable methods of compliance."[44] Thus, CEQA recognizes that the existence of alternative methods of compliance does not, in itself, make the alternatives not reasonably foreseeable. Nothing in logic dictates a different conclusion when the new edict is a county ordinance, even though the express terms of section 21159 do not cover ordinances. Consequently, regardless of whether the situation concerns a new rule, regulation or ordinance, whether one or more methods of future compliance are reasonably foreseeable depends upon the quality and quantity of evidence in the administrative record.

The evidence in this case includes predictions of OCSD, CSDLAC and CLABS that are supported by a reasoned analysis of the options available to them, an investigation into the practicalities of those options, and the plans or ***1587** intentions they had formed at that stage of their investigation. Accordingly, the predictions and the information upon which the predictions were based constitute substantial evidence supporting a fair argument that the reasonably foreseeable alternatives for disposing of sewage sludge that otherwise would have been applied to Kern County farmland as Class B biosolids were (1) hauling the Class B biosolids to other locations ****58** where land application was allowed, (2) treating the Class B biosolids to meet more stringent standards, and (3) depositing the Class B biosolids in landfills. In other words, based on the record cited on appeal (see Cal. Rules of Court, rule 14(a)(1)(C)), the only alternative method of disposal that was not *reasonably* foreseeable was incineration.

3. Significance of environmental impacts of disposal alternatives

The next inquiry under the fair argument test is whether the likelihood of implementation of the reasonably foreseeable disposal alternatives created a reasonable possibility of a significant effect on the environment. A project will have a significant effect on the environment if it will cause "a substantial, or potentially substantial, adverse change in" "the physical conditions [that] exist within the area [that] will be affected by [the] project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§§ 21060.5 [defining "environment"], 21068 [defining "significant effect on the environment"]; see Guidelines, §§ 15360, 15382.)

One illustration of the foreseeability of secondary environmental impacts occurred in *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 117 Cal.Rptr.2d 582 where a county approved amendments that modified its general plan relating to land use regulation of unincorporated territory within a city's sphere of influence. The general plan amendment caused the slope development standards to become more lenient in certain areas and created the possibility for development of land previously consider too steep for development. (*Id.* at pp. 412–413, 117 Cal.Rptr.2d 582.) The Fourth Appellate District held that an expected secondary effect of the adoption of a general plan amendment was an increase in grading that would destroy the natural contours of hillsides and possibly eliminate the natural habitat for plants and animals. (*Id.* at p. 413, 117 Cal.Rptr.2d 582.) Despite the county's argument that the evidence lacked the necessary specificity and the absence of a particular development project, the court concluded the administrative record contained ***1588** "substantial evidence of a fair argument that the amendments [to the general plan] may have a significant effect on the environment." (*Id.* at p. 414, 117 Cal.Rptr.2d 582.) Thus, the trial court's decision to require the preparation of an EIR was upheld. (*Ibid.*)

a. Hauling

Mr. Anderson stated that OCSD anticipated hauling at least five truckloads of Class B biosolids per day to Kings County and two truckloads per day to Yuma, Arizona, which would involve a total of 2,000 vehicle miles per day and 1,200 vehicle miles per day, respectively.

Mr. Stahl stated Ordinance G–6638 would cause CSDLAC to apply Class B biosolids to land "at a currently-permitted location in Kings County for which [CSDLAC has] an existing contract" and at more remote permitted locations because the permitted capacity in Kings County could only accept about two-thirds of the biosolids generated by CSDLAC, OCSD and CLABS. Mr. Stahl also stated the additional hauling distance to the location in Kings County was approximately 45 miles one way. Based on this additional mileage and the amount of wet tons of sewage sludge CSDLAC produced, Mr. Adams stated that the additional hauling of CSDLAC alone would result in nitrogen oxide (NOx) emissions of 63 pounds per day. Daily operations-related emissions that exceed 55 pounds per day of NOx are considered significant under the thresholds ****59** established by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD).[45] (See Guidelines, § 15064.7 [public agencies encouraged to develop and publish thresholds of significance]; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110–111, 126 Cal.Rptr.2d 441 [adopting quantitative standard as threshold of significance "promotes consistency, efficiency, and predictability in deciding

whether to prepare an EIR"].) Accordingly, Mr. Adams concluded that the additional hauling of sewage sludge produced by CSDLAC would have a significant effect on the environment.

The information in the administrative record supported a reasonable inference that the totality of additional hauling of Class B biosolids beyond sites in Kern County to locations in Kings County and further north would create additional NOx emissions that would have a significant adverse impact on the air quality within the jurisdiction of the SJVUAPCD. This determination is based on the levels of significance established by the SJVUAPCD. (See ***1589** Guidelines, § 15064.7.) Accordingly, under the fair argument test, an EIR should have been prepared to consider the impact of Ordinance G–6638 on air quality.

b. Treatment to EQ standards

Mr. Stahl's declaration also stated CSDLAC had not built facilities sufficient to process its biosolids to meet Class A or EQ standards, but the design parameters for a pasteurization facility to accomplish that processing had been calculated by CSDLAC and would require approximately 700 MMBTUH[46] for heating in a natural gas boiler and 3,200 Hp[47] for pumping and handling.

The declaration of Mr. Adams states that for the 700 MMBTUH design parameter calculated by CSDLAC for a pasteurization facility, a natural gas fired boiler of that capacity "would emit approximately 111 lbs of NOx and 581 lbs of CO per day at their BACT [best available control technology] levels (i.e., 5 ppm NOx and 50 ppm CO)." This estimate of the per day emission of NOx is more than twice the threshold of significance set by the SCAQMD, and the estimate of CO emission also exceeds the threshold of significance of 550 pounds per day. Mr. Adams also stated that the processing activity necessary for another sanitation agency to convert 100,000 tons of Class B biosolids to EQ biosolids per year would also exceed the thresholds of significance for NOx and CO.

In addition, the declaration of Robert A. Gillette, a civil engineer and principal of Carollo Engineers, described the energy consumption associated with the additional treatment processes used to convert Class B biosolids to Class A biosolids. In his declaration, Mr. Gillette expressed the opinion that the most viable processes for converting Class B biosolids to Class A at a treatment plant were in-vessel composting, heat drying, and lime stabilization. Based on these processes and other data, Mr. Gillette estimated:

> ****60** "If only one third of the Class B biosolids presently used in Kern County are converted to Class A, the electricity usage for these alternatives is equivalent on an annual average basis to the amount used by between 1,500 and 5,000 homes in Southern California, according to data from Southern California Edison. The natural gas usage is equivalent on an annual average basis to the amount used by between 3,000 and 6,000 homes in Southern California according to data from the Southern California Gas Company."

***1590** Mr. Gillette also stated his opinion that if 200,000 wet tons per year of Class B biosolids were converted to more stringent standards instead of applied to land in Kern County, "the environmental impact from the additional use of energy would be very significant."

While we recognize that OCSD, CSDLAC and CLABS each had choices in deciding what combination of further treatment and hauling to distant sites to implement, we conclude that a fair argument can be made that the aggregate impact of the alternatives adopted by these entities and the publicly and privately owned treatment works (POTW) serving Kern County communities[48] may cause a substantial, or potentially substantial, adverse change in the air quality within the jurisdiction of the SCAQMD and the SJVUAPCD. Furthermore, a fair argument can be made that the increased energy use caused by further treatment processes would cause a significant effect on the environment.

c. Landfill capacity

The historical data in the administrative record shows that the biggest changes in the disposal and use of biosolids in California between 1988 and 1998 were the reduction in the use of landfills (60.2 percent to 9.1 percent) and the increase in the use of land application (12.7 percent to 67.8 percent). From this data, it is reasonable to infer that land application has acted as a substitute for disposal in landfills and, as land application becomes more difficult, the use of landfills will be a partial substitute for land application. For instance, page 2–2 of the State Water Board's 1999 Draft EIR links the "huge increase in land application" reflected in the 1998 data with the reduction in the use of landfills.

The California Integrated Waste Management Act of

1989 includes the legislative findings that the "amount of solid waste generated in the state coupled with diminishing landfill space and potential adverse environmental impacts from landfilling constitutes an urgent need for state and local agencies to enact and implement an aggressive new integrated waste management program" (§ 40000, subd. (d)), and that the reuse of solid waste would preserve landfill capacity and protect the state's environment (*id.*, subd. (e)).

Based in part on (1) the volume of Class B biosolids applied to land in Kern County before the heightened treatment standards became effective, (2) the use of landfills as a substitute for land application of biosolids, and (3) the legislative findings regarding diminishing landfill capacity and the adverse ***1591** environmental impact associated with landfilling, we conclude that a fair argument exists that the potential increased use of California's limited landfill space to dispose of an organic, nitrogen-rich material may have a significant adverse effect on the environment. Accordingly, ****61** that potential environmental impact should be assessed in an EIR.

d. Summary

The reasonably foreseeable reactions of sewage sludge generators to Ordinance G–6638, and the reasonably foreseeable environmental impacts of those reactions, include: (1) increased fuel consumption and vehicle emissions resulting from hauling Class B biosolids greater distances; (2) the consumption of energy for the heating, pumping and handling involved in treating Class B biosolids to meet more stringent standards, and the emissions generated by the additional treatment; and (3) loss of landfill capacity.[49]

B. Farmer Reaction and Related Impacts

Plaintiffs argue that the reaction of Kern County farmers to the heightened treatment standards for sewage sludge applied to land after December 31, 2002, would result in significant impacts, "including the loss of productivity of marginal farmland (EPA, Garvey, Magan), increased air pollution from volatilization of increased pesticide usage, increased dust, and additional truck traffic (EPA, Regional Board, Garvey, Wilson, Tow, Anderson, Stahl, Adams, Hyde, Nixon, Westhoff) ... increased energy and fuel consumption (Wilson, Gillette, Anderson, Stahl, Nixon), increased erosion and dust (Garvey, Tow), increased water use (Garvey, Dixon, Tow), increased risks to human health (Nixon, Gerba), and loss of habitat for small animals (Garvey)." (Fn.omitted.)

County argues that the evidence referred to by plaintiffs is too general and does not show that "the Ordinance will result in significant environmental impacts on the land to which it applies." County asserts the lack of site-specific evidence occurred because "no physical changes would occur in the unincorporated area during the first three years because the Ordinance allowed the continued use of Class B biosolids; and no significant impacts ***1592** would occur after January 1, 2003 because the Ordinance allows the continued land application of EQ biosolids."

1. Reasonably foreseeable farmer reactions

Plaintiffs predicted that farmers who could not apply Class B biosolids after December 31, 2002, would react by (1) taking land out of agricultural production, (2) applying animal manure as a substitute for the biosolids, or (3) using chemical fertilizers. County asserts plaintiffs have indulged in assumptions unsupported by facts and have "ignore[d] evidence showing it is far more likely sludge generators will convert their Class B biosolids to EQ, ensuring an adequate substitute for Class B biosolids for anyone who wishes to use them." County supports its prediction by referring to various contracts and related documents of the sanitation agencies that contemplate the use of composting as a disposal option.[50]

In effect, County has argued its forecast of how farmers would react when they could no longer apply Class B biosolids was the only forecast supported by substantial ****62** evidence. (See Guidelines, § 15144 [forecasting].) This position is rejected for three reasons.

First, the documents cited by County in its appellate brief were not considered by County in adopting Ordinance G–6638 as they were not a part of the administrative record. (See § 21003, subd. (b) [document cannot be "meaningful and useful to decisionmakers" if it was not available to them].)

Second, County has cited and this court has located no evidence in the administrative record that supports the factual assertion that EQ biosolids are "an adequate substitute for Class B biosolids." Indeed, the evidence in the administrative record, including a letter from the EPA, indicates that most treatment processes for Class B biosolids reduce the nitrogen levels considerably and therefore reduce its value as fertilizer. County contends this evidence is unreliable because another document that was not in the administrative record shows that one of the primary land application sites used by OCSD in Kern County did not need additional nitrogen for crop growth and would not be available for land application of Class B

biosolids for a year or more. This attack on the evidence is faulty because (1) it is based on a document that is not in the administrative record; (2) it pertains to only one of the many land application sites in Kern County and provides no basis for inferring that all the other sites have the same characteristic; and (3) the ***1593** period the site was unavailable was not shown to extend to the time the heightened treatment standards went into effect.[51]

Third, even if one were to assume EQ biosolids and Class B biosolids were equivalents as fertilizer, the administrative record does not contain evidence which supports County's assumption that EQ biosolids would be available in sufficient quantities to completely replace Class B biosolids at all land application sites in Kern County. Some of the Class B biosolids that would have been applied in Kern County would be hauled to more distant locations or placed in landfills, which supports the inference that the EQ biosolids generated by the conversion of Class B biosolids would not be sufficient to completely replace the use of Class B biosolids.

Consequently, we reject County's position that the only reasonable forecast of the farmers' reaction to the implementation of the heightened treatment standards was that they all would use EQ biosolids as a substitute for Class B biosolids. Instead, substantial evidence in the administrative record shows that it was reasonable to forecast that the farmer reactions also would include taking marginal land out of production and substituting other types of fertilizer to replace the Class B biosolids. (See *League for Protection of Oakland's etc. Historic Resources v. City of Oakland, supra,* 52 Cal.App.4th at pp. 904–905, 60 Cal.Rptr.2d 821 [substantial evidence of one impact is not negated if the record also contains substantial evidence showing a different impact will result].)

The forecast that farmers would take land out of production was reasonable because one farmer told the Kern County Board of Supervisors that the availability of Class B biosolids made it feasible for him to bring 1,200 acres of marginal alkali soil into production, and another stated that the availability of biosolids as a free fertilizer allowed him to break even on a ****63** 160–acre parcel. Shaen Magan wrote a letter indicating that if he was unable to continue farming with the use of biosolids, then approximately 4,000 acres of his farmland located in Kern County would revert to open-range land. From these statements, it is reasonable to infer that without the free application of Class B biosolids, the marginal land would be taken out of production.

The forecast that some land would remain in production and substitutes would be used was reasonable because Pat McCarthy stated that he was currently applying Class B biosolids in his family's farming operations and, similar to gypsum, sulfur, animal waste and dairy waste, it was just one tool available to farmers. This statement supports an inference that he would ***1594** continue to farm by using one or more other types of fertilizer available to replace the Class B biosolids.

2. Potential environmental impacts of farmer reactions

a. Dust and air quality

Plaintiffs claim substantial evidence shows that "[a]t marginal sites that are currently used for Class B biosolids application, there will be a significant increase in soil loss of approximately 28,800 tons per year as PM–10 (Dust)" and cite to a letter prepared by Harry A. Tow, a principal engineer with Quad Knopf, Inc. In his letter, Tow states that sites left fallow and unfarmed will experience a significant increase in soil loss through wind erosion. The figure of 28,800 tons per year calculated by Tow equates to approximately 157,808 pounds per day, which is over 1,000 times the 150 pounds per day threshold of significance established for PM–10 by the SJVUAPCD for any project.

Tow also stated that more dust and odor is likely to be created where animal manure is used as a substitute for Class B biosolids because the transport and application of dry manure is not regulated and it could be applied in wind conditions where the application of biosolids would not be allowed.

Plaintiffs also cite a September 10, 1999, letter written on behalf of OCSD by Diane D. Garvey, who has a degree in civil and environmental engineering and a 20–year career in biosolids management. Garvey's company is Garvey Resources, Inc. and it is located in Lansdale, Pennsylvania. In Garvey's opinion, farmers who use chemical fertilizers as a substitute for biosolids will suffer increased soil loss from wind erosion because biosolids reduce soil erosion by increasing the amount of organic matter in the soil, which improves the soil's structure and cohesion. To support her opinion, Garvey quotes from an article titled "Agricultural Tillage Systems: Water Erosion and Sedimentation" published by the Soil and Water Conservation Society.

b. Increased use of animal manure

Plaintiffs contend a fair argument exists that increased use

of animal manure by farmers affected by Ordinance G–6638 would lead to more surface water pollution, more groundwater pollution and the spread of pathogens such as cryptosporidium, giardia, salmonella and E. coli. This argument is supported by a report by the United States Geological Survey and a report prepared for United States Senator Tom Harkin, both of which are in the administrative record, and show that animal manure has had an adverse impact on the environment at locations across the country and in California.

***1595** Plaintiffs also cite the September 10, 1999, letter written by Garvey which asserted that increased use of animal manure ****64** would increase (1) nitrate contamination of groundwater and (2) the spread of disease because animal manure is not treated to reduce pathogens like Class B biosolids. Garvey asserts biosolids cause less nitrate contamination because biosolids are closely monitored and more consistent in quality; in contrast, the quality of animal manure can vary greatly in solids and nitrogen content based on the age of the manure, storage method, the feed given to the animals and their weight. The inconsistent quality of manure means that some areas of a field will receive more nitrogen than can be used by the crops and the excess nitrates will contaminate the groundwater.

With respect to the pathogens in animal manure, plaintiffs cite a September 13, 1999, letter from Charles P. Gerba, Ph.D., from the Department of Soil, Water and Environmental Science at the University of Arizona, which described some of the pathogens found in animal manure, asserted outbreaks of some of these pathogens were associated with the use of animal manure as a fertilizer, and observed that animal manure that is land applied is not regulated for pathogen removal, unlike Class B biosolids.[52] The lack of regulatory oversight to the land application of animal manure also is mentioned in the comments submitted to County by the EPA.

c. Increased use of concentrated chemical fertilizers

Plaintiffs assert substantial evidence shows that increased use of concentrated chemical fertilizers by affected farmers would lead to a number of adverse environmental impacts including (1) soil erosion,[53] (2) surface water pollution, (3) groundwater pollution, (4) increased use of irrigation water, (5) decreased crop production and (6) increased use of pesticides.

We agree that it is reasonable to forecast that this farmland will have a lower organic content than it would have had if Class B biosolids had continued to be applied. There is ample evidence in the administrative record showing that the application of biosolids increases the organic content of soil. For example, the September 9, 1999, letter submitted to County by Robert C. Dixon, a certified professional agronomist, indicates that biosolids are an organic soil amendment with a high level of organic matter.

***1596** Both Garvey and Dixon asserted that the substitution of chemical fertilizers for biosolids could result in adverse impacts to the environment by (1) decreasing the ability of the soil to retain water and thus increasing the amount of water used to irrigate crops, and (2) increasing the amount of nutrients likely to leach below the root zone before they can be utilized by the crops and thereby increasing the amount of nutrients that leach into and pollute the groundwater.

Dixon also asserted that the increase in organic matter from biosolids increases the ability of the soil to hold onto pesticides, fertilizers and the soil itself. Thus, the water runoff from fields using biosolids would pollute surface water less because the runoff would transport fewer nutrients, pesticides and sediment.

Garvey asserted that the decrease in organic matter would decrease beneficial microbial populations in the soil and would increase farmer dependence on pesticides.

*****65 3. Significance of potential impacts from farmer reactions***

On our own initiative, we could provide bases on which to attack the significance of the above noted potential impacts to the environment arising from the reasonably foreseeable reactions of affected farmers.[54] County, however, has not provided any detailed analysis of the potential impacts plaintiffs have identified, other than to argue (1) the potential impacts will not arise because farmers will use EQ biosolids as a replacement for Class B biosolids and (2) plaintiffs' claims are based on (a) unsupported assumptions and opinions and (b) biased and unreliable information. (See § 21080, subd. (e); Guidelines, § 15384, subd. (a); *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1349, 272 Cal.Rptr. 372 [agency entitled to disbelieve biased witness].)

Neither of County's arguments is compelling. First, substantial evidence in the record establishes a reasonable possibility that farmers would react to the heightened treatment standards in various ways (see part II.B.1., *ante*) and thus would not limit their reaction to using EQ biosolids as a complete substitute for Class B biosolids. Moreover, County's argument appears to be an

after-the-fact rationalization for a decision already made because the ***1597** administrative record contains no evidence that County seriously investigated whether EQ biosolids would be a complete substitute for the Class B biosolids that had been used.[55] The after-the-fact nature of the position is illustrated by County's inability to cite any supporting evidence in the administrative record. (See fn. 50, *ante*.)

[8] Second, County's generalized assertion that the evidence relied upon by plaintiffs was biased and unreliable fails because County (1) did not make any express credibility findings in connection with its approval of the negative declaration and (2) has not shown that there were " 'legitimate, disputed issues of credibility.' [Citation.]" (*Stanislaus Audubon Society, Inc. v. County of Stanislaus, supra,* 33 Cal.App.4th at p. 151, 39 Cal.Rptr.2d 54.) Were we to accept County's broad-brush assertion of the incredibility of plaintiffs' evidence, the fair argument test would be effectively eviscerated because much of the evidence submitted in administrative proceedings concerning CEQA projects comes from people and entities who are interested in the outcome of the lead agency's decision. Instead, we hold that before an agency may rely on its purported rejection of evidence as incredible, it must first identify that evidence with sufficient particularity[56] to allow the reviewing court to determine whether there were legitimate, disputed issues of credibility. (E.g., ****66** *Leonoff v. Monterey County Bd. of Supervisors, supra,* 222 Cal.App.3d at pp. 1351–1353, 272 Cal.Rptr. 372 [court upheld county's rejection of project opponents' evidence of purportedly significant traffic impacts].)

We refrain from supplying arguments County has not made, or from requesting further briefing, because to do so would not reflect County's actual analysis but would simply create more after-the-fact justifications. Moreover, it would not change the need to remand this matter with directions to County to prepare an EIR. (See part II.A., *ante*.)

[9] We also agree with plaintiffs that, under CEQA, the lead agency bears a burden to investigate potential environmental impacts. "If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311, 248 Cal.Rptr. 352.)

***1598** In this case, Tow's calculation regarding the creation of 28,800 tons per year of PM–10 is not a reasonable prediction. Nevertheless, County failed to study the impact of dust on air quality and, as a result, there exists a plausible inference that the heightened treatment standard could cause, in the aggregate, the addition of 150 pounds per day of PM–10 to the air within the jurisdiction of the SJVUAPCD based on (1) Tow's analysis of wind erosion from fallow land, (2) Tow's analysis of the additional dust that will result from the use of animal manure, (3) Garvey's claim that increased use of chemical fertilizers will affect soil structure and lead to more wind erosion, and (4) the PM–10 from the additional truck emissions created by further hauling distances. Accordingly, the heightened treatment standards may have a significant adverse impact on the amount of PM–10 in the air and an EIR should address this potential impact.

In addition, we conclude the impacts from the increased use of animal manure and the increased use of chemical fertilizers may have a significant adverse impact on the environment and should be addressed in an EIR.

C. *Magan v. County of Kings* Is Distinguishable

In *Magan v. County of Kings, supra,* 105 Cal.App.4th 468, 129 Cal.Rptr.2d 344, the Kings County Board of Supervisors found that an ordinance regulating the application of sewage sludge to land in Kings County was categorically exempt from review under CEQA as an action taken by a regulatory agency for the protection of the environment. (See Guidelines, § 15308 [class 8 categorical exemption concerning protection of the environment]; see also § 21084.) In upholding the superior court's denial of a writ of mandate, this court determined that (1) the county met its burden of showing substantial evidence supported the board of supervisors' decision that the ordinance fell within the categorical exemption (*Magan,* at p. 476, 129 Cal.Rptr.2d 344) and (2) that the petitioner failed to meet his burden of producing substantial evidence showing a reasonable possibility of adverse environmental impact sufficient to remove the ordinance from the categorically exempt class (*ibid.*). In particular, this court observed that the petitioner "has failed to support his claims with *any* evidence in the record. The claims are based entirely on speculation." (*Id.* at p. 477, 129 Cal.Rptr.2d 344.)

The present case is distinguished easily from *Magan v. County of Kings* based on ****67** the contents of the administrative record.[57] In this case, the administrative record contains a large quantity of specific information about alternative methods of disposing of the Class B biosolids that otherwise ***1599** would have been applied

to Kern County farmland and the environmental significance of the impact of those alternatives on energy consumption, air quality within the jurisdiction of the SJVUAPCD, and landfill capacity. Thus, plaintiffs in this case have done exactly what the petitioner in *Magan v. County of Kings* failed to do—produced substantial evidence to support their argument that the ordinance would indirectly cause "a substantial, or potentially substantial, adverse change in" "the physical conditions [that] exist" inside and outside the county. (§§ 21060.5, 21068; Guidelines, §§ 15360, 15382; *Heninger v. Board of Supervisors* (1986) 186 Cal.App.3d 601, 609–611, 231 Cal.Rptr. 11 ["considerable body of evidence" supported a fair argument that an ordinance amendment authorizing installation of alternative private sewage disposal systems might have a significant effect on the environment; thus, a negative declaration was inappropriate and the preparation of an EIR was required].)

D. Deferral of Environmental Analysis

[10] County asserts deferring the preparation of an EIR was appropriate because the uncertainty over how the sanitation agencies would react to Ordinance G–6638 rendered environmental analysis of those reactions premature.

1. Deferral and the fair argument test

[11] A threshold issue is how the concept of deferral of environmental analysis interacts with the fair argument test. When a public agency *is preparing an EIR* and decides to defer environmental review of an action that may be taken in the future, courts analyze the decision to defer environmental review under a specific test. (See *National Parks & Conservation Assn. v. County of Riverside* (1996) 42 Cal.App.4th 1505, 1516–1520, 50 Cal.Rptr.2d 339 [deferral of environmental analysis in the context of EIR preparation and the test for deferral].) That test provides that the "discussion of a [future potential action] is not required in an EIR for the project ... if: (1) obtaining more detailed useful information is not meaningfully possible at the time when the EIR for the project is prepared, and (2) it is not necessary to have such additional information at an earlier stage in determining whether or not to proceed with the project." (*Id.* at p. 1518, 50 Cal.Rptr.2d 339.)[58]

[12] ***1600** In the context of a negative declaration, however, the courts have not ****68** used this test to determine whether the approval of the negative declaration complies with CEQA. (See *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580, 80 Cal.Rptr.2d 294 (*Pala Band*) [applying fair argument test, court held preparation of EIR would be premature; upheld negative declaration]; *Sundstrom v. County of Mendocino, supra,* 202 Cal.App.3d at pp. 306–307, 248 Cal.Rptr. 352 [deferring environmental assessment related to mitigation measures violated CEQA; negative declaration held invalid].) Further, we believe that use of an inquiry separate from the fair argument test would be inappropriate if it were used to raise or lower the threshold imposed by that test. Because the concept of deferral of environmental review does not change the threshold imposed by the fair argument test, there is no need for a separate inquiry. In other words, the idea of deferral is subsumed in the fair argument test, which considers whether a potential environmental impact is speculative or reasonably foreseeable; undertaking a separate inquiry would be redundant.

2. Timing and Guidelines section 15004

County contends preparation of an EIR would have been premature because "meaningful information for environmental assessment" (Guidelines, § 15004, subd. (b)) was not available at the time Ordinance G–6638 was adopted.

Section 15004 of the Guidelines addresses the time for preparation of an EIR or negative declaration, and subdivision (b) states: "Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." The "Discussion" that follows section 15004 of the Guidelines states:

> "This section codifies the requirement that EIRs and Negative Declarations be prepared before an agency makes a decision on the project and early enough to help influence the project's plans or design. For EIRs and Negative Declarations to be effective in serving the purposes of CEQA, the preparation of these documents must be coordinated with the planning, review, and approval processes as described in subsection (c). Early preparation is necessary for the legal validity of the process and for the usefulness of the documents. Early preparation enables agencies to make revisions in projects to reduce or avoid adverse environmental effects before ***1601** the agency has become so committed to a particular approach that it can make changes only with difficulty."[59]

County's timing argument is ill-suited to the facts of this case because it (1) confuses deferring environmental analysis of Ordinance G–6638 with avoiding it and (2) treats the reactions of the sanitation agencies as though they were part of the same CEQA project.[60]

****69** An agency's deferral of environmental assessment was appropriate in *Pala Band, supra,* 68 Cal.App.4th 556, 80 Cal.Rptr.2d 294, and *Kaufman & Broad–South Bay, Inc. v. Morgan Hill Unified School Dist.* (1992) 9 Cal.App.4th 464, 11 Cal.Rptr.2d 792 (*Kaufman & Broad*) because the agency had the opportunity to assess all of the physical impacts of its multistage activity in an EIR prepared by the agency at a later stage of the project. Thus, those cases do not use timing considerations to justify an agency's completely avoiding the preparation of an EIR for its project.

In *Pala Band, supra,* 68 Cal.App.4th 556, 80 Cal.Rptr.2d 294, the County of San Diego adopted a countywide integrated waste management plan, which was a statutory prerequisite to the development of new landfills in the county. The court held the preparation of an EIR would be premature where all 10 proposed landfill sites identified in the siting element of the plan were only "tentatively reserved" and the county had made no commitment to develop any of the sites. (*Id.* at pp. 574–575, 580, 80 Cal.Rptr.2d 294.) Thus, it was not "reasonably foreseeable at the current planning stage that any of the sites will actually be developed" (*id.* at p. 575, 80 Cal.Rptr.2d 294), and the county could wait and subsequently prepare an EIR to help it decide which sites to actually develop.

Similarly, in *Kaufman & Broad, supra,* 9 Cal.App.4th 464, 11 Cal.Rptr.2d 792, a school district formed a consolidated facilities district (CFD) but did not prepare an EIR. The formation of the CFD was merely an initial step and many alternative courses of action remained open to the school district. (*Id.* at p. 476, 11 Cal.Rptr.2d 792.) For instance, formation of the CFD did not commit the school district to build a new facility, buy or lease portable classrooms, or rehabilitate existing facilities. (*Id.* at pp. 474–475, 11 Cal.Rptr.2d 792.) The formation of the CFD caused no physical changes to the environment and it was not an essential step culminating in ***1602** activity that might cause physical changes to the environment. (*Id.* at p. 474, 11 Cal.Rptr.2d 792.) In other words, physical changes would not occur until the district actually committed to building a new facility or some other course of action. Therefore, the school district itself had the opportunity to prepare an EIR when it committed to a stage of the project that would cause a physical change to the environment.[61] (Cf. Guidelines, § 15165 [issues raised by multiple and phased projects where significant environmental impacts arise earlier in the process].)

****70** The present case is distinguishable from *Pala Band* and *Kaufman & Broad* because the adoption of Ordinance G–6638 was a definitive action by County that *completed* its project and, accordingly, County had no opportunity to assess the indirect physical impacts of Ordinance G–6638 before those impacts occurred. Therefore, we reject County's attempts to use cases upholding a public agency's deferral of EIR preparation as support for its avoidance of EIR preparation.

Furthermore, in this case the CEQA "project" was Ordinance G–6638 itself. (See fn. 58, *ante.*) The final form of that project was proposed at the time Ordinance G–6638 was proposed, and County's commitment to the project became final when it adopted that ordinance. By avoiding the preparation of an EIR, County committed to a particular approach and completed its project without the benefit of the environmental analysis and information an EIR would have contained.

3. Each agency has separate CEQA responsibilities

Another aspect of County's deferral argument is that (1) the sanitation agencies are responsible for performing an environmental review of the potential environmental impacts resulting from the changes those agencies make in their biosolids management programs, and (2) plaintiffs are trying to ***1603** avoid this responsibility by foisting it on County. We reject County's argument because it misses the mark on how CEQA operates. If only the sanitation agencies were required to prepare, supplement, or amend their EIR's, there would be no environmental review of (1) feasible alternatives to the heightened treatment standards adopted in Ordinance G–6638, (2) its cumulative impacts, and (3) mitigation measures available to County but not the sanitation agencies. Under this approach, the environmental review contemplated by CEQA would contain a gap, and California's environment would be deprived of the benefits that might result from County's consideration of feasible alternatives, cumulative impacts, and mitigation measures.[62]

Furthermore, the fact that County must prepare an EIR does not absolve the sanitation agencies of their responsibilities to comply with CEQA. (See part VII., *post.*)[63] As noted by the Third Appellate District in *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 243 Cal.Rptr. 727, "*Each* public agency is required to comply with CEQA and meet its responsibilities, including evaluating mitigation measures and project alternatives. (See Guidelines, § 15020.)" (*Id.*

at p. 442, fn. 8, 243 Cal.Rptr. 727.) When agencies—even agencies with antagonistic positions—comply with their responsibilities for environmental review under CEQA, their action should be taken after consideration of the other's position and, ****71** as a result, their action may achieve a measure of coordination that would not have existed without that review. (See § 21000, subds. (d) & (f).)

E. Relief Appropriate Under Section 21168.9

[13] Section 21168.9 sets forth the requirements for the court order entered after a failure to comply with CEQA has been found. (See *San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (2001) 89 Cal.App.4th 1097, 1102–1103, 109 Cal.Rptr.2d 108.) An order granting relief for CEQA violations "shall include only those mandates ... necessary to achieve compliance with [CEQA] and only those specific project activities in noncompliance with [CEQA]." (§ 21168.9, subd. (b).) In this case, the specific project activity that did not comply with CEQA was the approval of the negative declaration and the adoption of the heightened treatment standards.

***1604** Accordingly, the order could mandate that County void all or part of its decision to approve the negative declaration and adopt the heightened treatment standards. (§ 21168.9, subd. (a).) The order also could mandate that County take specific action necessary to bring its decision into compliance with CEQA. (§ 21168.9, subd. (a)(3).)

We requested supplemental briefing concerning how section 21168.9 should be applied in this case and what directions should be given to the superior court on remand. (Gov.Code, § 68081.) We asked whether the heightened treatment standard should be voided or allowed to remain in effect pending the completion of an EIR, and whether the adoption of Ordinance No. G–6931, which repealed Ordinance G–6638 but reenacted the heightened treatment standards, should affect the relief ordered.

The parties concurred that the heightened treatment standards should remain operative pending County's (1) completion of an EIR in good faith and without unnecessary delay and (2) approval of whatever replacement version of the biosolids ordinance is generated as a result of completing the EIR.[64] This position presumes (1) the severability of the heightened treatment standards from the other provisions in Ordinance G–6638 as well as from the additional provisions added by Ordinance No. G–6931, such as the licensing permit required for the land application of EQ biosolids, and (2) that the equities favor it. Because we conclude both of these presumptions are appropriate, we will accept the position adopted by the parties.

First, we conclude that the heightened treatment standards are grammatically, functionally, and volitionally severable from the remainder of chapter 8.05 as adopted by Ordinance G–6638 or as currently in effect under Ordinance No. G–6931. (See *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821–822, 258 Cal.Rptr. 161, 771 P.2d 1247.)[65] Therefore, the CEQA violations relating to the adoption of the heightened treatment standards do not infect the other provisions of the ordinances. (See § 21168.9, subd. (b).)

Second, County and CSDLAC both state they are unaware of any published ****72** case in which (1) a negative declaration that related to the adoption of an ordinance, regulation or general order was ruled invalid under CEQA, and (2) the appellate court did not invalidate the ordinance, regulation or general ***1605** order itself. (Cf. *Friends of Sierra Madre v. City of Sierra Madre, supra,* 25 Cal.4th at p. 196, 105 Cal.Rptr.2d 214, 19 P.3d 567 [appropriate relief for noncompliance with CEQA was invalidation of ordinance; ordinance not allowed to remain in effect pending compliance with CEQA]; *No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 88, 118 Cal.Rptr. 34, 529 P.2d 66 [superior court directed to set aside three ordinances].) Nevertheless, a remedy less severe than immediately voiding the heightened treatment standards may be ordered if supported by equitable principles. (See *Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at pp. 423–425, 253 Cal.Rptr. 426, 764 P.2d 278; *San Bernardino Valley Audubon Society v. Metropolitan Water Dist., supra,* 89 Cal.App.4th at p. 1104, 109 Cal.Rptr.2d 108.) Because the heightened treatment standards currently contained in Ordinance No. G–6931 have been in effect for over two years, we will follow the more steady course of allowing the status quo to continue pending the completion of an EIR. The alternative of reverting to a situation where the application of Class B biosolids is not subject to any local regulation and then, after an EIR is completed, possibly returning to a situation where Class B biosolids either cannot be land applied or are highly regulated by County would be disruptive to County, the sanitation agencies, and the members of the biosolids industry that are subject to the ordinances.

In light of (1) the position of the parties, (2) the authority given to the courts in section 21168.9 to fashion the terms of the writ of mandate, and (3) the equitable considerations relevant to this proceeding, we hold that the heightened treatment standards may continue in effect

provided that County prepares, in good faith without unnecessary delay, an EIR that complies with CEQA. If County decides to forgo regulating the application of biosolids to land, or does not prepare an EIR in good faith[66] and without unnecessary delay, then the superior court shall enter an order that immediately invalidates the heightened treatment standards. Questions concerning County's good faith or lack of diligence, if raised, shall be decided by the superior court in the first instance.

III. Ordinance G–6638 Is Consistent with Water Code Section 13274

[14] In the proceedings before the superior court, County argued that Ordinance G–6638 was a local determination concerning sewage sludge that was authorized by Part 503 and by Water Code section 13274. Plaintiffs agree that Water Code section 13274 allows a county to impose stricter regulations than ***1606** those contained in the federal regulations on the land application of Class B biosolids. Plaintiffs contend, however, that County has imposed an outright ban and thus has gone further than Water Code section 13274 allows when it is read in conjunction with Part 503. (See *Blanton v. Amelia County* (2001) 261 Va. 55, 540 S.E.2d 869 ****73** [county ordinance banning use of biosolids on farmland held invalid because of conflict with Virginia statute and regulations]; *O'Brien v. Appomattox County* (W.D.Va.2003) 293 F.Supp.2d 660 [same]; *Franklin County v. Fieldale Farms Corp.* (1998) 270 Ga. 272, 507 S.E.2d 460 [Georgia water quality statute regulating land application of sludge implicitly preempted county ordinance regulating land application of sewage sludge, except in area of monitoring].)

Plaintiffs' contention presents an issue of statutory construction concerning the meaning of subdivision (i) of section 13274 of the Water Code, which provides:

> "Nothing in this section restricts the authority of a local government agency *to regulate* the *application of sewage sludge* and other biological solids to land within the jurisdiction of that agency, ..." (Italics added.)

Under plaintiffs' statutory construction, the word "regulate" does not include the authority to prohibit an activity. Accepting this narrow view of the word "regulate" for purposes of argument,[67] it does not follow that County lacks the authority to prohibit the application of Class B biosolids to land within its jurisdiction. This is because the statute refers to "sewage sludge" and not specifically to Class B biosolids.[68] Ordinance G–6638 did not prohibit "the application of sewage sludge ... to land within the jurisdiction of [County]" (Wat.Code, § 13274, subd. (i)) within the usual, ordinary meaning of that language because it would have allowed the application of sewage sludge that has been treated to specified, stringent standards. By allowing the land application of EQ biosolids, Ordinance G–6638 would have regulated how much treatment sewage sludge must receive before it was applied within the unincorporated area of Kern County. Accordingly, the heightened treatment standards do not conflict with Water Code section 13274 when the term "sewage sludge" is given its usual, ordinary meaning—that is, read literally.[69]

***1607** Furthermore, plaintiffs have not demonstrated a legislative purpose that justifies narrowly construing the term "sewage sludge" to mean only Class B biosolids rather than using the broader, literal construction of the term set forth in 40 Code of Federal Regulations part 503.9(w) (2005). (See *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299 [literal construction should prevail unless contrary to legislative purpose].) Thus, the heightened treatment standards do not conflict with ****74** Water Code section 13274 when that section is read in conjunction with Part 503. (See 40 C.F.R. § 503.5(b) (2005) [state and local government authorized to impose more stringent requirements].)

IV. Commerce Clause Analysis

[15] Plaintiffs contend that the heightened treatment standards in Kern Code provision 8.05.040(A),[70] Ordinance G–6638, violate the commerce clause of the United States Constitution (U.S. Const., art. I, § 8, cl. 3) in that those standards (1) impermissibly discriminate against out-of-county biosolids by allowing municipalities located in Kern County to apply their own Class B biosolids on land in the incorporated areas of Kern County, and (2) were adopted for the protectionist purpose of banning out-of-county biosolids in order to prevent damage to the reputation of agricultural products grown in Kern County.

As factual support for the first of these contentions, plaintiffs point out that the City of Bakersfield maintains an extensive Class B biosolids application program within its incorporated area. At an April 27, 1999, hearing before the Kern County Board of Supervisors, Lauren Fondahl, the biosolids coordinator for the EPA regional office in San Francisco, observed that the proposed ordinance would not prevent Bakersfield and other cities in Kern County from applying Class B biosolids on city lands, and stated that "Bakersfield has been applying for many years now on lands across from East Planz Road[.] Wasco, Taft, Delano and North of Kern in Kern Community Service

District have also been applying on city lands for years."[71]

***1608** In contrast to the Bakersfield example, however, the administrative record also shows that not all municipalities located in Kern County were able to apply their Class B biosolids on land within an incorporated area of Kern County. A September 13, 1999, letter from the City of Shafter indicated that the city had applied biosolids from its treatment plant to neighboring agricultural land that was in the unincorporated area of Kern County and stated that the proposed ordinance would "force local, smaller communities, which rely on cost-saving alternatives to promote growth and development, to explore other methods of biosolid use or treatment that require technology and resources that we may not be able to acquire."

A. Scope of the Dormant Commerce Clause

[16] The commerce clause of the federal Constitution delegates to Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." (U.S. Const., art. I, § 8, cl. 3.) This explicit grant of power has been interpreted as an implied limitation on the power of states and local government to adopt statutes, regulations and ordinances that burden or interfere with interstate commerce. (*West Lynn Creamery, Inc. v. Healy* (1994) 512 U.S. 186, 192, 114 S.Ct. 2205, 129 L.Ed.2d 157.) Known as the "dormant" or "negative" commerce clause (*Barclays Bank* ****75** *PLC v. Franchise Tax Bd. of Cal.* (1994) 512 U.S. 298, 311, fn. 9, 114 S.Ct. 2268, 129 L.Ed.2d 244), this limitation has been characterized as "predicated upon the implications of the commerce clause itself, [citations], or upon the presumed intention of Congress, where Congress has not spoken, [citations]." (*Southern Pacific Co. v. Arizona* (1945) 325 U.S. 761, 768, 65 S.Ct. 1515, 89 L.Ed. 1915.) Consequently, where Congress has spoken and specifically authorized the state or local government action, the dormant commerce clause does not apply. (*White v. Mass. Council of Constr. Employers* (1983) 460 U.S. 204, 213, 103 S.Ct. 1042, 75 L.Ed.2d 1 (*White*).)

[17] The threshold question is whether Ordinance G–6638 is subject to analysis under the dormant commerce clause.[72] This question will be answered in the ***1609** affirmative if (1) an article of commerce is involved and (2) Congress did not specifically authorize the adoption of such an ordinance.

B. Article of Commerce

[18] The United States Supreme Court has held that the processing and disposal of solid waste in landfills is an article of commerce. (*C & A Carbone, Inc. v. Clarkstown* (1994) 511 U.S. 383, 391, 114 S.Ct. 1677, 128 L.Ed.2d 399; see *Philadelphia v. New Jersey* (1978) 437 U.S. 617, 628, 98 S.Ct. 2531, 57 L.Ed.2d 475; Nowak & Rotunda, Constitutional Law (5th ed.1995) § 8.8, pp. 299–300 [out-of-state buyers purchased space in landfill, waste was not purchased]; but see Cox, *Burying Misconceptions About Trash and Commerce: Why It Is Time to Dump Philadelphia v. New Jersey* (1991) 20 Cap. U. L.Rev. 813, 829 [trash is not a commodity but a regulated stream to which the commerce clause should not apply].) Sewage sludge differs from solid waste in that economic benefits are realized by farmers using treated sewage sludge as a fertilizer. This difference creates a stronger case for concluding that an article of commerce is involved in transactions concerning the use of sewage sludge on agricultural land. Accordingly, based on the strength of the analogy to solid waste and the commercial value resulting from the application of treated sewage sludge to land, we conclude that the land application of sewage sludge is an article of commerce for purposes of the commerce clause.

C. Congress Authorized Local Sewage Sludge Ordinances

Congress has not been silent on the issue of local regulation of the land application of sewage sludge. Specifically, the Clean Water Act authorizes some degree of local control over the use and disposal of ****76** sewage sludge so long as federal regulatory standards are met:

> "The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations." (33 U.S.C.A. § 1345(e).)

The regulations of the EPA reiterate this aspect of local control:

> "Nothing in this part precludes a State or political subdivision thereof ... from imposing requirements for the use or disposal of sewage sludge more ***1610** stringent than the requirements in this part or from imposing additional requirements for the use or disposal of sewage sludge." (40 C.F.R. § 503.5(b) (2005).)

[19] The foregoing statutory and regulatory language must be examined to determine if Congress affirmatively permitted the adoption of a local ordinance like Ordinance G–6638. (*White, supra*, 460 U.S. at p. 213, 103 S.Ct. 1042 [applicable federal statute and regulations examined to determine if they authorized City of Boston's requirement that construction contracts it entered must be with firms that hire half or more of their workers from Boston].) "Where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce. *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 769[, 65 S.Ct. 1515, 89 L.Ed. 1915] ... (1945)." (*Ibid.*) As the United States Supreme Court has noted, however, "for a state regulation to be removed from the reach of the dormant Commerce Clause, congressional intent must be unmistakably clear." (*South–Central Timber Dev. v. Wunnicke* (1984) 467 U.S. 82, 91, 104 S.Ct. 2237, 81 L.Ed.2d 71.)

It is unmistakably clear that Congress intended "the manner of disposal or use of sludge [to be] a local determination" so long as minimum federal standards were met. (33 U.S.C.A. § 1345(e).) It is equally clear that the restriction in Ordinance G–6638—that only sewage sludge meeting the heightened treatment standards can be applied to land in Kern County—reflects a local determination of the manner of disposal or use of sewage sludge.[73] Thus, the heightened treatment standards are the type of local regulation expressly authorized by the Clean Water Act. (Cf. *Welch, supra*, 888 F.Supp. at p. 760 [ordinance banning the land application of sewage sludge permissible under Clean Water Act].) Because Congress authorized a local ban on the land application of sewage sludge (*Welch, supra*, at pp. 757–758), one can strongly infer that Congress also authorized local governments to impose a lesser burden on commerce such as the heightened treatment standards in Kern Code provision 8.05.040(A), Ordinance G–6638. (See *Posadas de Puerto Rico Assoc. v. Tourism Co.* (1986) 478 U.S. 328, 345–346, 106 S.Ct. 2968, 92 L.Ed.2d 266 [the greater power to ban an activity necessarily includes the lesser power to impose conditions on the activity].)

In light of the foregoing, plaintiffs' assertion that Ordinance G–6638 is a step ****77** towards the balkanization of the sewage sludge industry misses the ***1611** mark; the natural consequence of Congress's authorization of local control is variety and inconsistency in the way localities choose to address the subject. What plaintiffs characterize as balkanization is more appropriately characterized as Congress's choosing to exploit one of the strengths of our federal system—its flexibility—by allowing states and localities to (1) experiment with different approaches (see *New State Ice Co. v. Liebmann* (1932) 285 U.S. 262, 311, 52 S.Ct. 371, 76 L.Ed. 747 (dis. opn. of Brandeis, J.) [describing states as laboratories that can experiment with different laws]), subject to the minimum national standard contained in Part 503, and (2) adapt their regulations to local conditions, such as geography, climate, soil types and population density.

D. Discrimination Against Interstate Commerce

Plaintiffs contend, however, that although Congress has authorized some local determinations concerning the land application of sewage sludge, it has not expressly authorized ordinances that discriminate against interstate commerce. (Cf. *White, supra*, 460 U.S. at p. 213, 103 S.Ct. 1042 [federal program authorized local favoritism in hiring construction workers as a means for economic revitalization and providing opportunities for the poor, minorities, and unemployed].) We will address this contention by considering whether the Clean Water Act authorized discriminatory local ordinances and, if not, whether Ordinance G–6638 discriminates against interstate commerce.

1. The Clean Water Act does not authorize discrimination

The Clean Water Act does not explicitly authorize local governmental units to discriminate against sewage sludge that arrives in a state through interstate commerce. (See 33 U.S.C.A. § 1345(e).) Nor is there anything in the statutory language that gives rise to a reasonable inference that Congress intended such a result. Also, County has cited no legislative history revealing such a Congressional intent. Thus, County has failed to establish that Congress demonstrated an unmistakably clear intent to allow discriminatory state regulation of the land application of sewage sludge. (See *South–Central Timber Dev. v. Wunnicke, supra*, 467 U.S. at p. 91, 104 S.Ct. 2237.) Consequently, any discriminatory aspect of a local ordinance regulating the land application of sewage sludge is still subject to scrutiny under the limitation imposed on discrimination by the dormant commerce clause.

2. Ordinance G–6638 is not facially discriminatory

[20] [21] Unless Congress has provided otherwise, an ordinance that discriminates against interstate commerce, as opposed to one that regulates evenhandedly, is virtually always invalid under the dormant commerce clause.

(*Oregon* ***1612** *Waste Systems v. Dept. of Env. Quality* (1994) 511 U.S. 93, 99, 114 S.Ct. 1345, 128 L.Ed.2d 13 [landfill disposal fees imposed by Oregon statute were higher for waste generated in other states than for waste generated in Oregon and, thus, were facially discriminatory and invalid].) In this context, discrimination means "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." (*Ibid.*)

Ordinance G–6638 does not on its face discriminate against interstate commerce, because its provisions apply to the land application of all sewage sludge regardless of its geographical origin. (See Goldfarb, ****78** *Sewage Sludge, supra*, 26 B.C. Envtl. Aff. L.Rev. at p. 722 ["local ordinance upheld in *Welch* banned all land application of sewage sludge, not just sewage sludge generated out-of-state"].) Consequently, Ordinance G–6638 is distinguishable from a Michigan statute that violated the dormant commerce clause by creating separate categories for in-county and out-of-county solid waste. (*Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources* (1992) 504 U.S. 353, 112 S.Ct. 2019, 119 L.Ed.2d 139; see *Philadelphia v. New Jersey, supra*, 437 U.S. at p. 624, 98 S.Ct. 2531 [New Jersey's prohibition on the importation of solid waste unconstitutional].)

3. Ordinance G–6638 is not discriminatory in effect

[22] In addition to facial discrimination, an ordinance may be discriminatory "in practical effect." (*Hughes v. Oklahoma* (1979) 441 U.S. 322, 336, 99 S.Ct. 1727, 60 L.Ed.2d 250.) Plaintiffs' claim of discrimination in practical effect is based on an incorrect comparison of the impacts of different regulations, rather than different impacts caused by the challenged ordinance. Plaintiffs compare (a) the effect of the ordinance within the geographical area that comprises the jurisdiction of County to (b) the effect of other regulations, or the lack of regulations, applicable to the incorporated areas of Kern County. The incorporated areas of Kern County are necessarily outside the jurisdiction and authority of County; County's authority extends only to the unincorporated areas within its borders. (See Cal. Const., art. XI, § 7 ["A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws"]; *City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 274–275, 17 Cal.Rptr.2d 845 [only unincorporated area of a county is "within its limits"].) Therefore, the correct comparison is between the impact of the ordinance on sewage sludge generated outside the jurisdictional authority of County and the impact on sewage sludge generated within that area. (See *Associated Industries of Missouri v. Lohman* (1994) 511 U.S. 641, 650, 114 S.Ct. 1815, 128 L.Ed.2d 639 ["discrimination is appropriately assessed with reference to the specific subdivision in which applicable laws reveal differential treatment"].) In this case, the ordinance's burden on the sewage sludge ***1613** industry is the same without regard to the place of origin of the sewage sludge. Sewage sludge, regardless of whether it originates in Kern County, other counties in California, or out of state must be treated to the same standards before it is allowed to be applied to land in the unincorporated areas of Kern County.

Plaintiffs stated at oral argument that discrimination in practical effect occurred because no in-county producer of sewage sludge needed access to land within the unincorporated area of Kern County to dispose of its sewage sludge. This argument is rejected because it is factually inaccurate. The administrative record contains a letter from the City of Shafter indicating that it had applied biosolids from its treatment plant to neighboring agricultural land that was in the unincorporated area of Kern County.

Consequently, plaintiffs have failed to meet their burden of showing that the ordinance, in practical effect, treats out-of-state economic interests[74] differently than ****79** in-state economic interests. (See *Pacific Merchant Shipping Assn. v. Voss* (1995) 12 Cal.4th 503, 517, 48 Cal.Rptr.2d 582, 907 P.2d 430 [party raising commerce clause challenge has burden of showing discrimination].) In other words, plaintiffs have failed to show that Ordinance G–6638 causes an out-of-county producer of sewage sludge to be at a disadvantage to an in-county producer of sewage sludge in the competition among those producers to acquire the right to place their sewage sludge on agricultural land located in the unincorporated areas of Kern County.[75]

Plaintiffs condemn Ordinance G–6638 as illegitimate economic protectionism prohibited by the commerce clause. But the possibility that the reputation of agricultural produce from Kern County benefited from the enactment of Ordinance G–6638 is not enough to violate the commerce clause. First, Ordinance G–6638 still falls within the scope of what Congress authorized. Second, the possibility that consumers might view Kern County produce more favorably does not render the ordinance discriminatory against interstate commerce from the perspective of (1) in-county farmers who are selling sewage sludge disposal services and applying biosolids to their land in the unincorporated areas of Kern County or (2) the producers of sewage sludge, regardless of their location, that are buying sewage sludge disposal services.

RBM focuses on the farmers who applied Class B biosolids and argues ***1614** Ordinance G–6638 had the practical effect of discriminating against them for the benefit of farmers who claimed the reputation of their products was harmed by allowing the land application of Class B biosolids in Kern County. This theory of discrimination and protectionism fails because all in-county farmers are subject to the same practical effect of Ordinance G–6638—they can no longer apply Class B biosolids to their land. Furthermore, this result was not achieved at the expense of out-of-state competition. (See *Hunt v. Washington Apple Advertising Comm'n* (1977) 432 U.S. 333, 97 S.Ct. 2434, 53 L.Ed.2d 383 [out-of-state competition improperly discriminated against by North Carolina statute that prohibited sale of closed apple containers displaying another state's grading classification]; see also *Oregon Waste Systems v. Dept. of Env. Quality, supra,* 511 U.S. at pp. 106–107, 114 S.Ct. 1345.)

E. Burden on Interstate Commerce

As we have stated, though the Clean Water Act does not authorize discrimination against interstate commerce, it does explicitly authorize local governmental entities to regulate the land application of sewage sludge. Because Congress has specifically and unmistakably authorized nondiscriminatory local ordinances like Ordinance G–6638, our analysis of the dormant commerce clause need not consider "whether the ordinance imposes a burden on interstate commerce that is 'clearly excessive in relation to the putative local benefits,' *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142[, 90 S.Ct. 844, 25 L.Ed.2d 174] ... (1970)." (*C & A Carbone, Inc. v. Clarkstown, supra,* 511 U.S. at p. 390, 114 S.Ct. 1677.) Application of the *Pike* test is inappropriate in this case because the enactment of the Clean Water Act reflects a determination by Congress that local regulation is appropriate, which necessarily implies that localities have a legitimate purpose in regulating the use and disposal of ****80** sewage sludge within their jurisdictional boundaries and that the local benefits from such a regulation outweigh any nondiscriminatory burdens on interstate commerce that might result.

V. California Constitutional Limitations on Exercise of Police Power

Plaintiffs contend that the Kern County Board of Supervisors failed to consider the effect of the ordinance on surrounding areas beyond the borders of Kern County, and that this failure renders the ordinance a defective exercise of the police powers granted to County by the California Constitution. (See Cal. Const., art. XI, § 7 ["A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws"].)

[23] [24] The California Supreme Court has identified the standard for determining whether the adoption of a land use restriction is a valid exercise of the ***1615** police power granted under the California Constitution. An ordinance is valid "if it is fairly debatable that the [land use] restriction in fact bears a reasonable relation to the general welfare." (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 601, 135 Cal.Rptr. 41, 557 P.2d 473.) The "general welfare" that must be considered may extend beyond the geographical limits of the local governmental entity adopting the ordinance. "[I]f a restriction significantly affects residents of surrounding communities, the constitutionality of the restriction must be measured by its impact not only upon the welfare of the enacting community, but upon the welfare of the surrounding region." (*Ibid.*)

In ruling against the plaintiffs on this claim, the superior court stated "that OCSD has not presented any evidence of the impact on the entire region as is required pursuant to *Associated Home Builders* ...." The superior court observed that the administrative record did not contain a study of the ordinance's regional impact and found OCSD was collaterally estopped from raising the issue again because it had already been presented in the CEQA portion of the lawsuit.

We previously held that the imposition of heightened treatment standards in Kern Code provision 8.05.040(A), Ordinance G–6638, was not valid under CEQA. An EIR should have been prepared because plaintiffs presented substantial evidence to support a fair argument that the heightened treatment standards might have a significant effect on the environment, including effects occurring outside Kern County. (See part II.A., *ante.*) Assuming for purposes of argument that County exceeded the limitations imposed by the California Constitution on the exercise of police power when it adopted Ordinance G–6638, the preparation of the EIR required by this decision would have the effect of addressing the alleged failure to consider the general welfare outside Kern County. Therefore, we need not rule separately on this constitutional challenge to the heightened treatment standards.

VI. The Biosolids Impact Fee Violates Vehicle Code Section 9400.8

Vehicle Code section 9400.8 provides in pertinent part:

> "Notwithstanding any other provision of law, ... no local agency may impose a tax, permit fee, or other charge for the privilege of using its streets or highways, other than a permit fee for extra legal loads, after December 31, 1990, unless the local agency had imposed the fee prior to June 1, 1989."[76]

****81 *1616** In moving for summary adjudication of issues, OCSD asserted that the biosolids impact fee was invalid because it was barred by Vehicle Code section 9400.8. The superior court denied summary adjudication and ruled "[t]his issue was not raised by OCSD's pleadings and the pleadings control. Pleadings must give notice of the claim. [Citation.]" OCSD raised the issue again at trial and requested leave to amend its complaint. The superior court denied this request and stated that "[a]mendment at this time would be unduly prejudicial to ... County."

Plaintiffs contend that the complaint raised the preemption issue, although it did not specifically reference Vehicle Code section 9400.8, and that the superior court's refusal to consider the issue at the motion for summary adjudication or at trial was a prejudicial abuse of discretion. County argues that plaintiffs' claim is procedurally defective because they did not exhaust their administrative remedies and failed to file a timely motion to amend their complaint. County also asserts that the biosolids impact fee imposed by the ordinance is a bona fide impact fee and not a fee for the privilege of using the streets and highways in Kern County.[77]

[25] We independently review issues of statutory construction and the application of that construction to a set of undisputed facts as questions of law. (*Twedt v. Franklin* (2003) 109 Cal.App.4th 413, 417, 134 Cal.Rptr.2d 740.)

A. Exhaustion Doctrine

[26] County asserts that plaintiffs did not raise Vehicle Code section 9400.8 during the administrative proceedings and, as a result, "are barred by the exhaustion doctrine from seeking judicial review of this claim. (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197–1198, 200 Cal.Rptr. 855.)"

Coalition for Student Action v. City of Fullerton did not involve a claim that a local ordinance was preempted by a state statute. (See *Coalition for Student Action v. City of Fullerton, supra,* 153 Cal.App.3d 1194, 200 Cal.Rptr. 855.) In that case, the plaintiffs failed to assert CEQA violations at the administrative level and then sought to set aside approval of construction plans based on alleged violations of CEQA. The superior court denied their petition for a writ of mandate based on the failure to exhaust administrative remedies, and the Court of Appeal affirmed. (*Id.* at p. 1198, 200 Cal.Rptr. 855.)

***1617** Alleged violations of CEQA are distinguishable from alleged violations of Vehicle Code section 9400.8 because (1) CEQA expressly requires the exhaustion of administrative remedies (§ 21177; see Remy, Guide to CEQA, *supra,* pp. 578–588 [exhaustion of administrative remedies]) and (2) compliance with CEQA is first determined by a public agency rather than the courts. In contrast, a claim that an ordinance violates Vehicle Code section 9400.8 is not given to the exclusive jurisdiction of a county's board of supervisors. (See *Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 390–391, 6 Cal.Rptr.2d 487, 826 P.2d 730 [exhaustion doctrine applies where an agency alone has jurisdiction over a case].) In asserting its ****82** theory of exhaustion, County has not shown that there was an available administrative procedure for asserting the ordinance violated the prohibition contained in Vehicle Code section 9400.8. (See *People v. Beaumont Inv., Ltd.* (2003) 111 Cal.App.4th 102, 125, 3 Cal.Rptr.3d 429 [exhaustion doctrine does not apply in the absence of an available administrative remedy].) The coincidental existence of a CEQA administrative procedure did not confer exclusive jurisdiction over the preemption challenge on the Kern County Board of Supervisors, or require the preemption challenge to be raised in the CEQA proceeding, before a court could obtain jurisdiction over such a challenge.

Accordingly, we hold that the doctrine of exhaustion of administrative remedies does not apply to the claim that the biosolids impact fee imposed by the ordinance is preempted by Vehicle Code section 9400.8.

B. Mitigation Fee Act Does Not Apply to the Biosolids Impact Fee

[27] County asserts that the biosolids impact fee was adopted by County pursuant to the Mitigation Fee Act, Government Code section 66000 et seq. and therefore the prohibition in Vehicle Code section 9400.8 does not apply.

We do not address the issues of statutory construction raised in connection with the Mitigation Fee Act in detail because the prohibition on certain fees contained in Vehicle Code section 9400.8 is not overridden by the Mitigation Fee Act. Vehicle Code section 9400.8 expressly states that its prohibition applies "[n]otwithstanding any other provision of law." The Mitigation Fee Act was in effect at the time Vehicle Code

section 9400.8 became operative and thus was among the other provisions of law covered by the quoted phrase. In short, despite the existence of the Mitigation Fee Act, a local agency may not impose a charge for the privilege of using its streets and highways.

C. Prejudice and Leave to Amend to Reference Specific Code Section

[28] [29] [30] The superior court found that allowing plaintiffs to amend their pleadings to assert a violation of Vehicle Code section 9400.8 would prejudice County. This finding is not supported by any evidence. Indeed, County ***1618** did not even assert it experienced prejudice in its trial brief, reply trial brief, or appellate brief.

> "A pleading may be amended at the time of trial unless the adverse party can establish prejudice. [Citation.] Where a party is allowed to prove facts to establish one cause of action, an amendment which would allow the same facts to establish another cause of action is favored, and a trial court abuses its discretion by prohibiting such an amendment when it would not prejudice another party. [Citations.] A variance between pleading and proof does not justify the denial of an amendment to conform pleading to proof unless the unamended pleading 'misled the adverse party to his prejudice in maintaining his action or defense upon the merits.' [Citations.]" (*Brady v. Elixir Industries* (1987) 196 Cal.App.3d 1299, 1303, 242 Cal.Rptr. 324, overruled on another ground in *Turner v. Anheuser–Busch, Inc.* (1994) 7 Cal.4th 1238, 1248–1251, 32 Cal.Rptr.2d 223, 876 P.2d 1022.)

[31] As a general rule, where the evidence to support the cause of action in the amendment is already before the court, the opposing party will not experience prejudice if the amendment is allowed. (See Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2004) ¶ 12:394, p. 12–79 (rev.# 1, 2004).) In this case, the general rule applies because the evidence relied upon by ****83** plaintiffs was contained in the administrative record and was discussed before the superior court in connection with the constitutional challenges raised against the biosolids impact fee. In addition, County has not shown that the lack of a specific reference to Vehicle Code section 9400.8 in the complaint misled it in the presentation of its defense, either in terms of the evidence it would have produced or in a manner not related to evidence. Thus, County has not shown that this situation falls within an exception to the general rule. Accordingly, we conclude that plaintiffs should have been allowed to assert that the biosolids impact fee was prohibited by Vehicle Code section 9400.8.

D. Vehicle Code Section 9400.8 Preempts the Biosolids Impact Fee

[32] [33] [34] [35] [36] The general principles governing state law preemption of a local ordinance were set forth by the California Supreme Court in *Sherwin–Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 16 Cal.Rptr.2d 215, 844 P.2d 534 as follows:

> " 'If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.' [Citations.] [¶] 'A conflict exists if the local legislation " 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.' " ' [Citations.] [¶] Local legislation is 'duplicative' of general law when it is coextensive therewith. [Citation.]
>
> ***1619** "Similarly, local legislation is 'contradictory' to general law when it is inimical thereto. [Citation.]
> "Finally, local legislation enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area [citation], or when it has impliedly done so in light of one of the following indicia of intent: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality. [Citations.]" (*Sherwin–Williams Co. v. City of Los Angeles, supra,* 4 Cal.4th at pp. 897–898, 16 Cal.Rptr.2d 215, 844 P.2d 534.)

[37] By adopting Vehicle Code section 9400.8, the Legislature expressly prohibited a county from "impos[ing] a tax, permit fee, or other charge for the privilege of using its streets or highways, other than a permit fee for extra legal loads...." (*Ibid.*) This language raises two questions of statutory construction. First, was the biosolids impact fee a "tax, permit fee or other charge"? Second, do fees "for the privilege of using its streets or highways"[78] include fees designed to cover damage resulting from the use of a county's roads?

County does not argue that the biosolids impact fee was not a "permit fee or other charge" for purposes of Vehicle Code section 9400.8. The parties' dispute focuses on the

second issue. County specifically ****84** argues the fee was not for road use, but was a bona fide impact fee: "The fee is imposed only on permittees to recover the costs for repairing damage or upgrading county roads due to the incremental increase in truck traffic transporting biosolids to be land applied in Kern County."

In describing the underlying basis for the fee, County states in its appellate brief that it "commissioned an engineering firm to determine the condition of local roads used for biosolids transport, the volume of traffic attributable to trucks hauling biosolids on ... those roads, and the estimated cost of maintaining the roads in their current condition. [Citation.] The study specifically identified the roads affected, the length of the road segments, the required thickness of paving overlay needed to maintain them, and the price ***1620** of the required materials. [Citation.] Based on this information, ... County determined the amount of the fee needed to pay the estimated cost of the required maintenance. [Citation.]"

County explicitly argues that a fee for the privilege of using its roads is distinguishable from a fee "for mitigating the impacts to the ... County infrastructure shown to be caused by the transport of Biosolids." (Ordinance G–6638, Kern Code provision 8.05.020(F) [definition of biosolids impact fee].) Whether such a distinction should be recognized is a matter of statutory construction.

[38] A reviewing court's fundamental task in determining the meaning of a statute "is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.]" (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272, 105 Cal.Rptr.2d 457, 19 P.3d 1196.) The analysis starts with an examination of the actual words of the statute, giving them their usual, ordinary meaning. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476, 66 Cal.Rptr.2d 319, 940 P.2d 906.) A court may refer to the definitions contained in a dictionary to obtain the usual and ordinary meaning of a word. (*Martinez v. Enterprise Rent–A–Car Co.* (2004) 119 Cal.App.4th 46, 54, fn. 3, 13 Cal.Rptr.3d 857.)

Webster's Third New International Dictionary (1986), page 2524, states the verb "use" "is general and indicates any putting to service of a thing, usu. for an intended or fit purpose...." This definition is quite broad because it covers "*any* putting to service" (italics added). If the Legislature employed the literal meaning of this definition, then the "privilege of using" a road would cover the privilege of putting that road to service. Because trucks hauling loads within the legal weight limit are putting to service the roads over which they travel and they have the privilege of traveling over those roads as a result of being properly licensed and registered, it follows that a literal reading of the phrase the "the privilege of using [a county's] streets or highways" includes driving a truck on a road even if it causes incremental damage to the road. In other words, a road maintenance or impact fee is simply one type of fee for the privilege of using a road.

Before adopting the literal meaning of the word "using," we must check the resulting statutory construction to determine if it comports with, or frustrates, the purpose of the statutory scheme. (See *Torres v. Automobile Club of So. California* (1997) 15 Cal.4th 771, 777, 63 Cal.Rptr.2d 859, 937 P.2d 290 [statutory language must be construed in context by referring to the nature and purpose of the statutory scheme as a whole]; *Select Base Materials, Inc. v. Board of Equalization* (1959) 51 Cal.2d 640, 645, 335 P.2d 672 [legislative purpose will not be sacrificed to a literal construction].)

****85 *1621** First, neither Vehicle Code section 9400.8 nor the remainder of article 3 of chapter 6 of division 3 of the Vehicle Code—which addresses weight fees assessed at vehicle registration—contains an express exception for local fees or charges that attempt to recover damage to streets or highways caused by vehicle use.

Second, such an exception cannot be implied. Vehicle Code section 9400.8 expressly creates an exception for "extra legal loads" and authorizes local agencies to collect a permit fee for those types of loads. Because the exception for extra legal loads shows the Legislature was capable of expressing its intent to except certain uses, it creates the inference that the Legislature did not intend any exceptions that were not expressly stated. (See Code Civ. Proc., § 1858 [judge may not insert what Legislature has omitted]; see *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1230, 32 Cal.Rptr.2d 19, 876 P.2d 505 [express statutory exemptions generally preclude implied exemptions].)

Third, Vehicle Code section 9400.8 is part of article 3 of chapter 6 of division 3 of the Vehicle Code. Division 3 concerns the registration of vehicles and certificates of title. Chapter 6 addresses registration and weight fees. Article 3, which includes Vehicle Code sections 9400 through 9410, concerns weight fees. For example, subdivision (b) of Vehicle Code section 9400 sets forth registration fees based on unladen weight for commercial motor vehicles with not more than two axles, and subdivision (c) does the same for commercial motor vehicles with three or more axles and certain trailers and dollies.[79] Thus, it appears that Vehicle Code section 9400.8 is part of a statutory scheme that regulates fees

based on vehicle weight.[80] This statutory scheme as set forth in article 3 of chapter 6 of division 3 of the Vehicle Code, and the Legislature's statement in the legislation that added section 9400.8 to the Vehicle Code that "[n]othing in this act shall be construed to allow local governments to impose fees not otherwise authorized by statute" (Stats.1989, ch. 1337, § 4, p. 5498), support the conclusion that the Legislature intended to fully occupy the field of fees related to the weight of vehicles carrying legal loads.

***1622** In opposition to the foregoing reasoning, County has cited no case law, legislative history, published legal opinion of the Attorney General, treatise, article or other authority that adopts or endorses the distinction between fees for the privilege of using roads and fees that recover damages caused by a specific type of road use. Nor has County offered an explanation as to how such a distinction would further the purpose of the statutory scheme. In other words, County has not shown the Legislature intended to allow local agencies to charge fees for road use that causes incremental damage to the roads.

Accordingly, Vehicle Code section 9400.8 must be construed to prohibit a local agency from imposing fees or charges on legal ****86** loads that are hauled on its roads, even though hauling such loads may cause damage beyond minor wear and tear to the roads.

The final step of our analysis is to determine if the biosolids impact fee was in fact the type of fee prohibited by Vehicle Code section 9400.8. This is necessary because, on its face, the biosolids impact fee was not assessed on miles driven on roads. Instead, the biosolids impact fee was assessed primarily on tons of Class B biosolids applied to land in the unincorporated areas of Kern County. Although this basis of assessment is attenuated from actual road use, that attenuation is insufficient to save the entire biosolids impact fee. The undisputed facts in the administrative record establish that the per-ton amount of the biosolids impact fee was derived from (1) the miles of Kern County roads used in the hauling of biosolids,[81] (2) the quality of those roads,[82] (3) an estimate of the total weight of Class B biosolids that would be hauled before the January 1, 2003, deadline, (4) the load and volume of nonbiosolid traffic experienced by the road segments, and (5) the amount of load and volume of traffic added to each road segment by the transport of biosolids. The funds generated by the biosolids impact fee were to be used to maintain and repair roads and correct any other "infrastructure deficiencies directly associated with the hauling of Biosolids" (Ordinance G–6638, Kern Code provision 8.05.030(H)(3)), but also were available for other purposes not related to roads and other infrastructure.

The way County calculated the biosolids impact fee and the way funds generated could be applied leads inescapably to the conclusion that the fee was, at least in part, a fee imposed on road use. This conclusion is reinforced by the exception in Kern Code provision 8.05.03(H)(1), Ordinance G–6638, ***1623** that allows a waiver of the fee "[w]here the Permitee can demonstrate the land application of Biosolids does not have an impact on County infrastructure or roads." Because the primary purpose of the biosolids impact fee was to collect funds based on the use of streets or highways located in Kern County, it violated Vehicle Code section 9400.8.

E. Remedy

[39] Although the primary purpose of the biosolids impact fee was to pay for road repair and maintenance, that was not its exclusive purpose. Kern Code provision 8.05.030(H)(3), Ordinance G–6638, was in effect from January 1, 2000, through December 31, 2002, and stated that the money generated by the biosolids impact fee and other permit fees would be available to fund a number of different uses, some of which were not related to the impact of hauling biosolids over County roads.

Because of these multiple purposes, we asked OCSD and County to submit supplemental letter briefs on the issue of what relief is appropriate when an ordinance imposes a fee for more than one purpose and one of the purposes conflicts with a statute and other purposes do not. We asked OCSD and County whether the superior court should be directed to (1) uphold the entire biosolids impact fee, (2) invalidate the entire fee, or (3) determine what portion of the fee, if any, was or will ****87** be used for purposes not contrary to Vehicle Code section 9400.8 and allow that portion to stand.

The first alternative—upholding the entire fee based on the existence of some potentially valid uses of the funds generated by that fee—is not appropriate because such a remedy would allow public agencies to adopt fees with illegal purposes and save those fees from invalidation by appending one valid purpose for which the fees could be used. Thus, when a fee has both valid and invalid purposes, the entire fee cannot be upheld as valid.

Conversely, it would be unduly harsh to completely invalidate a fee when part of the funds would be used for proper purposes and the formula by which the fee is calculated—in this case, tons of biosolids applied to the unincorporated areas of Kern County—does not itself run afoul of a statutory prohibition.[83]

Accordingly, we hold the appropriate relief when a fee is imposed for both valid and invalid purposes is to uphold the fee to the extent that the funds generated are applied to valid purposes and those purposes are otherwise severable from the invalid ones. (See *Williams Communications v. City* ***1624** *of Riverside* (2003) 114 Cal.App.4th 642, 656–660, 8 Cal.Rptr.3d 96 [unlawful portion of school facilities fee imposed on developer ordered refunded under Gov.Code, § 66020, subd. (e)].)[84]

In this case, Ordinance G–6638 expressly stated that (1) the invalidity of any of its provisions would not affect the validity of its other provisions and (2) its provisions were severable. (See *City and County of San Francisco v. Flying Dutchman Park, Inc.* (2004) 122 Cal.App.4th 74, 79, 18 Cal.Rptr.3d 532 [illegal allocation did not require invalidation of entire parking tax ordinance or reduction of parking tax arrearages because offending clause was severable under ordinance's saving clause].) Furthermore, the rate used to determine the biosolids impact fee as well as the funds generated by the fee are inherently divisible, at least down to the penny. We conclude that the appropriate relief is to invalidate the biosolids impact fee to the extent it was or will be used for purposes that violated Vehicle Code section 9400.8.

OCSD contends this court should direct the superior court to invalidate the entire biosolids impact fee and order a refund of that fee with interest. Recognizing that Kern Code provision 8.05.030(H)(3), Ordinance G–6638, created the possibility of valid purposes mixed with invalid purposes, OCSD asserts:

> "To the extent that ... 8.05.030(H)(3) could be read as authorizing the use of biosolids impact fees for property inspections or the GIS tracking system, then the annual permit fee would have to be reduced and the overpayment would have to be refunded—the County cannot recover the same cost twice."

OCSD's assertion is based on the factual premise that the annual permit fees collected were sufficient to pay for all of the valid uses and, therefore, the funds generated by the biosolids impact fee were not needed, and will not be budgeted, for valid uses. We are unable to confirm this factual premise based on the current appellate record.

Relief in the form of apportionment or allocation between valid and invalid purposes cannot be granted without further ****88** findings of fact. Therefore, this matter will be remanded to the superior court for further proceedings to consider how the funds generated by the biosolids impact fee were spent or will be spent and how to separate the valid applications of funds, if any, from the invalid applications.[85]

***1625** Because of the relief that will be granted on remand, we need not address the claims that the biosolids impact fee violated the equal protection clause of the United States Constitution and constituted an illegal general or special tax. (See fn. 37, *ante;* see also *Waters–Pierce Oil Co. v. City of Hot Springs* (1908) 85 Ark. 509, 109 S.W. 293 [taxing vehicles differently based on contents—petroleum products, ice or other—instead of capacity and size unconstitutional].) On one hand, if all or a portion of the biosolids impact fee is invalidated under Vehicle Code section 9400.8, then addressing other grounds of invalidity would be redundant. On the other hand, if all or a portion of the biosolids impact fee was or will be allocated to expenditures specifically related to County's biosolids regulatory program, then a rational basis exists for imposing a per ton fee on Class B biosolids and not imposing a per ton fee on other materials carried by truck. The existence of a rational basis for distinguishing between biosolids and other materials means the distinction does not violate equal protection. (See *Genesis Environmental Services v. San Joaquin Valley Unified Air Pollution Control Dist.* (2003) 113 Cal.App.4th 597, 605, 6 Cal.Rptr.3d 574 [equal protection claims are based on the lack of a rational basis for treating similarly situated persons differently].) Similarly, funds allocated to valid uses do not constitute illegal general or special taxes. (See *City of Dublin v. County of Alameda, supra,* 14 Cal.App.4th 264, 17 Cal.Rptr.2d 845 [county landfill $6 per ton surcharge valid as a reasonably necessary charge for cost of the program].)

VII. County's Cross–Action

County's cross-action alleged that a number of contracts and contract extensions entered by CSDLAC, CLABS, and OCSD relating to the transport and disposal of biosolids were projects for purposes of CEQA, and that some level of CEQA review should have been performed before they were entered. Environmental assessment was required, according to County, because the new contracts and extensions were either separate projects or modifications of prior projects that may have triggered the need for a subsequent EIR, supplemental EIR or subsequent negative declaration.

The superior court ruled against County on all of the

causes of action in its cross-action and concluded that (1) some of the actions by the sanitation agencies were covered by program EIR's that did not require additional CEQA documentation, (2) the Central Valley Water Board rather than the sanitation agency was the lead agency for some of the projects, and (3) CEQA review of an option to purchase real estate was premature under the ***1626** provisions of Guidelines section 15004. ****89** County appeals from the rulings related to nine contracts.[86]

A. Mootness of Expired Contracts and Extensions

[40] [41] The termination dates for some of the contracts and extensions have passed since the ruling by the superior court. Consequently, we directed the parties to submit supplemental letter briefs on the question whether County's CEQA challenges to those contracts or extensions are moot. The standard this court applies in determining the mootness of a CEQA appeal is whether any effective relief can be granted the appellant. (*Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th 629, 10 Cal.Rptr.3d 560 [question whether initial study should have been prepared was not moot]; *Woodward Park Homeowners Assn. v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, 888–889, 92 Cal.Rptr.2d 268 [completing and opening car wash project for operations while appeal was pending did not render preparation of EIR moot because modification or removal of project remained possible].)

1. Extension of CSDLAC–Yakima Agreement

On November 9, 1994, CSDLAC and Yakima Company (Yakima) entered into an agreement for the removal, transportation and reuse of biosolids (Yakima Agreement) pursuant to which biosolids produced at the Carson Plant would be transported to Kern County and applied to a specific site owned and cultivated by the Buttonwillow Land and Cattle Company. The Yakima Agreement required Yakima to (1) obtain all the necessary licenses, permits and other approvals needed to perform the agreement, (2) keep complete records, (3) conduct testing of soil, groundwater and plant tissue, (4) provide CSDLAC access to the site and records for inspection purposes, (5) provide CSDLAC with copies of all regulatory reports, and (6) maintain insurance. Yakima agreed to remove up to 1,000 wet tons of biosolids per week from CSDLAC's treatment plant and was paid $25 per wet ton.

The Yakima Agreement began on November 9, 1994, remained effective for a period of three years, and provided for two 3–year renewal periods upon agreement of Yakima and CSDLAC's chief engineer. Yakima was granted the right to terminate the Yakima Agreement by giving 24 hours' notice if it could no longer legally perform the required services.

In October 1997, CSDLAC and Yakima agreed to the first extension of the Yakima Agreement. Almost two years later, in a letter dated September 16, ***1627** 1999, CSDLAC stated:

> "The first three-year extension was granted and will expire on November 8, 2000. Due to the current uncertain situation involving proposed ordinances in the County of Kern, which may place restrictions on the land application of biosolids, [CSDLAC's] preference is to extend the contract through the second allowable three-year period. It is our understanding that Yakima is interested and will participate in this arrangement at the original biosolids management fee of $25.00 per wet ton."

Yakima agreed to the second extension by countersigning the letter and, as a result, the termination date of the extended contract became November 8, 2003.

****90 a. Previous CEQA review and documentation**

CSDLAC's final program EIR for the "Joint Outfall System 2010 Master Facilities Plan, June 1995" (1995 final Program EIR), discussed the Yakima Agreement:

> "Since circulation of the draft EIR, some changes in the reuse sites have occurred.... Ag Tech has opened an additional land application site near Delano, California, that now receives some of the Districts' biosolids. The Districts also have initiated new land application contracts with the Yakima Company near Buttonwillow, California; McCarthy Family Farms near Corcoran, California; and one short-term contract with Bio Gro

Systems near Blythe, California."

The 1995 final Program EIR also stated that in January 1995, approximately 1,699 wet tons per week were delivered to McCarthy Family Farms and 580 wet tons per week were delivered to Yakima Company.

CSDLAC's draft Program EIR recognized that NOx emissions generated by trucks transporting biosolids from the Carson Plant to disposal or use sites would be considered a significant impact under the thresholds adopted by the South Coast Air Basin and the Southeast Desert Air Basin. To mitigate this impact, CSDLAC stated it would perform maintenance on its trucks at least as frequently as recommended by the manufacturer.

The 1995 final Program EIR also references the mitigated negative declarations from the Central Valley Water Board obtained by McCarthy Family Farms and Yakima Company in connection with the permits that authorize them to land apply biosolids. More specifically, the Central Valley Water Board adopted resolution No. 95–011 approving the initial study and adopting a mitigated negative declaration for the issuance of a WDR relating to Yakima Company's application of biosolids to 1,372 acres of farmland in Kern County.

Based on the 1995 final Program EIR and the mitigated negative declaration of the Central Valley Water Board, CSDLAC contends that both the ***1628** hauling and the land application aspects of the extension of the Yakima Agreement were covered by CEQA documents and that further CEQA review was unnecessary. In contrast, County argues that CSDLAC violated CEQA by (1) approving the extension of the Yakima Agreement without performing the review required by Guidelines section 15168 and (2) failing to prepare a subsequent or supplemental EIR that analyzed the extension.

b. Mootness

In responding to our inquiry, both parties have agreed that the November 8, 2003, termination date rendered County's CEQA challenge to the extension of the Yakima Agreement moot. (See *Giles v. Horn* (2002) 100 Cal.App.4th 206, 123 Cal.Rptr.2d 735 [challenges to county contracts moot because contracts had been fully performed and had expired].) County, however, asserts that we should exercise our discretion to address the controversy because of its importance and the likelihood similar controversies will recur. We also conclude the challenge to the Yakima Agreement is moot. Furthermore, we decline County's invitation to render an advisory opinion because the future disputes between County and CSDLAC regarding CSDLAC's disposal activities are likely to be factually distinct. Thus, any ruling made now would do little to prevent future disputes from arising.

2. CLABS Contract No. C–87685

In January 1994, CLABS entered contract No. C–87685 (Contract C–87685) with ****91** Gardner–Arciero for the loading, transporting and beneficial use of biosolids produced by CLABS. Gardner–Arciero applied the biosolids to farms near Cantil, California. On February 11, 2000, the Los Angeles City Council approved amendment No. 3 to Contract C–87685, which included an extension of the contract through February 14, 2003. The second cause of action in County's cross-action alleged CLABS violated CEQA by failing to perform any environmental review before approving the amendment of Contract C–87685. The superior court rejected the second cause of action and ruled (1) the Central Valley Water Board, not CLABS, was the lead agency for the project, (2) the contract had been reviewed under a program EIR prepared by CLABS, and (3) the amendment did not expand the project in a way that required additional review under CEQA.

The date for the expiration of the amendment to Contract C–87685 has passed, but County asserts its CEQA claim regarding the amendment of Contract C–87685 is not moot unless that contract cannot be renewed or extended.

As with the CSDLAC–Yakima Agreement, we conclude that County's CEQA challenges to CLABS's February 11, 2000, approval of amendment ***1629** No. 3 to Contract C–87685 is moot because the contract is no longer in effect. (See *Giles v. Horn, supra,* 100 Cal.App.4th 206, 123 Cal.Rptr.2d 735.) Moreover, the mere prospect that Contract C–87685 or a similar contract might become operative because of future actions taken by CSDLAC and Gardner–Arciero does not create an actual, present controversy.

3. CLABS Contract No. C–94375

In October 1996, CLABS entered contract No. C–94375 (Contract C–94375) with RBM and Valley Communities, Inc. (collectively, RBM-Valley) for the loading, transporting and beneficial use of biosolids produced at the Terminal Island and Hyperion treatment plants. RBM-Valley agreed to load CLABS's biosolids onto its trucks, transport the biosolids to RBM-Valley's sites, unload the biosolids at designated sites, and beneficially use the biosolids in accordance with applicable laws and

regulations. The term of Contract C–94375 was to run for three years from the date of the first load.

On October 26, 1999, the Los Angeles City Council approved an amendment of Contract C–94375 to provide CLABS the option of renewing it for two additional three-year terms, the first of which would be from October 31, 1999, through October 30, 2002. The first cause of action in County's cross-action alleged the extension of Contract C–94375 was a project for purposes of CEQA, and CLABS violated CEQA by failing to perform any environmental review before approving the extension. The superior court rejected this claim, ruling the extension already had been reviewed under a program EIR adopted by CLABS and further review was not required.

In its supplemental letter brief, CLABS represented that Contract C–94375 was amended again in 2000 and that the contract, as then amended, remains in effect. RBM[87] and CLABS assert that performing CEQA review at this point, such as preparing an EIR or the checklist referenced in Guidelines section 15168, subdivision (c)(4), would be pointless because the particular amendment to Contract C–94375 challenged in the cross-action is no ****92** longer in effect. In contrast, County contends that its CEQA claim regarding Contract C–94375 is not moot because the contract has remained in effect as a result of the subsequent amendment in 2000.

We conclude that County's cause of action based on Contract C–94375 is not moot. First, a court order addressing Contract C–94375 may still be able to provide effective relief. For example, if an environmental assessment actually is performed by CLABS, such assessment could lead to mitigation ***1630** measures, either as part of a supplemental EIR or a subsequent mitigated negative declaration, that affect the performance of Contract C–94375. (See *Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 641, 10 Cal.Rptr.3d 560 [CEQA claim not moot because performing initial study could lead to adoption of mitigation measures].) Second, Contract C–94375 itself is still in effect and the case law regarding the mootness of contract-based claims involves the expiration of the entire contract, not just the expiration of a single amendment. (See *Giles v. Horn, supra,* 100 Cal.App.4th at pp. 228–229, 123 Cal.Rptr.2d 735.)

4. OCSD's contract with Yakima

OCSD and Yakima entered a contract titled "Agreement for the Management of Biosolids and Construction and Operation of Storage/Composting Facility," effective January 10, 2000 (OCSD–Yakima Agreement). Under section 1 of the OCSD–Yakima Agreement, Yakima charged $25 per wet ton "to accept delivery of up to 100 wet tons per day of Class B Biosolids" from OCSD's plants and apply the biosolids to land at specified sites in Kern County. Yakima represented that it had valid permits from the Central Valley Water Board and Kern County Environmental Health Services Department that authorized it to land apply biosolids at the sites.

The OCSD–Yakima Agreement also contained a number of provisions regarding the construction and operation of a storage and composting facility. In July 2000, however, OCSD and Yakima amended the OCSD–Yakima Agreement to remove any reference to the construction or operation of a storage and composting facility. The trial court ruled County's CEQA challenge to the storage and composting facility was moot. We concur in that ruling.

The remaining part of the OCSD–Yakima Agreement, which concerns the land application of Class B biosolids to sites located in Kern County, was not formally terminated and technically remains in effect. Section 21.1 of the OCSD–Yakima Agreement stated that the term of the agreement would end January 2012, unless terminated earlier. Section 23.1 of the OCSD–Yakima Agreement stated Yakima could terminate the agreement on 24 hours' notice if it could no longer legally perform the required services. OCSD contends the adoption of the heightened treatment standards had the effect of terminating the agreement by making the land application of Class B biosolids illegal. ***1631** County asserts the CEQA claim in its thirteenth cause of action is not moot because OCSD and Yakima could resume activities under the OCSD–Yakima Agreement if the heightened treatment standards were invalidated or modified.[88] ****93** Even assuming the claim presently is moot, we will exercise our inherent discretion and consider County's CEQA claim regarding the OCSD–Yakima Agreement because of the potential it will be reinstituted if the heightened treatment standards are modified. (See *In re William M.* (1970) 3 Cal.3d 16, 23, 89 Cal.Rptr. 33, 473 P.2d 737 [court has discretion to consider issue likely to recur].)

5. OCSD's contract with Magan

OCSD and Shaen Magan entered a contract titled "Agreement for the Management of Biosolids," effective January 10, 2000 (OCSD–Magan Biosolids Agreement). Under the agreement, OCSD agreed to pay Magan a base fee of $22.40 per wet ton for biosolids that Magan accepted, transported, and used on land located in Kings

and Kern Counties. The agreement was not expressly limited to Class B biosolids. The OCSD–Magan Biosolids Agreement was scheduled to terminate January 2003 and provided for early termination in the event that Magan could no longer legally perform the services required.

In its supplemental letter brief, OCSD has represented that OCSD and Magan agreed to extend the OCSD–Magan Biosolids Agreement through December 31, 2004, and it was likely that OCSD would exercise an option to extend the agreement an additional year. Because the agreement may have been extended through 2005, we will address the merits of County's challenge to OCSD's failure to perform any environmental assessment concerning the OCSD–Magan Biosolids Agreement and leave it to the superior court to determine the question of mootness on remand.

6. OCSD's option contracts

On January 10, 2000, OCSD entered three contracts involving the option to purchase real estate. One option contract was entered with Shaen Magan involving 1,360 acres and another option contract was entered with Shaen Magan, Inc. involving 2,666 acres. Also, OCSD entered an option and right of first refusal with Yakima, which had a 12–year total term and involved 320 acres.

***1632** The appellate record does not show whether OCSD's option agreements with Shaen Magan and Shaen Magan, Inc., which were to expire after three years, have been exercised, extended or allowed to expire. Similarly, the appellate record does not show the current status of OCSD's option and right of first refusal with Yakima. The option was to expire after three years and the right of first refusal was to remain in effect for nine years thereafter, but OCSD and Yakima may have rescinded it like the portion of the OCSD–Yakima Agreement. We will consider the merits of County's CEQA claims concerning these contracts and, on remand, the superior court can determine whether those claims are moot.

B. Program EIR and Subsequent Environmental Assessment

Both CLABS and OCSD have adopted program EIR's that cover the management of biosolids generated at the treatment plants they operate.

1. EIR's of CLABS

In connection with CLABS's wastewater treatment operations, the City of Los Angeles prepared a CEQA document titled "Offsite Sludge Transportation and Disposal Program Final EIR" dated March 1989 (CLABS 1989 FEIR). Section 3 of the CLABS 1989 FEIR is titled "Setting, Impacts, and Mitigation Measures" and excerpts are part of the appellate record.

The CLABS 1989 FEIR states that (1) the hauling and disposal of sewage sludge ****94** from the treatment plants is not one specific action, but consists of potential combinations of actions involving different disposal technologies and transportation modes; (2) a detailed discussion of current or proposed projects is not provided because site-specific issues will be dealt with on a case-by-case basis; (3) future or ongoing specific projects may require additional CEQA documentation; and (4) such additional CEQA documentation would tier off the CLABS 1989 FEIR.

More recently, the City of Los Angeles also prepared a CEQA document titled "Biosolids Management Program Final [EIR]" dated July 1996 (CLABS 1996 FEIR). The first page of its executive summary is part of the appellate record. The CLABS 1996 FEIR was designed to "serve as the basis for examining subsequent implementation actions to determine if additional environmental documentation is required." The CLABS 1996 FEIR stated that (1) under the concept of tiering, the site-specific environmental documents would incorporate by reference the analysis of environmental effects contained in the CLABS 1996 FEIR and (2) if additional effects are created or further mitigation measures are required, supplemental environmental documents would be required.

1633** ***2. OCSD's program EIR

OCSD adopted a 1999 Strategic Plan that covered all aspects of its operations and assessed its wastewater systems needs and options to the year 2020. Volume 8 of OCSD's 1999 Strategic Plan addressed biosolids management. OCSD acted as the lead agency for purposes of preparing and considering the environmental documents that CEQA required for the adoption of the 1999 Strategic Plan. As a result, OCSD caused a draft program EIR, dated June 1999, to be prepared covering the 1999 Strategic Plan (OCSD 1999 DEIR). Chapter 8.0 of the OCSD 1999 DEIR was titled "Residual Solids/Biosolids Management Setting, Impacts, and Mitigations." In October 1999, after receipt of comments, the "Orange County Sanitation District 1999 Strategic Plan Final Program [EIR]" was prepared. Both the draft and final EIR are part of the administrative record.

OCSD used a program EIR to allow for more streamlined and focused environmental reviews in the future, including the use of tiering. In addition, the OCSD 1999 DEIR states that "[s]hould the design or project description as identified in this document change substantially for any of the near-term projects, subsequent project-level impact evaluation will be necessary."

3. Lead agencies under the program EIR's

CEQA defines "lead agency" as "the public agency [that] has the principal responsibility for carrying out or approving a project [that] may have a significant effect upon the environment." (§ 21067.) If more than one public agency is involved in a project but only one public agency carries out the project, then "that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency." (Guidelines, § 15051, subd. (a); see § 21165.)

CLABS and OCSD are the agencies that actually carry out the construction and operation of wastewater treatment facilities. Thus, under the ordinary meaning of the language contained in the statutory definition of "lead agency," both CLABS and OCSD are lead agencies. This conclusion is not controversial in that CLABS and OCSD have recognized in their program EIR's that they are each the lead agency for purposes of their wastewater treatment operations.

****95** Because the operation of a wastewater treatment facility includes managing the biosolids that the facility produces, CLABS and OCSD are also each the lead agency for their activities concerning the management of biosolids. Again, this conclusion is based on (1) a straightforward application of the statutory definition of "lead agency" and the criteria contained in the Guidelines (see ***1634** § 21067; Guidelines, §§ 15050, 15051), and (2) the program EIR's of CLABS and OCSD, both of which cover the activity of biosolids management. Thus, the program EIR's effectively acknowledge that biosolids management is the responsibility of CLABS and OCSD, even though they carry out that responsibility by contracting with other entities to handle the physical aspects of hauling and disposing of the biosolids generated. (See § 21065, subd. (b) [definition of "project" includes activity undertaken in whole or in part through a contract with a public agency].)

4. Assessment of later actions related to the program

Having determined that CLABS and OCSD are lead agencies with program EIR's that address biosolids management, the question becomes what procedural steps those lead agencies should have performed to comply with CEQA when entering contracts or extensions concerning the use or disposal of biosolids generated at their facilities.

The program EIR's of CLABS and OCSD expressly state that activity undertaken after the adoption of the program EIR's might result in the use of a tiered EIR to achieve future CEQA compliance. Therefore, one possible answer to the question is that the lead agencies must follow the steps of performing a preliminary review, completing an initial study, and preparing a tiered EIR. (See § 21094.)

Alternatively, section 21166 sets forth the conditions where a subsequent or supplemental EIR is required to cover a new activity that is regarded as a change in a project already covered by an existing EIR. In particular, a subsequent or supplemental EIR is required where "[s]ubstantial changes are proposed in the project [that] will require major revisions of the [EIR]." (§ 21166, subd. (a); see Guidelines, §§ 15162 [subsequent EIR], 15163 [supplement to EIR] & 15164 [addendum to EIR].)

To identify the initial procedural steps that CLABS and OCSD should have taken, we turn to the provisions in the Guidelines that explicitly address how subsequent activity that is related to the program covered by a program EIR must be handled to comply with the documentation requirements of CEQA. Section 15168 of the Guidelines provides:

> "(c) Use with Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.
>
> "(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.
>
> ***1635** "(2) If the agency finds that pursuant to Section 15162 [regarding subsequent EIR's], no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.
>
> "(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.
>
> ****96** "(4) Where the subsequent activities involve site

> specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR."

The Discussion that follows section 15168 of the Guidelines states:

> "Use of the program EIR also enables the Lead Agency to characterize the overall program as the project being approved at that time. Following this approach when individual activities within the program are proposed, the agency would be required to examine the individual activities to determine whether their effects were fully analyzed in the program EIR. If the activities would have no effects beyond those analyzed in the program EIR, the agency could assert that the activities are merely part of the program which had been approved earlier, and no further CEQA compliance would be required. This approach offers many possibilities for agencies to reduce their costs of CEQA compliance and still achieve high levels of environmental protection."[89]

[42] Based on the requirements of subdivision (c) of section 15168 of the Guidelines, County argues that if CLABS's and OCSD's sludge disposal contracts are viewed as "subsequent activities" in their wastewater collection, treatment and disposal program, then CLABS and OCSD are required to conduct an examination to determine if additional environmental documents must be prepared and, with respect to site-specific activities, prepare a written checklist or similar device to determine whether the environmental effects of the contracts were covered by the program EIR.

There is little doubt that the contracts and extensions entered by CLABS and OCSD concern the management of biosolids and that CLABS and OCSD have characterized the management of biosolids as part of the overall program covered by their program EIR's. Therefore, the contracts and extensions are "[s]ubsequent activities in the program" for purposes of Guidelines section 15168, subdivision (c). Consequently, CLABS and OCSD ***1636** were required to conduct the examination and make the determinations required by that subdivision.[90]

The required examination and determinations were not made. Neither CLABS nor OCSD has cited to any evidence in the administrative record showing it completed these requirements. With respect to some of OCSD's contracts, the administrative record affirmatively shows such an examination was overlooked. One staff report sent to the board of directors of the OCSD on November 17, 1999, concerning the OCSD's consideration of the OCSD–Yakima Agreement and the OCSD–Magan Biosolids Agreement, contained no entries under the heading "CEQA FINDINGS." Similarly, another staff report that recommended authorizing the staff to negotiate with Magan for the purchase of a site for the long-term management of OCSD's biosolids contained only the notation "N/A" under the heading "CEQA FINDINGS."

****97** As a result of their failure to conduct an examination and document the determinations required to be made after the examination, CLABS and OCSD violated section 15168, subdivision (c) of the Guidelines. Accordingly, they have "not proceeded in a manner required by law" and have abused their discretion for purposes of section 21168.5.[91]

C. Remand and Remedy

To remedy the foregoing violations of CEQA and appropriately dispose of the moot causes of action in County's cross-action, the judgment on the cross-action will be reversed and the superior court directed to dismiss the moot causes of action (see *Giles v. Horn, supra,* 100 Cal.App.4th at p. 229, 123 Cal.Rptr.2d 735 [when an appeal is moot, the preferable procedure is to reverse the judgment and direct the trial court to dismiss the action for having become moot prior to its final determination on appeal]), and issue a writ of mandate under the remaining causes of action.

We have determined that dismissals of the second cause of action concerning Contract C–87685 between CLABS and Gardner–Arciero, and the seventh cause of action concerning the CSDLAC–Yakima Agreement are appropriate because of mootness. Additional causes of action in the cross-action may be moot at the time the superior court issues a writ of mandate. For instance, if Yakima and OCSD formally terminate the OCSD–Yakima Agreement, then the thirteenth cause of action would be moot and should be dismissed rather ***1637** than included in the writ. Similarly, if any option agreement has expired unexercised or has been formally terminated, then the related cause of action would be moot. Consequently, immediately prior to issuing a writ of mandate, the superior court should determine which causes of action are moot and exclude them from the writ or writs issued.

If all of the remaining causes of action are justiciable, the superior court should issue a writ of mandate under the first and fourth causes of action of the cross-action[92] directing CLABS to undertake the examination required

by section 15168, subdivision (c) of the Guidelines as well as the other steps necessary to comply with that provision and any other provisions of CEQA or the Guidelines that become applicable as a result of the determinations made under section 15168, subdivision (c) of the Guidelines. A similar writ of mandate should be issued under the remaining causes of action that concern OCSD[93] and are justiciable. The superior court also shall require a return be filed to notify it of (1) the determinations made under Guidelines section 15168, subdivision (c), and (2) the other actions taken by the ****98** sanitation agency in response to the writ of mandate. (See § 21168.9, subd. (b) [trial court shall retain jurisdiction by way of a return]; Cal. Civil Writ Practice (Cont.Ed.Bar 3d ed.2004) § 11.1 & appen. A–15, pp. 473–474, 581–582.)

The question of whether any acts taken in performance of the contracts should be enjoined should, if raised by the parties on remand, be determined by the superior court in accordance with section 21168.9 and any other applicable provisions of law.

VIII. Evidentiary Objections

In connection with the non-CEQA causes of action, plaintiffs contend the superior court erred in failing to permit them to conduct discovery or submit extra-record evidence at the time of trial. Because plaintiffs' cause of action concerning the biosolids impact fee will be remanded for further proceedings, the assertions of reversible error based on the evidentiary rulings related to that cause of action need not be addressed.

***1638** To the extent that the evidentiary issues relate to plaintiffs' allegations that counsel for County advised the Kern County Board of Supervisors that it only had to consider the proposed ordinance's impacts within Kern County and had no duty to consider the impacts to the surrounding communities, those evidentiary issues are no longer relevant because of the broader environmental review that will be conducted in connection with the preparation of an EIR. For the same reason that we did not address the issues concerning the claim based on California's constitutional limits on exercises of the police power (see part V., *ante*), we need not address the related evidentiary issues.

Insofar as the evidentiary issues might relate to the other alleged constitutional violations, such as the claims based on the commerce clause and equal protection, or the affirmative defenses of laches, unclean hands and estoppel, we conclude the evidentiary rulings of the superior court did not affect the outcome on those claims and defenses, and thus were not reversible error.

DISPOSITION

Appeal

The judgment entered on plaintiffs' petition and complaint is reversed and the matter is remanded to the superior court. The orders underlying the judgment are reversed in part and affirmed in part as set forth *post.*

As to plaintiffs' first cause of action, the superior court is directed to vacate its November 22, 2000, order denying that cause of action under CEQA. The superior court is further directed to issue a writ of mandate ordering County to void its negative declaration relating to Ordinance G–6638 and to prepare an EIR that covers the adoption of an ordinance regulating the land application of treated sewage sludge within its jurisdiction. The heightened treatment standards once reflected in Kern County Ordinance Code provision 8.05.040(A), Ordinance G–6638, and now set forth in Ordinance No. G–6931, may remain operative, provided that County prepares, in good faith without unnecessary delay, an EIR that complies with CEQA.

As to plaintiffs' second cause of action, the November 25, 2002, order denying relief is affirmed.

As to plaintiffs' third cause of action regarding the validity of the biosolids impact fee, the superior court is directed to vacate its November 25, 2002, order denying relief under that cause of action. On remand, the superior court is directed to uphold the biosolids impact fee to the extent that the funds generated are, or will ****99** be, applied to valid purposes and those purposes are ***1639** otherwise severable from the invalid ones. The superior court also is directed to hold such further proceedings as it deems appropriate for the purpose of determining how the funds generated by the biosolids impact fee were spent, or will be spent, and how to separate the valid applications of funds, if any, from the invalid applications.

Cross–Action

The judgment on County's cross-action is reversed and the matter remanded to the superior court with directions to (1) enter an order dismissing the second and seventh causes of action as moot; (2) determine which of the remaining causes of action in the cross-action (first, fourth, tenth, eleventh, twelfth, thirteenth and fourteenth

causes of action) have become moot and dismiss those causes of action; (3) issue a writ of mandate under the causes of action that are not moot directing CLABS or OCSD to undertake (a) the examination and make the determinations necessary to comply with section 15168, subdivision (c) of the Guidelines and (b) the steps necessary to comply with any other provisions of CEQA or the Guidelines that become applicable as a result of the determinations made under Guidelines section 15168; and (4) require the party subject to the writ of mandate to file a return.

The parties shall bear their own costs on the appeals.

WE CONCUR: DIBIASO, Acting P.J., and VARTABEDIAN, J.

All Citations

127 Cal.App.4th 1544, 27 Cal.Rptr.3d 28, 35 Envtl. L. Rep. 20,070, 05 Cal. Daily Op. Serv. 2907, 2005 Daily Journal D.A.R. 3974

Footnotes

1 The ordinance was enacted by the Kern County Board of Supervisors, on behalf of the County of Kern (collectively, defendants or County). For purposes of this opinion, “County” refers to the governmental entity and “Kern County” refers to the geographical area.

2 Plaintiffs, cross-defendants and appellants are County Sanitation District No. 2 of Los Angeles County (CSDLAC), Orange County Sanitation District (OCSD), and the City of Los Angeles (CLABS); plaintiffs and appellants are California Association of Sanitation Agencies (CASA), Responsible Biosolids Management, Inc. (RBM), and the Southern California Alliance of Publicly Owned Treatment Works (SCAP).

3 Public Resources Code section 21000 et seq. All further statutory references are to the Public Resources Code unless otherwise indicated.

4 In all further citations, title 14, section 15000 et seq. of the California Code of Regulations will be referred to as the Guidelines.

5 European Commission Joint Research Centre, Institute for Environment and Sustainability, Soil and Waste Unit, Organic Contaminants in Sewage Sludge for Agricultural Use (Oct. 18, 2001) < http:// europa.eu.int/comm/environment/waste/sludge/ organics_in_sludge.pdf> (as of Mar. 30, 2005).

6 Goldfarb et al., *Unsafe Sewage Sludge or Beneficial Biosolids?: Liability, Planning, and Management Issues Regarding the Land Application of Sewage Treatment Residuals* (1999) 26 B.C. Envtl. Aff. L.Rev. 687, 688 (Goldfarb, *Sewage Sludge*).

7 Because the percentage of solids in sewage sludge varies, there is no constant for converting the wet weight of sewage sludge to its dry weight. Dry weight is defined by federal regulation to mean the mass reached after drying to essentially 100 percent solids content. (40 C.F.R. § 503.9(h) (2005).)

8 The EPA has estimated the United States’ production of human sanitary waste, a precursor of sewage sludge, at approximately 150 million wet tons per year. (68 Fed.Reg. 7176, 7180 (Feb. 12, 2003).) This figure can be restated as about 0.518 wet tons per person per year (*ibid.*) or 2.8 pounds per person per day. By comparison, in 1997, the United States’ annual production of animal waste from cattle, hogs, chickens and turkeys (which includes more than manure) was estimated at 1,365,661,300 tons, or roughly 5 tons for every person in the United States.

9 State Water Resources Control Board (State Water Board), Draft EIR, General Waste Discharge Requirements for Biosolids Land Application (June 28, 1999) figure 2–2 (State Water Board’s 1999 Draft EIR), which was in the administrative record and is available at < http:// www.swrcb.ca.gov/programs/biosolids/deir/chapters/ch2.pdf> (as of Mar. 30, 2005).

10 State Water Board, Final Statewide Program EIR, General Waste Discharge Requirements for Biosolids Land Application (June 2004) page 3–3 (State Water Board’s 2004 Final PEIR for Biosolids), which is available at < http://www.swrcb.ca.gov/hearings/docs/finalbio_chap3.pdf> (as of Mar. 30, 2005).

11 State Water Board's 2004 Final PEIR for Biosolids, page 3–4.

12 State Water Board's 1999 Draft EIR, table 2–2 and figure 2–2.

13 In 1998, the counties of Kings, Kern, Fresno, and Riverside did not have ordinances that prohibited the land application of Class B biosolids. (See State Water Board's 2004 Final PEIR for Biosolids, p. 3–8.) By early 2004, these counties had adopted ordinances that prohibited the land application of Class B biosolids and were among the 17 of the 58 counties in California that had some type of ordinance related directly to the land application of biosolids. (*Ibid.*)

14 State Water Board's 1999 Draft EIR, table 2–1 (Kern County received 148,000 dry tons).

15 The administrative record contains a document dated September 1, 1999, that estimated the volume of Class B biosolids brought into Kern County at 823,350 wet tons per year. The four largest sources were the City of Los Angeles (273,700), Los Angeles County (214,000), Orange County (130,300) and "Fresno" (85,000).

16 The federal legislation became commonly known as the Clean Water Act (33 U.S.C.A. § 1251 et seq.) as a result of amendments adopted in 1977. (Pub.L. No. 95–217, § 2 (Dec. 27, 1977) 91 Stat. 1566.)

17 "According to Milton Russell and Michael Gruber, 'Risk Assessment in Environmental Policy–Making,' 236 *Science* 286, 289 (April 17, 1989), 'the removal of pollutants from waste water produces sludge that must be either disposed of on land, incinerated, or dumped at sea. None of these procedures are without risk to human health or the environment.' " (Breyer, Breaking the Vicious Circle: Toward Effective Risk Regulation (1993) p. 97, fn. 111.)

18 The National Pollutant Discharge Elimination System (NPDES) permitting program set forth in the Clean Water Act regulates point sources of pollution that reach the waters of the United States. (33 U.S.C.A. § 1342.) Congress delegated the authority to issue permits to discharge pollutants under the NPDES to states with approved water quality programs.

19 The Water Quality Act of 1987 (Pub.L. No. 100–4 (Feb. 4, 1987) 101 Stat. 7) amended the Clean Water Act to require the EPA to identify and set numeric limits for toxic pollutants in sewage sludge and establish management practices for the use and disposal of sewage sludge containing those pollutants. (33 U.S.C.A. § 1345(d)(2).)

20 Similarly, legislation adopted by the European Union sets minimum standards for the use of sewage sludge in agriculture and also allows member states to impose more stringent measures. (See Council Directive 86/278/EEC of 12 June 1986, Protection of the Environment, and in Particular of the Soil, When Sewage Sludge Is Used in Agriculture, 1986 Official J. Eur. Coms. (L181), pp. 0006–0012 < http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnum doc&lg=EN&numdoc=31986L0278&model=guichett> [as of Mar. 30, 2005].) The Web site maintained by the European Union that summarizes the legislation is < http://europa.eu.int/scadplus/leg/en/lvb/l28088.htm> (as of Mar. 30, 2005).

21 The history of the EPA's regulation of sewage sludge prior to the final adoption of Part 503 in 1993 is described in Goldfarb, *Sewage Sludge, supra,* 26 B.C. Envtl. Aff. L.Rev. at pages 697–704. The EPA has described the recent legal history of its regulation of sewage sludge in the Federal Register. (See 68 Fed.Reg. 75533 (Dec. 31, 2003).)

22 A fifth option, ocean dumping of sewage sludge, was eliminated as a legal disposal option effective December 31, 1991, by the federal Ocean Dumping Ban Act of 1988. (33 U.S.C.A. §§ 1401–1445.) (See *City of New York v. United States EPA* (S.D.N.Y.1981) 543 F.Supp. 1084 [prior to statutory ban, City of New York and EPA litigated deleterious impacts of ocean dumping versus other methods of disposal].)

23 Pathogenic organisms cause disease and "include, but are not limited to, certain bacteria, protozoa, viruses, and viable" eggs of parasitic worms (40 C.F.R. § 503.31(f) (2005)), such as tapeworms, whipworms, roundworms, and hookworms.

24 Vectors are rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents; vector attraction refers to the characteristic of sewage sludge that attracts these carriers. (See 40 C.F.R. § 503.31(k) (2005).)

25 Goldfarb, *Sewage Sludge, supra,* 26 B.C. Envtl. Aff. L.Rev. at page 708; see Comment, *Sewage Sludge and Land Application Practices: Do the Section 503 Standards Guarantee Safe Fertilizer Usage?* (2000) 9 Dick. J. Envtl. L. & P. 147, 169 (asserting EPA failed to account for variability of contaminants in sludge and how combinations of

contaminants may affect public health and environment, and failed to foresee problems caused by lackadaisical monitoring and labeling requirements and by the lack of remedies for failure to comply with requirements). Another aspect of the controversy is illustrated by the dispute created when the Agricultural Marketing Service of the United States Department of Agriculture considered allowing the use of sewage sludge in "organic" production. The proposal was based on the view of the federal government that "there is no current scientific evidence that use of sewage sludge in the production of foods presents unacceptable risks to the environment or human health." (65 Fed.Reg. 13514 (Mar. 13, 2000).) Overwhelming public opposition led to the rejection and replacement of the proposal with a regulation that "prohibit [ed sewage sludge] use in the production" of all organic foods. (*Ibid.* ["275,603 commenters ... almost universally opposed the use of [sewage sludge] in organic production systems"]; see 7 C.F.R. §§ 205.105(g) & 205.301(f)(2) (2005).)

26 See EPA, Office of Water, Use and Disposal of Biosolids (Sewage Sludge) (Dec.2003)< http://www.epa.gov/ost/biosolids/dec03fact sheet.html> (as of Mar. 30, 2005).

27 See EPA, Office of Water, Use and Disposal of Biosolids (Sewage Sludge), *supra;* 33 U.S.C.A. § 1345(d)(2)(C) (two-year review of regulations).

28 The anecdotal allegations of which the EPA is aware (but unconvinced) include (1) over 350 claims of adverse effects collected by the Cornell Waste Management Institute, (2) the deaths of Shayne Conner, Tony Behun, and Daniel Pennock, and (3) the deaths of 300 dairy cattle on a farm near Augusta, Georgia that resulted in a $550,000 jury verdict in a state court action. (G. Tracy Mehan, III, EPA, letter to Joseph Mendelson, III, Center for Food Safety, and Thomas Alan Linzey, Community Environmental Legal Defense Fund, Inc., Dec. 22, 2003, pp. 3, 5–7 [denying petition to stop land application of sewage sludge] < http:// www.centerforfoodsafety.org/ pubs/SewageSludgePetitionResponse12–22– 03.pdf> [as of Mar. 30, 2005].) The claims related to the dairy cattle also are described in the administrative record and in *Boyce v. Augusta–Richmond County* (S.D.Ga.2000) 111 F.Supp.2d 1363. The medical examiner's autopsy report for Shayne Conner is in the administrative record and it concludes the cause of his death is unknown.

29 The California Integrated Waste Management Act of 1989 defines "solid waste" to include "dewatered, treated, or chemically fixed sewage sludge [that] is not hazardous waste, manure, vegetable or animal solid ...." (§ 40191, subd. (a).)

30 According to one set of estimates, the portion of California's annual sewage sludge production disposed of in landfills was 60.2 percent in 1988, 43.3 percent in 1991, 9.1 percent in 1998, and 30 percent in 2003. (State Water Board's 1999 Draft EIR, table 2–2 & fig. 2–2; State Water Board's 2004 Final PEIR for Biosolids, p. 3–4.)

31 General Order 2000–10 is available on the State Water Board's Web site. (See < http://www.swrcb.ca.gov/resdec/wqorders/ 2000/wqo2000–10.doc> [as of Mar. 30, 2005].)

32 County referred to the Third Appellate District's unpublished decision in its reply brief and cited a statement made by the State Water Board in an appellate brief it filed in that case. Our reference to this unpublished opinion as part of a factual narrative of the historical development of California's regulation of sewage sludge is not a citation or reliance upon that opinion as legal authority for purposes of California Rules of Court, rule 976.

33 General Order 2004–0012 is available at < http:// www.swrcb.ca.gov/resdec/wqorders/ 2004/wqo/wqo2004–0012.pdf> (as of Mar. 30, 2005).

34 EQ sewage sludge must meet one of the Class A pathogen reduction alternatives set forth in 40 Code of Federal Regulations part 503.32(a) (2005); the more stringent pollutant concentration standards set forth in 40 Code of Federal Regulations part 503.13(b)(3) (2005); and a level of vector attraction reduction required by 40 Code of Federal Regulations part 503.33 (2005).

35 This reference was probably intended to be limited to subsection (a), which states the pathogen reduction requirements for sewage sludge to be classified Class A.

36 All subsequent references to Kern Code provision 8.05.040(A), Ordinance G–6638, are to this version, which was contained in section 4 of Ordinance G–6638 and was scheduled to become effective on January 1, 2003. The substantive requirements of provision 8.05.040(A) were reenacted by the adoption of Ordinance No. G–6931, which repealed Ordinance G–6638. All subsequent references to the "heightened treatment standards" are to those

substantive requirements; this term was chosen because the effect of those requirements was that sewage sludge could not be applied to land in the unincorporated areas of Kern County unless the sludge was treated to the higher standards used to define EQ biosolids.

37 The theory of discrimination alleged was that vehicles loaded with Class B biosolids should not be singled out, and that all vehicles using the same roads and carrying a load of similar weight caused damage to the roads and thus should be charged the same fee.

38 The Guidelines caution that an ironclad definition of "significant effect" is not possible because the significance of an activity may vary with the setting. (Guidelines, § 15064, subd. (b).)

39 This farmland represents about 3 percent of the total harvested crop land in Kern County.

40 Land application may involve sewage sludge that has received various levels of treatment. For example, composting may be an intermediate step that prepares the sewage sludge to be applied to land as EQ biosolids.

41 See generally Goldfarb, *Sewage Sludge, supra,* 26 B.C. Envtl. Aff. L.Rev. at pages. 690–697 (discussing the three main ways to dispose of sewage sludge: landfilling, incineration and land application).

42 Mr. Stahl relied on a survey conducted by CASA that was described in the State Water Board's 1999 Draft EIR, figure 2–2.

43 In addressing forecasting, i.e., predicting or estimating what will occur in the future, the Guidelines state that "[d]rafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (Guidelines, § 15144.)

44 The section in the Guidelines corresponding to section 21159, subdivision (a) provides that adoption of a rule or regulation concerning pollution control, performance standards, or treatment requirements by specified state agencies requires an "environmental analysis of the reasonably foreseeable methods by which compliance ... will be achieved." (Guidelines, § 15187, subd. (a).)

45 The SJVUAPCD and the South Coast Air Quality Management District (SCAQMD) have both established thresholds of significance for direct and indirect project emissions, such as NOx, reactive organic gases (ROG), carbon monoxide (CO), sulfur oxide (SOx) and fine particulate matter (PM–10).

46 Million British thermal units per hour. A British thermal unit is a unit of energy defined as the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

47 Horsepower, which is a unit of power that can be defined as 550 foot pounds per second or 745.7 watts.

48 A Central Valley Water Board letter of September 17, 1999, stated the negative declaration "should also address the impacts of the proposed ban on POTWs serving Kern County communities."

49 In determining the foreseeability of a significant environmental impact, predicting what combination of alternatives will be used is less important when environmental impacts are associated with each alternative in the limited array of choices available.

50 Reliance upon these documents could be an after-the-fact justification because the documents were not part of the administrative record before the Kern County Board of Supervisors when it decided to adopt Ordinance G–6638 and to certify the negative declaration.

51 In other words, County failed to show that by January 1, 2003, nitrogen levels at the site would have remained so high that EQ biosolids could have been used as fertilizer without any need for an additional source of nitrogen.

52 Under Part 503, sewage sludge must be treated to significantly reduce pathogens to obtain Class B status. (See 40 C.F.R. § 503.32(b) (2005) [Class B pathogen requirements and site restrictions].)

53 The soil loss from wind erosion is discussed in part II.B.2.a., *ante.*

54 For example, Tow's analysis of the impact of dust on air quality suffers from a rather glaring deficiency—his failure to compare the potential dispersal of PM–10 after January 1, 2003, to the dispersal of PM–10 from the same land while it was farmed and biosolids were applied to it. The question, of course, is *change* to the environment which might arise from the ordinance. (See § 21068; Remy et al., Guide to the Cal. Environmental Quality Act (CEQA) (10th ed.1999) p. 162 (Remy, Guide to CEQA).)

55 For instance, in completing the initial study County did not investigate the basic question of quantity—whether the volume of EQ biosolids available for application to farmland in Kern County would be sufficient to replace the volume of Class B biosolids that had been used.

56 Under the facts of this case, we need not decide whether that identification must take place in explicit findings by the agency, elsewhere in the administrative record, or in the briefing submitted by the lead agency to the court.

57 This court has emphasized the importance of connecting one's arguments to the contents of the administrative record in a CEQA proceeding. (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 1 Cal.Rptr.3d 726; see Cal. Rules of Court, rule 14(a)(1)(C).)

58 A dispute over the application of the test for deferral often is closely related to a dispute concerning the proper scope of the project and whether a line can be drawn between the project covered by the EIR and the future action for which environmental analysis is deferred. (See *National Parks & Conservation Assn. v. County of Riverside, supra,* 42 Cal.App.4th at pp. 1514–1515, 50 Cal.Rptr.2d 339; see also *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 236–237, 242 Cal.Rptr. 37 [discussion of pipelines in an EIR for exploration phase of multistage oil project need not address specific pipeline routes because quantity and quality of oil discovery was uncertain and another EIR would be prepared in connection with the city's approval of a specific pipeline route].)

59 The Discussion is available on the Internet at < http:// ceres.ca.gov/topic/env_law/ceqa/guidelines/art1.html> (as of Mar. 30, 2005). (See generally *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1987) 189 Cal.App.3d 498, 503, fn. 1, 234 Cal.Rptr. 527 [judicial notice taken of the "Discussion" that followed a section of the Guidelines].)

60 The project description contained in County's proposed negative declaration states the project is "the adoption of a Kern County ordinance regulating the land application of Class A and B biosolids...." The project description does not include any biosolids management activities that might be undertaken by sanitation agencies in response to the ordinance.

61 The analogy between the adoption of a land use ordinance and the multistage activities involved in *Pala Band* and *Kaufman & Broad* is weak. The stronger analogy is between the adoption of Ordinance G–6638 and the adoption of (1) an amendment to a general plan, (2) revised sphere of influence guidelines, or (3) development plans for an area surrounding an airport. (See *City of Redlands v. County of San Bernardino, supra,* 96 Cal.App.4th at pp. 412–413, 117 Cal.Rptr.2d 582 [adoption of negative declaration set aside and county required to prepare an EIR in connection with general plan amendment]; *City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 230 Cal.Rptr. 867 [LAFCO's negative declaration vacated and preparation of EIR required for changes in sphere of influence guidelines regarding urban development]; *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors, supra,* 91 Cal.App.4th at p. 369, 110 Cal.Rptr.2d 579 [final subsequent EIR certified in connection with approval of updated specific plan for development of area surrounding county airport properly considered "project's effect on growth and housing ... felt outside of the project area"].)

62 Plaintiffs point to the State Water Board's 1999 Draft EIR contained in the administrative record and argue that if the adoption of General Order 2000–10 at the state level created potential impacts that could be foreseen and required analysis, then the potential impacts from the adoption of Ordinance G–6638 (which represented a greater change from the status quo) also must be foreseeable. In plaintiffs' view, consistent application of CEQA's concept of foreseeability at the state and county level requires rejection of County's position that the potential physical impacts of Ordinance G–6638 were so attenuated as to be unforeseeable.

63 Justice Stephen Breyer has described of the problem of regulatory inconsistency which can arise when agencies ignore their regulatory program's environmental effect on other programs. (See Breyer, Breaking the Vicious Circle: Toward Effective Risk Regulation, *supra,* pp. 21–22.)

64 At the time County begins the EIR process, it will not know the exact terms of the ordinance that it might approve at the

end of that process because the terms it initially proposes, i.e., the "project," may be revised after considering feasible alternatives and mitigation measures.

65 This conclusion regarding severability does not mean, however, that the heightened treatment standards are the entire "project" for purposes of determining the scope of the EIR.

66 One issue that may arise in connection with the good faith of County's attempt to prepare an EIR is whether its definition of the scope of the EIR appropriately considers the "project" to include the "whole of the action" actually implemented by County in regulating the land application of sewage sludge. (Guidelines, § 15378, subd. (a); see *Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 637–640, 10 Cal.Rptr.3d 560.)

67 But see *Young v. Department of Fish & Game* (1981) 124 Cal.App.3d 257, 279, 177 Cal.Rptr. 247 ("power to regulate includes the power to prohibit"); *Watkins v. Naifeh* (Tenn.1982) 635 S.W.2d 104, 107 ("extremely broad powers to regulate the sale of ... alcoholic beverages ... extends even to the power to ban such sales"); see also *Personal Watercraft Coalition v. Marin County Bd. of Supervisors* (2002) 100 Cal.App.4th 129, 150, 122 Cal.Rptr.2d 425.

68 Class B biosolids are one category of "sewage sludge," which Part 503 defines as the "solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works." (40 C.F.R. § 503.9(w) (2005).)

69 We need not reach the question of statutory construction concerning whether the authority to "regulate" includes or excludes the authority to ban an entire activity. Thus, although we requested supplemental briefing on whether it would be appropriate for this court to take judicial notice of State Water Board's General Order 2004–0012, which states the Water Code does not preempt the authority of local agencies to prohibit the use of biosolids, we need not consider the weight to give the regulatory agency's construction of the statute. (See generally *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 6–8, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

70 See footnote 36, *ante*.

71 According to the Web site maintained by the City of Bakersfield Public Works Department, approximately 3,541 dry tons per year of Class B biosolids produced from two treatment plants are applied to 5,000 acres of farmland owned by the city. (<http:// www.bakersfieldcity.us/cityservices/pubwrks/wastewater> [as of Apr. 1, 2005].) Assuming an even distribution, each square foot of farmland would receive approximately five ounces of Class B biosolids per year.

72 The parties did not address this threshold question in their initial briefs, but followed the approach used by others in analyzing the validity of local sewage sludge regulation. For example, the parties in a case involving a ban on biosolids application by a county in Virginia appear to have assumed the dormant commerce clause applied and argued whether the sewage sludge ordinance violated a particular test. (*Welch v. Bd. of Sup'rs of Rappahannock County, Va.* (W.D.Va.1995) 888 F.Supp. 753, 758 (*Welch*); see *Synagro–WWT, Inc. v. Rush Tp., Penn.* (M.D.Pa.2002) 204 F.Supp.2d 827, 842–843 [allegations sufficient to state a claim under two-tiered analysis applied to violations of dormant commerce clause]; Goldfarb, *Sewage Sludge, supra,* 26 B.C. Envtl. Aff. L.Rev. at pp. 718–727 [discussion of dormant commerce clause does not address whether enactment of Clean Water Act restricts or eliminates application of dormant commerce clause to local sewage sludge regulations]; Harrison & Eaton, *The Role of Municipalities in Regulating the Land Application of Sewage Sludges and Septage* (2001) 41 Nat. Resources J. 77, 112–115 [overview of commerce clause does not address threshold question].) Accordingly, this court requested supplement briefing on this threshold question. (See Gov.Code, § 68081.)

73 Plaintiffs argue the statutory phrase "local determination" refers only to the decisions made by a wastewater treatment agency and excludes ordinances adopted by land use agencies such as County. We reject this statutory construction because, among other things, it cannot be reconciled with the EPA's regulation concerning local imposition of requirements for the use or disposal of sewage sludge. (See 40 C.F.R. § 503.5(b) (2005).)

74 If Ordinance G–6638 were shown to discriminate against out-of-county interests, that discrimination, by definition, would include discrimination against out-of-state interests. (See *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources, supra,* 504 U.S. 353, 112 S.Ct. 2019, 119 L.Ed.2d 139.) Thus, even though the record does not show any sewage sludge originating outside California was ever shipped to Kern County, we will treat plaintiffs' arguments as implicating interstate commerce.

75 This lack of discrimination also means the heightened treatment standards do not violate the equal protection clause.

76 This statutory provision became operative because voters approved Senate Constitutional Amendment No. 1 of the 1989–1990 Regular Session (Prop.111) at the June 5, 1990, primary election. (See *San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 583, fn. 13, 7 Cal.Rptr.2d 245, 828 P.2d 147.)

77 The provisions of Ordinance G–6638 relevant to the biosolids impact fee are contained in Kern Code provisions 8.05.020(F) and 8.05.030(H), which expired on December 31, 2002. (See FACTS AND PROCEEDINGS, *ante*.)

78 "Highway" and "street" are both defined as "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel." (Veh.Code, §§ 360, 590.)

79 Vehicle Code section 9400.1 became effective on September 29, 2000, and sets forth a range of fees based on gross vehicle weight for commercial motor vehicles with declared gross vehicle weight of 10,001 pounds or more. (Stats.2000, ch. 861, § 50.)

80 The commercial weight fees collected under this statutory scheme are deposited with the State Treasurer, who, on order of the Controller, shall deposit the money in the State Highway Account in the State Transportation Fund. (Veh.Code, § 42205, subd. (a).) Funds from the commercial weight fee not used to cover the administration costs related to the fee may be appropriated by the Legislature to various uses including the maintenance and construction of public streets and highways. (Veh.Code, § 42205, subd. (b); see Cal. Const., art. XIX, §§ 1, 2.)

81 An inventory of those roads established their total length at 153.5 miles.

82 The roads were classified into three categories. According to the biosolids staff report dated October 5, 1999, issued by the County Resource Management Agency, category 3 roads were designed for heavy truck traffic and, as a result, "[t]he increased truck traffic due to the biosolids transport [would] not have any noticeable effect on the structural integrity of these roads."

83 A stronger argument for invalidating the entire fee might exist if the formula by which the fee is applied to the public were itself contrary to a statute.

84 Government Code section 66020 is not applicable to the biosolids impact fee, but it provides a useful analogy for determining the appropriate relief in this case.

85 Deciding these broad questions may involve the consideration of a wide variety of specific factual and legal issues. For example, if the terms of section 3 of Ordinance G–6638, Kern Code provision 8.05.040(M) are construed to allow the biosolids impact fee to be used to pay costs and expenses incurred in "enforcement activities," then funds from the biosolids impact fee might appropriately be allocated to cover various amounts expended in connection with *Kern County Environmental Health Services v. Arciero Ranches* (Aug. 9, 2001, F035181) (nonpub.opn.). These issues and others are best addressed in the first instance by the superior court.

86 The first, second, fourth, seventh, tenth, eleventh, twelfth, thirteenth and fourteenth causes of action of County's cross-action each address one of the nine contracts.

87 RBM also submitted a supplemental letter brief and requested that we consider it. That request is granted.

88 For example, in conducting its environmental review, County might consider alternatives to the current heightened treatment standards that would allow the application of Class B biosolids to land only used to grow fiber crops, such as cotton, or land not used for food crops and grazing. If an alternative is adopted that allows some lands to receive Class B biosolids, then deliveries might resume under the OCSD–Yakima Agreement.

89 The Discussion is available at < http://ceres.ca.gov/topic/env_ law/ceqa/guidelines/art11.html> (as of Mar. 30, 2005).

90 We do not address what impact, if any, the provisions of section 15004 of the Guidelines might have on the steps taken to comply with CEQA after the examination and determinations required by subdivision (c) of section 15168 of the Guidelines have been made.

91 We will not go so far as to rule what determinations should have been made, but remand to allow CLABS and OCSD to

make those determinations in the first instance.

92 The first cause of action concerns Contract C–94375 and the fourth cause of action concerns the "Contract to Purchase Real Property" that the City of Los Angeles entered with Valley Communities, Inc., and Buena Vista Lake Properties regarding 4,688 acres of land located in Kern County at a purchase price of approximately $9.6 million. The contract to purchase real property was not discussed in part VII.A., *ante,* because it was performed and did not expire. Accordingly, the CEQA cause of action relating to that contract is not moot.

93 These causes of action are the tenth (OCSD–Magan Biosolids Agreement), eleventh (option agreement to purchase real estate from Magan), twelfth (option agreement to purchase real estate from Shaen Magan, Inc.), thirteenth (OCSD–Yakima Agreement) and fourteenth (option agreement to purchase real estate from Yakima) contained in County's cross-action.

43 Cal.3d 46, 729 P.2d 202, 233 Cal.Rptr. 38

COUNTY OF LOS ANGELES et al., Plaintiffs and Appellants,
v.
THE STATE OF CALIFORNIA et al., Defendants and Respondents.
CITY OF SONOMA et al., Plaintiffs and Appellants,
v.
THE STATE OF CALIFORNIA et al., Defendants and Respondents

L.A. No. 32106.
Supreme Court of California
Jan 2, 1987.

SUMMARY

The trial court denied a petition for writ of mandate to compel the State Board of Control to approve reimbursement claims of local government entities, for costs incurred in providing an increased level of service mandated by the state for workers' compensation benefits. The trial court found that Cal. Const., art. XIII B, § 6, requiring reimbursement when the state mandates a new program or a higher level of service, is subject to an implied exception for the rate of inflation. In another action, the trial court, on similar claims, granted partial relief and ordered the board to set aside its ruling denying the claims. The trial court, in this second action, found that reimbursement was not required if the increases in benefits were only cost of living increases not imposing a higher or increased level of service on an existing program. Thus, the second matter was remanded due to insubstantial evidence and legally inadequate findings. (Superior Court of Los Angeles County, Nos. C 424301 and C 464829, Leon Savitch and John L. Cole, Judges.) The Court of Appeal, Second Dist., Div. Five, Nos. B001713 and B003561 affirmed the first action; the second action was reversed and remanded to the State Board of Control for further and adequate findings.

The Supreme Court reversed the judgment of the Court of Appeal, holding that the petitions lacked merit and should have been denied by the trial court without the necessity of further proceedings before the board. The court held that when the voters adopted art. XIII B, § 6, their intent was not to require the state to provide subvention whenever a newly enacted statute results incidentally in some cost to local agencies, but only to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. Thus, the court held, reimbursement was not required by art. XIII B, § 6. Finally, the court held that no pro tanto repeal of Cal. Const., art. XIV, § 4 (workers' compensation), was intended or made necessary by the adoption of art. XIII B, § 6. (Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.)

HEADNOTES

Classified to California Digest of Official Reports

([1])
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Costs to Be Reimbursed.
When the voters adopted Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.

([2])
Statutes § 18--Repeal--Effect--"Increased Level of Service."
The statutory definition of the phrase "increased level of service," within the meaning of Rev. & Tax. Code, § 2207, subd. (a) (programs resulting in increased costs which local agency is required to incur), did not continue after it was specifically repealed, even though the Legislature, in enacting the statute, explained that the definition was declaratory of existing law. It is ordinarily presumed that the Legislature, by deleting an express provision of a statute, intended a substantial change in the law.

[See **Am.Jur.2d,** Statutes, § 384.]

([3])
Constitutional Law § 13--Construction of Constitutions--Language of Enactment.
In construing the meaning of an initiative constitutional provision, a reviewing court's inquiry is focused on what the voters meant when they adopted the provision. To determine this intent, courts must look to the language of the provision itself.

([4])
Constitutional Law § 13--Construction of Constitutions--Language of Enactment--"Program."
The word "program," as used in Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), refers to programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

([5])
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Increases in Workers' Compensation Benefits.
The provisions of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), have no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state- mandated programs or higher levels of service within the meaning of art. XIII B, § 6. Accordingly, the State Board of Control properly denied reimbursement to local governmental entities for costs incurred in providing state-mandated increases in workers' compensation benefits. (Disapproving *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], to the extent it reached a different conclusion with respect to expenses incurred by local entities as the result of a newly enacted law requiring that all public employees be covered by unemployment insurance.)

[See **Cal.Jur.3d,** State of California, § 78.]

([6])
Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts.
Controlling principles of construction require that in the absence of irreconcilable conflict among their various parts, constitutional provisions must be harmonized and construed to give effect to all parts.

([7])
Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts--Pro Tanto Repeal of Constitutional Provision.
The goals of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), were to protect residents from excessive taxation and government spending, and to preclude a shift of financial responsibility for governmental functions from the state to local agencies. Since these goals can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, the adoption of art. XIII B, § 6, did not effect a pro tanto repeal of Cal. Const., art. XIV, § 4, which gives the Legislature plenary power over workers' compensation.

COUNSEL
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GRODIN, J.

We are asked in this proceeding to determine whether legislation enacted in 1980 and 1982 increasing certain workers' compensation benefit payments is subject to the

command of article XIII B of the California Constitution that local government costs mandated by the state must be funded by the state. The County of Los Angeles and the City of Sonoma sought review by this court of a decision of the Court of Appeal which held that state-mandated increases in workers' compensation benefits that do not exceed the rise in the cost of living are not costs which must be borne by the state under article XIII B, an initiative constitutional provision, and legislative implementing statutes.

Although we agree that the State Board of Control properly denied plaintiffs' claims, our conclusion rests on grounds other than those relied upon by the Court of Appeal, and requires that its judgment be reversed. ([1]) We conclude that when the voters adopted article XIII B, section 6, their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or ***50** increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. In using the word "programs" they had in mind the commonly understood meaning of the term, programs which carry out the governmental function of providing services to the public. Reimbursement for the cost or increased cost of providing workers' compensation benefits to employees of local agencies is not, therefore, required by section 6.

We recognize also the potential conflict between article XIII B and the grant of plenary power over workers' compensation bestowed upon the Legislature by section 4 of article XIV, but in accord with established rules of construction our construction of article XIII B, section 6, harmonizes these constitutional provisions.

I

On November 6, 1979, the voters approved an initiative measure which added article XIII B to the California Constitution. That article imposed spending limits on the state and local governments and provided in section 6 (hereafter section 6): "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." No definition of the phrase "higher level of service" was included in article XIII B, and the ballot materials did not explain its meaning.[1]

The genesis of this action was the enactment in 1980 and 1982, after article XIII B had been adopted, of laws increasing the amounts which ***51** employers, including local governments, must pay in workers' compensation benefits to injured employees and families of deceased employees.

The first of these statutes, Assembly, Bill No. 2750 (Stats. 1980, ch. 1042, p. 3328), amended several sections of the Labor Code related to workers' compensation. The amendments of Labor Code sections 4453, 4453.1 and 4460 increased the maximum weekly wage upon which temporary and permanent disability indemnity is computed from $231 per week to $262.50 per week. The amendment of section 4702 of the Labor Code increased certain death benefits from $55,000 to $75,000. No appropriation for increased state-mandated costs was made in this legislation.[2]

Test claims seeking reimbursement for the increased expenditure mandated by these changes were filed with the State Board of Control in 1981 by the County of San Bernardino and the City of Los Angeles. The board rejected the claims, after hearing, stating that the increased maximum workers' compensation benefit levels did not change the terms or conditions under which benefits were to be awarded, and therefore did not, by increasing the dollar amount of the benefits, create an increased level of service. The first of these consolidated actions was then filed by the County of Los Angeles, the County of San Bernardino, and the City of San Diego, seeking a writ of mandate to compel the board to approve the reimbursement claims for costs incurred in providing an increased level of service mandated by the state pursuant to Revenue and Taxation Code section 2207.[3] They also sought a declaration that because the State of California and the board were obliged by article XIII B to reimburse them, they were not obligated to pay the increased benefits until the state provided reimbursement.

The superior court denied relief in that action. The court recognized that although increased benefits reflecting cost of living raises were not expressly ***52** excepted from the requirement of state reimbursement in section 6 the intent of article XIII B to limit governmental expenditures to the prior year's level allowed local governments to make

adjustment for changes in the cost of living, by increasing their own appropriations. Because the Assembly Bill No. 2750 changes did not exceed cost of living changes, they did not, in the view of the trial court, create an "increased level of service " in the existing workers' compensation program.

The second piece of legislation (Assem. Bill No. 684), enacted in 1982 (Stats. 1982, ch. 922. p. 3363), again changed the benefit levels for workers' compensation by increasing the maximum weekly wage upon which benefits were to be computed, and made other changes among which were: The bill increased minimum weekly earnings for temporary and permanent total disability from $73.50 to $168, and the maximum from $262.50 to $336. For permanent partial disability the weekly wage was raised from a minimum of $45 to $105, and from a maximum of $105 to $210, in each case for injuries occurring on or after January 1, 1984. (Lab. Code, § 4453.) A $10,000 limit on additional compensation for injuries resulting from serious and willful employer misconduct was removed (Lab. Code, § 4553), and the maximum death benefit was raised from $75,000 to $85,000 for deaths in 1983, and to $95,000 for deaths on or after January 1, 1984. (Lab. Code, § 4702.)

Again the statute included no appropriation and this time the statute expressly acknowledged that the omission was made "[n]otwithstanding section 6 of Article XIIIB of the California Constitution and section 2231 ... of the Revenue and Taxation Code." (Stats. 1982, ch. 922, § 17, p. 3372.)[4]

Once again test claims were presented to the State Board of Control, this time by the City of Sonoma, the County of Los Angeles, and the City of San Diego. Again the claims were denied on grounds that the statute made no change in the terms and conditions under which workers' compensation benefits were to be awarded, and the increased costs incurred as a result of higher benefit levels did not create an increased level of service as defined in Revenue and Taxation Code section 2207, subdivision (a).

The three claimants then filed the second action asking that the board be compelled by writ of mandate to approve the claims and the state to pay them, and that chapter 922 be declared unconstitutional because it was not adopted in conformity with requirements of the Revenue and Taxation Code or ***53** section 6. The trial court granted partial relief and ordered the board to set aside its ruling. The court held that the board's decision was not supported by substantial evidence and legally adequate findings on the presence of a state-mandated cost. The basis for this ruling was the failure of the board to make adequate findings on the possible impact of changes in the burden of proof in some workers' compensation proceedings (Lab. Code, § 3202.5); a limitation on an injured worker's right to sue his employer under the "dual capacity" exception to the exclusive remedy doctrine (Lab. Code, §§ 3601-3602); and changes in death and disability benefits and in liability in serious and wilful misconduct cases. (Lab. Code, § 4551.)

The court also held: "[T]he changes made by chapter 922, Statutes of 1982 may be excluded from state-mandated costs if that change effects a cost of living increase which does not impose a higher or increased level of service on an existing program." The City of Sonoma, the County of Los Angeles, and the City of San Diego appeal from this latter portion of the judgment only.

II

The Court of Appeal consolidated the appeals. The court identified the dispositive issue as whether legislatively mandated increases in workers' compensation benefits constitute a "higher level of service" within the meaning of section 6, or are an "increased level of service"[5] described in subdivision (a) of Revenue and Taxation Code section 2207. The parties did not question the proposition that higher benefit payments might constitute a higher level of "service." The dispute centered on whether higher benefit payments which do not exceed increases in the cost of living constitute a higher level of service. Appellants maintained that the reimbursement requirement of section 6 is absolute and permits no implied or judicially created exception for increased costs that do not exceed the inflation rate. The Court of Appeal addressed the problem as one of defining "increased level of service."

The court rejected appellants' argument that a definition of "increased level of service" that once had been included in section 2231, subdivision (e) of the Revenue and Taxation Code should be applied. That definition brought any law that imposed "additional costs" within the scope of "increased level of service." The court concluded that the repeal of section 2231 in 1975 (Stats. 1975, ch. 486, § 7, pp. 999-1000) and the failure of the Legislature by statute or the electorate in article XIII B to readopt the ***54** definition must be treated as reflecting an intent to change the law. (*Eu v. Chacon* (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289].)[6] On that basis the court concluded that increased costs were no longer tantamount to an increased level of service.

The court nonetheless assumed that an increase in costs mandated by the Legislature did constitute an increased level of service if the increase exceeds that in the cost of living. The judgment in the second, or "Sonoma " case was affirmed. The judgment in the first, or "Los Angeles" case, however, was reversed and the matter "remanded" to the board for more adequate findings, with directions.[7]

III

The Court of Appeal did not articulate the basis for its conclusion that costs in excess of the increased cost of living do constitute a reimbursable increased level of service within the meaning of section 6. Our task in ascertaining the meaning of the phrase is aided somewhat by one explanatory reference to this part of section 6 in the ballot materials.

A statutory requirement of state reimbursement was in effect when section 6 was adopted. That provision used the same "increased level of service " phraseology but it also failed to include a definition of "increased level of service," providing only: "Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law ... which mandates a new program or an increased level of service of an existing program." (Rev. & Tax. Code § 2207.) As noted, however, the definition of that term which had been ***55** included in Revenue and Taxation Code section 2164.3 as part of the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 14.7, p. 2961), had been repealed in 1975 when Revenue and Taxation Code section 2231, which had replaced section 2164.3 in 1973, was repealed and a new section 2231 enacted. (Stats. 1975. ch. 486, §§ 6 & 7, p. 999.)[8] Prior to repeal, Revenue and Taxation Code section 2164.3, and later section 2231, after providing in subdivision (a) for state reimbursement, explained in subdivision (e) that " "Increased level of service' means any requirement mandated by state law or executive regulation ... which makes necessary expanded or additional costs to a county, city and county, city, or special district." (Stats. 1972, ch. 1406, § 14.7, p. 2963.)

([2]) Appellants contend that despite its repeal, the definition is still valid, relying on the fact that the Legislature, in enacting section 2207, explained that the provision was "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6, p. 1006.) We concur with the Court of Appeal in rejecting this argument. "[I]t is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law." (*Lake Forest Community Assn. v. County of Orange* (1978) 86 Cal.App.3d 394, 402 [150 Cal.Rptr. 286]; see also *Eu* v. *Chacon, supra,* 16 Cal.3d 465, 470.) Here, the revision was not minor: a whole subdivision was deleted. As the Court of Appeal noted, "A change must have been intended; otherwise deletion of the preexisting definition makes no sense."

Acceptance of appellants' argument leads to an unreasonable interpretation of section 2207. If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post-1975 statutory scheme. Since that definition has been repealed, an act of which the drafters of section 6 and the electorate are presumed to have been ***56** aware, we may not conclude that an intent existed to incorporate the repealed definition into section 6.

([3]) In construing the meaning of the constitutional provision, our inquiry is not focussed on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979. To determine this intent, we must look to the language of the provision itself. (*ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, 866 [210 Cal.Rptr. 226, 693 P.2d 811].) In section 6, the electorate commands that the state reimburse local agencies for the cost of any "new program or higher level of service." Because workers' compensation is not a new program, the parties have focussed on whether providing higher benefit payments constitutes provision of a higher level of service. As we have observed, however, the former statutory definition of that term has been incorporated into neither section 6 nor the current statutory reimbursement scheme.

([4]) Looking at the language of section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs." But the term "program" itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the

term - programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: "Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them." (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase "to force programs on local governments" confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not ***57** for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to "force" programs on localities.

The language of section 6 is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs. We believe that if the electorate had intended such a far-reaching construction of section 6, the language would have explicitly indicated that the word "program" was being used in such a unique fashion. (Cf. *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449]; *Big Sur Properties v. Mott* (1976) 63 Cal.App.3d 99, 105 [132 Cal.Rptr. 835].) Nothing in the history of article XIII B that we have discovered, or that has been called to our attention by the parties, suggests that the electorate had in mind either this construction or the additional indirect, but substantial impact it would have on the legislative process.

Were section 6 construed to require state subvention for the incidental cost to local governments of general laws, the result would be far-reaching indeed. Although such laws may be passed by simple majority vote of each house of the Legislature (art. IV, § 8, subd. (b)), the revenue measures necessary to make them effective may not. A bill which will impose costs subject to subvention of local agencies must be accompanied by a revenue measure providing the subvention required by article XIII B. (Rev. & Tax. Code, §§ 2255, subd. (c).) Revenue bills must be passed by two-thirds vote of each house of the Legislature. (Art. IV, § 12, subd. (d).) Thus, were we to construe section 6 as applicable to general legislation whenever it might have an incidental effect on local agency costs, such legislation could become effective only if passed by a supermajority vote.[9] Certainly no such intent is reflected in the language or history of article XIII B or section 6.

([5]) We conclude therefore that section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation ***58** benefits that employees of private individuals or organizations receive.[10] Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. (See Lab. Code, § 3201 et seq.) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.

IV

([6]) Our construction of section 6 is further supported by the fact that it comports with controlling principles of construction which "require that in the absence of irreconcilable conflict among their various parts, [constitutional provisions] must be harmonized and construed to give effect to all parts. (*Clean Air Constituency* v. *California State Air Resources Bd.* (1974) 1 Cal.3d 801, 813-814 [114 Cal.Rptr. 577, 523 P.2d 617]; *Serrano v. Priest* (1971) 5 Cal.3d 584, 596 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645 [335 P.2d 672].)" (*Legislature* v. *Deukmejian* (1983) 34 Cal.3d 658, 676 [194 Cal.Rptr. 781, 669 P.2d 17].)

Our concern over potential conflict arises because article

XIV, section 4,[11] gives the Legislature "plenary power, unlimited by any provision of ***59** this Constitution" over workers' compensation. Although seemingly unrelated to workers' compensation, section 6, as we have shown, would have an indirect, but substantial impact on the ability of the Legislature to make future changes in the existing workers' compensation scheme. Any changes in the system which would increase benefit levels, provide new services, or extend current service might also increase local agencies' costs. Therefore, even though workers' compensation is a program which is intended to provide benefits to all injured or deceased employees and their families, because the change might have some incidental impact on local government costs, the change could be made only if it commanded a supermajority vote of two-thirds of the members of each house of the Legislature. The potential conflict between section 6 and the plenary power over workers' compensation granted to the Legislature by article XIV, section 4 is apparent.

The County of Los Angeles, while recognizing the impact of section 6 on the Legislature's power over workers' compensation, argues that the "plenary power" granted by article XIV, section 4, is power over the substance of workers' compensation legislation, and that this power would be unaffected by article XIII B if the latter is construed to compel reimbursement. The subvention requirement, it is argued, is analogous to other procedural ***60** limitations on the Legislature, such as the "single subject rule" (art. IV, § 9), as to which article XIV, section 4, has no application. We do not agree. A constitutional requirement that legislation either exclude employees of local governmental agencies or be adopted by a supermajority vote would do more than simply establish a format or procedure by which legislation is to be enacted. It would place workers' compensation legislation in a special classification of substantive legislation and thereby curtail the power of a majority to enact substantive changes by any procedural means. If section 6 were applicable, therefore, article XIII B would restrict the power of the Legislature over workers' compensation.

The City of Sonoma concedes that so construed article XIII B *would* restrict the plenary power of the Legislature, and reasons that the provision therefore either effected a pro tanto repeal of article XIV, section 4, or must be accepted as a limitation on the power of the Legislature. We need not accept that conclusion, however, because our construction of section 6 permits the constitutional provisions to be reconciled.

Construing a recently enacted constitutional provision such as section 6 to avoid conflict with, and thus pro tanto repeal of, an earlier provision is also consistent with and reflects the principle applied by this court in *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329 [178 Cal.Rptr. 801, 636 P.2d 1139]. There, by coincidence, article XIV, section 4, was the later provision. A statute, enacted pursuant to the plenary power of the Legislature over workers' compensation, gave the Workers' Compensation Appeals Board authority to discipline attorneys who appeared before it. If construed to include a transfer of the authority to discipline attorneys from the Supreme Court to the Legislature, or to delegate that power to the board, article XIV, section 4, would have conflicted with the constitutional power of this court over attorney discipline and might have violated the separation of powers doctrine. (Art. III, § 3.) The court was thus called upon to determine whether the adoption of article XIV, section 4, granting the Legislature plenary power over workers' compensation effected a pro tanto repeal of the preexisting, exclusive jurisdiction of the Supreme Court over attorneys.

We concluded that there had been no pro tanto repeal because article XIV, section 4, did not give the Legislature the authority to enact the statute. Article XIV, section 4, did not expressly give the Legislature power over attorney discipline, and that power was not integral to or necessary to the establishment of a complete system of workers' compensation. In those circumstances the presumption against implied repeal controlled. "It is well established that the adoption of article XIV, section 4 'effected a repeal *pro tanto*' of any state constitutional provisions which conflicted with that ***61** amendment. (*Subsequent Etc. Fund. v. Ind. Acc. Com.* (1952) 39 Cal.2d 83, 88 [244 P.2d 889]; *Western Indemnity Co.* v. *Pillsbury* (1915) 170 Cal. 686, 695, [151 P. 398].) A *pro tanto* repeal of conflicting state constitutional provisions removes 'insofar as necessary' any restrictions which would prohibit the realization of the objectives of the new article. (*Methodist Hosp. of Sacramento* v. *Saylor* (1971) 5 Cal.3d 685, 691-692 [97 Cal.Rptr. 1, 488 P.2d 161]; cf. *City and County of San Francisco v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 103, 115-117 [148 Cal.Rptr. 626, 583 P.2d 151].) Thus the question becomes whether the board must have the power to discipline attorneys if the objectives of article XIV, section 4 are to be effectuated. In other words, does the achievement of those objectives compel the modification of a power - the disciplining of attorneys - that otherwise rests exclusively with this court?" (*Hustedt v. Workers' Comp. Appeals Bd., supra*, 30 Cal.3d 329, 343.) We concluded that the ability to discipline attorneys appearing before it was not necessary to the expeditious resolution of workers' claims or the efficient administration of the agency. Thus, the absence of disciplinary power over attorneys would not

preclude the board from achieving the objectives of article XIV, section 4, and no pro tanto repeal need be found.

([7]) A similar analysis leads to the conclusion here that no pro tanto repeal of article XIV, section 4, was intended or made necessary here by the adoption of section 6. The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending. (*Huntington Park Redevelopment Agency* v. *Martin* (1985) 38 Cal.3d 100, 109-110 [211 Cal.Rptr. 133, 695 P.2d 220].) Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage - costs which all employers must bear - neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.

Therefore, since the objectives of article XIII B and section 6 can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, section 6 did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation, a power that does not contemplate that the Legislature rather than the employer must fund the cost or increases in ***62** benefits paid to employees of local agencies, or that a statute affecting those benefits must garner a supermajority vote.

Because we conclude that section 6 has no application to legislation that is applicable to employees generally, whether public or private, and affects local agencies only incidentally as employers, we need not reach the question that was the focus of the decision of the Court of Appeal - whether the state must reimburse localities for state-mandated cost increases which merely reflect adjustments for cost-of-living in existing programs.

V

It follows from our conclusions above, that in each of these cases the plaintiffs' reimbursement claims were properly denied by the State Board of Control. Their petitions for writs of mandate seeking to compel the board to approve the claims lacked merit and should have been denied by the superior court without the necessity of further proceedings before the board.

In B001713, the Los Angeles case, the Court of Appeal reversed the judgment of the superior court denying the petition. In the B003561, the Sonoma case, the superior court granted partial relief, ordering further proceedings before the board, and the Court of Appeal affirmed that judgment.

The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Bird, C. J., Broussard, J., Reynoso, J., Lucas, J., and Panelli, J., concurred.

MOSK, J.

I concur in the result reached by the majority, but I prefer the rationale of the Court of Appeal, i.e., that neither article XIII B, section 6, of the Constitution nor Revenue and Taxation Code sections 2207 and 2231 require state subvention for increased workers' compensation benefits provided by chapter 1042, Statutes of 1980, and chapter 922, Statutes of 1982, but only if the increases do not exceed applicable cost-of-living adjustments because such payments do not result in an increased level of service.

Under the majority theory, the state can order unlimited financial burdens on local units of government without providing the funds to meet those burdens. This may have serious implications in the future, and does violence to the requirement of section 2231, subdivision (a), that the state reimburse local government for "all costs mandated by the state."

In this instance it is clear from legislative history that the Legislature did not intend to mandate additional burdens, but merely to provide a cost-of-living ***63** adjustment. I agree with the Court of Appeal that this was permissible.

Appellants' petition for a rehearing was denied February 26, 1987. ***64**

Footnotes

1 The analysis by the Legislative Analyst advised that the state would be required to "reimburse local governments for the cost of complying with 'state mandates.' 'State mandates' are requirements imposed on local governments by legislation or executive orders." Elsewhere the analysis repeats: "[T]he initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates. ...
The one ballot argument which made reference to section 6, referred only to the "new program" provision, stating, "Additionally, this measure [¶] (1) will not allow the state government to force programs on local governments without the state paying for them."

2 The bill was approved by the Governor and filed with the Secretary of State on September 22, 1980. Prior to this, the Assembly gave unanimous consent to a request by the bill's author that his letter to the Speaker stating the intent of the Legislation be printed in the Assembly Journal. The letter stated: (1) that the Assembly Ways and Means Committee had recommended approval without appropriation on grounds that the increases were a result of changes in the cost of living that were not reimbursable under either Revenue and Taxation Code section 2231, or article XIII B; (2) the Senate Finance Committee had rejected a motion to add an appropriation and had approved a motion to concur in amendments of the Conference Committee deleting any appropriation.
Legislative history confirms only that the final version of Assembly Bill No. 2750, as amended in the Assembly on April 16, 1986, contained no appropriation. As introduced on March 4, 1980, with a higher minimum salary of $510 on which to base benefits, an unspecified appropriation was included.

3 The superior court consolidated another action by the County of Butte, Novato Fire Protection District, and the Galt Unified School District with that action. Neither those plaintiffs nor the County of San Bernardino are parties to the appeal.

4 The same section "recognized," however, that a local agency "may pursue any remedies to obtain reimbursement available to it" under the statutes governing reimbursement for state-mandated costs in chapter 3 of the Revenue and Taxation Code, commencing with section 2201.

5 The court concluded that there was no legal or semantic difference in the meaning of the terms and considered the intent or purpose of the two provisions to be identical.

6 The Court of Appeal also considered the expression of legislative intent reflected in the letter by the author of Assembly Bill No. 2750 (see fn. 2, *ante*). While consideration of that expression of intent may have been proper in construing Assembly Bill No. 2750, we question its relevance to the proper construction of either section 6, adopted by the electorate in the prior year, or of Revenue and Taxation Code section 2207, subdivision (a) enacted in 1975. (Cf. *California Employment Stabilization Co.* v. *Payne* (1947) 31 Cal.2d 210, 213-214 [187 P.2d 702].) There is no assurance that the Assembly understood that its approval of printing a statement of intent as to the later bill was also to be read as a statement of intent regarding the earlier statute, and it was not relevant to the intent of the electorate in adopting section 6.
The Court of Appeal also recognized that the history of Assembly Bill No. 2750 and Statutes 1982, chapter 922, which demonstrated the clear intent of the Legislature to omit any appropriation for reimbursement of local government expenditures to pay the higher benefits precluded reliance on reimbursement provisions included in benefit-increase bills passed in earlier years. (See e.g., Stats. 1973, chs. 1021 and 1023.)

7 We infer that the intent of the Court of Appeal was to reverse the order denying the petition for writ of mandate and to order the superior court to grant the petition and remand the matter to the board with directions to set aside its order and reconsider the claim after making the additional findings. (See Code Civ. Proc. § 1094.5, subd. (f).)

8 Pursuant to the 1972 and successor 1973 property tax relief statutes the Legislature had included appropriations in measures which, in the opinion of the Legislature, mandated new programs or increased levels of service in existing programs (see, e.g., Stats. 1973, ch. 1021, § 4, p. 2026; ch. 1022, § 2, p. 2027; Stats. 1976, ch. 1017, § 9, p. 4597) and reimbursement claims filed with the State Board of Control pursuant to Revenue and Taxation Code sections 2218-2218.54 had been honored. When the Legislature fails to include such appropriations there is no judicially enforceable remedy for the statutory violation notwithstanding the command of Revenue and Taxation Code section 2231, subdivision (a) that "[t]he state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207" and the additional command of subdivision (b) that any statute imposing such costs "provide an appropriation therefor." (*County of Orange v. Flournoy* (1974) 42 Cal.App.3d 908, 913 [117 Cal.Rptr. 224].)

9 Whether a constitutional provision which requires a supermajority vote to enact substantive legislation, as opposed to funding the program, may be validly enacted as a Constitutional amendment rather than through revision of the

Constitution is an open question. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 228 [149 Cal.Rptr. 239, 583 P.2d 1281].)

10 The Court of Appeal reached a different conclusion in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as to whether the expense was a "state mandated cost," rather than as whether the provision of an employee benefit was a "program or service" within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved.

11 Section 4: "The Legislature is hereby *expressly vested with plenary power, unlimited by any provision of this Constitution*, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.
"The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.
"The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.
"Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed." (Italics added.)

15 Cal.4th 68, 931 P.2d 312, 61 Cal.Rptr.2d 134, Med & Med GD (CCH) P 45,112, 97 Cal. Daily Op. Serv. 1555, 97 Daily Journal D.A.R. 2296

COUNTY OF SAN DIEGO, Cross-complainant and Respondent,
v.
THE STATE OF CALIFORNIA et al., Cross-defendants and Appellants.

No. S046843.
Supreme Court of California
Mar 3, 1997.

SUMMARY

After a county's unsuccessful administrative attempts to obtain reimbursement from the state for expenses incurred through its County Medical Services (CMS) program, and after a class action was filed on behalf of CMS program beneficiaries seeking to enjoin termination of the program, the county filed a cross-complaint and petition for a writ of mandate (Code Civ. Proc., § 1085) against the state, the Commission on State Mandates, and various state officers, to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service). The county alleged that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The trial court found that the state had an obligation to fund the county's CMS program. (Superior Court of San Diego County, No. 634931, Michael I. Greer,* Harrison R. Hollywood, and Judith D. McConnell, Judges.) The Court of Appeal, Fourth Dist., Div. One, No. D018634, affirmed the judgment of the trial court insofar as it provided that Cal. Const., art. XIII B, § 6, required the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required the county to spend at least $41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. The Court of Appeal remanded to the commission to determine the reimbursement amount and appropriate statutory remedies.

The Supreme Court affirmed the judgment of the Court of Appeal insofar as it held that the exclusion of medically indigent adults from Medi-Cal imposed a mandate on the county within the meaning of Cal. Const., art. XIII B, § 6. The Supreme Court reversed the judgment insofar as it held that the state required the county to spend at least $41 million on the CMS program in fiscal years 1989-1990 and 1990-1991, and remanded the matter to the commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c), Welf. & Inst. Code, §§ 10000, 17000) forced the county to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which the county was entitled. The court held that the trial court had jurisdiction to adjudicate the county's mandate claim, notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The court also held that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was Welf. & Inst. Code, § 17000, enacted in 1965, rather than the 1982 legislation, and since Cal. Const., art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, Welf. & Inst. Code, § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. The court further held that there was a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide the medical care. While Welf. & Inst. Code, § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000, or be struck down as void by the courts. The court also held that the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the commission to determine the amount of any reimbursement due, erred in finding the county had a minimum required expenditure on its CMS program. (Opinion by Chin, J., with George, C. J., Mosk, and Baxter, JJ., Anderson, J.,* and Aldrich, J.,† concurring. Dissenting opinion by Kennard, J.)

HEADNOTES

Classified to California Digest of Official Reports

([1])
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program.
Cal. Const., art. XIII A, and art. XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Their goals are to protect residents from excessive taxation and government spending. The purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ill equipped to assume increased financial responsibilities because of the taxing and spending limitations that Cal. Const., arts. XIII A and XIII B, impose. With certain exceptions, Cal. Const., art. XIII B, § 6, essentially requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.

([2a], [2b])
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Jurisdiction--With Pending Test Claim.
The trial court had jurisdiction to adjudicate a county's mandate claim asserting the Legislature's transfer to counties of the responsibility for providing health care for medically indigent adults constituted a new program or higher level of service that required state funding under Cal. Const., art. XIII B, § 6 (reimbursement to local government for costs of new state-mandated program), notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The trial court's failure to defer to the primary jurisdiction of the other court did not prejudice the state. The trial court did not usurp the Commission on State Mandates' authority, since the commission had exercised its authority in the pending action. Since the pending action was settled, no multiple decisions resulted. Nor did lack of an administrative record prejudice the state, since determining whether a statute imposes a state mandate is an issue of law. Also, attempts to seek relief from the commission would have been futile, thus triggering the futility exception to the exhaustion requirement, given that the commission rejected the other county's claim.

([3])
Administrative Law § 99--Judicial Review and Relief--Administrative Mandamus--Jurisdiction--As Derived From Constitution.
The power of superior courts to perform mandamus review of administrative decisions derives in part from Cal. Const., art. VI, § 10. That section gives the Supreme Court, Courts of Appeal, and superior courts "original jurisdiction in proceedings for extraordinary relief in the nature of mandamus." The jurisdiction thus vested may not lightly be deemed to have been destroyed. While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication.

([4])
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was Welf. & Inst. Code, § 17000, enacted in 1965, rather than the 1982 legislation, and since Cal. Const., art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, Welf. & Inst. Code, § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. To the extent care was provided prior to the 1982 legislation, the county's obligation had been reduced. Also, the state's assumption of full funding responsibility prior to the 1982 legislation was not intended to be temporary. The 1978 legislation that assumed funding responsibility was limited to one year,

but similar legislation in 1979 contained no such limiting language. Although the state asserted the health care program was never operated by the state, the Legislature, in adopting Medi-Cal, shifted responsibility for indigent medical care from counties to the state. Medi-Cal permitted county boards of supervisors to prescribe rules (Welf. & Inst. Code, § 14000.2), and Medi-Cal was administered by state departments and agencies.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

([5a], [5b])
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards--Eligibility.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care. While Welf. & Inst. Code, § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000 (counties shall relieve and support "indigent persons"), or be struck down as void by the courts. As to eligibility standards, counties must provide care to all adult medically indigent persons (MIP's). Although Welf. & Inst. Code, § 17000, does not define "indigent persons," the 1982 legislation made clear that adult MIP's were within this category. The coverage history of Medi-Cal demonstrates the Legislature has always viewed all adult MIP's as "indigent persons" under Welf. & Inst. Code, § 17000. The Attorney General also opined that the 1971 inclusion of MIP's in Medi-Cal did not alter the duty of counties to provide care to indigents not eligible for Medi-Cal, and this opinion was entitled to considerable weight. Absent controlling authority, the opinion was persuasive since it was presumed the Legislature was cognizant of the Attorney General's construction and would have taken corrective action if it disagreed. (Disapproving *Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944 [203 Cal.Rptr. 184] insofar as it holds that a county's responsibility under Welf. & Inst. Code, § 17000, extends only to indigents as defined by the county's board of supervisors, and suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of Welf. & Inst. Code, § 17000, but do not qualify for Medi-Cal.)

([6])
Public Aid and Welfare § 4--County Assistance--Counties' Discretion.
Counties may exercise their discretion under Welf. & Inst. Code, § 17001 (county board of supervisors or authorized agency shall adopt standards of aid and care for indigent and dependent poor), only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose (Gov. Code, § 11374). Despite the counties' statutory discretion, courts have consistently invalidated county welfare regulations that fail to meet statutory requirements.

([7])
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards--Service.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care by setting its own service standards. Welf. & Inst. Code, § 17000, mandates that medical care be provided to indigents, and Welf. & Inst. Code, § 10000, requires that such care be provided promptly and humanely. There is no discretion concerning whether to provide such care. Courts construing Welf. & Inst. Code, § 17000, have held it imposes a mandatory duty upon counties to provide medically necessary care, not just emergency care, and it has been interpreted to impose a minimum standard of care. Until its repeal in 1992, Health & Saf. Code, § 1442.5, former subd. (c), also spoke to the level of services that counties had to provide under Welf. & Inst. Code, § 17000, requiring that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county. (Disapproving *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401 [261 Cal.Rptr. 706] to the extent it held that Health & Saf. Code, §

1442.5, former subd. (c), was merely a limitation on a county's ability to close facilities or reduce services provided in those facilities, and was irrelevant absent a claim that a county facility was closed or that services in the county were reduced.)

([8])
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Minimum Required Expenditure.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), in which the trial court found that the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults mandated a reimbursable new program entitling the county to reimbursement, the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the Commission on State Mandates to determine the amount of any reimbursement due, erred in finding the county had a minimum required expenditure on its County Medical Services (CMS) program. The Court of Appeal relied on Welf. & Inst. Code, former § 16990, subd. (a), which set forth the financial maintenance-of-effort requirement for counties that received California Healthcare for the Indigent Program (CHIP) funding. However, counties that chose to seek CHIP funds did so voluntarily. Thus, Welf. & Inst. Code, former § 16990, subd. (a), did not mandate a minimum funding requirement. Nor did Welf. & Inst. Code, former § 16991, subd. (a)(5), establish a minimum financial obligation. That statute required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its allocation from various sources was less than the funding it received under Welf. & Inst. Code, § 16703, for 1988-1989. Nothing about this requirement imposed on the county a minimum funding requirement.

([9])
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Proper Mandamus Proceeding:Mandamus and Prohibition § 23--Claim Against Commission on State Mandates.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), after the Commission on State Mandates indicated the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults did not mandate a reimbursable new program, a mandamus proceeding under Code Civ. Proc., § 1085, was not an improper vehicle for challenging the commission's position. Mandamus under Code Civ. Proc., § 1094.5, commonly denominated "administrative" mandamus, is mandamus still. The full panoply of rules applicable to ordinary mandamus applies to administrative mandamus proceedings, except where they are modified by statute. Where entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding under Code Civ. Proc., § 1085, as one brought under Code Civ. Proc., § 1094.5, and should overrule a demurrer asserting that the wrong mandamus statute has been invoked. In any event, the determination whether the statutes at issue established a mandate under Cal. Const., art. XIII B, § 6, was a question of law. Where a purely legal question is at issue, courts exercise independent judgment, no matter whether the issue arises by traditional or administrative mandate.

COUNSEL
Daniel E. Lungren, Attorney General, Charlton G. Holland III, Assistant Attorney General, John H. Sanders and Richard T. Waldow, Deputy Attorneys General, for Cross-defendants and Appellants.
Lloyd M. Harmon, Jr., County Counsel, John J. Sansone, Acting County Counsel, Diane Bardsley, Chief Deputy County Counsel, Valerie Tehan and Ian Fan, Deputy County Counsel, for Cross-complainant and Respondent.

CHIN, J.

Section 6 of article XIII B of the California Constitution (section 6) requires the State of California (state), subject to certain exceptions, to "provide a subvention of funds to reimburse" local governments "[w]henever the Legislature or any state agency mandates a new program or higher level of service ...." In this action, the County of San Diego (San Diego or the County) seeks reimbursement under section 6 from the state for the costs of providing health care services to certain adults who formerly received medical care under the California Medical Assistance Program (Medi-Cal) (see Welf. & Inst. Code, § 14063)[1] because they were medically indigent, i.e., they had insufficient financial resources to pay for their own medical care. In 1979, when the electorate adopted section 6, the state provided Medi-Cal coverage to these medically indigent adults without requiring financial contributions from counties. Effective January 1, 1983, the Legislature excluded this population from Medi-Cal. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp.

1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Since that date, San Diego has provided medical care to these individuals with varying levels of state financial assistance.

To resolve San Diego's claim, we must determine whether the Legislature's exclusion of medically indigent adults from Medi-Cal "mandate[d] a new program or higher level of service" on San Diego within the meaning of section 6. The Commission on State Mandates (Commission), which the Legislature created to determine claims under section 6, has ruled that section 6 does not apply to the Legislature's action and has rejected reimbursement claims like San Diego's. (See *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 330, fn. 2 [285 Cal.Rptr. 66, 814 P.2d 1308] (*Kinlaw*).) The trial court and Court of Appeal in this case disagreed with the Commission, finding that San Diego was entitled to reimbursement. The state seeks ***76** reversal of this finding. It also argues that San Diego's failure to follow statutory procedures deprived the courts of jurisdiction to hear its claim. We reject the state's jurisdictional argument and affirm the finding that the Legislature's exclusion of medically indigent adults from Medi-Cal "mandate[d] a new program or higher level of service" within the meaning of section 6. Accordingly, we remand the matter to the Commission to determine the amount of reimbursement, if any, due San Diego under the governing statutes.

I. Funding of Indigent Medical Care

Before the start of Medi-Cal, "the indigent in California were provided health care services through a variety of different programs and institutions." (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3 (Preliminary Report).) County hospitals "provided a wide range of inpatient and outpatient hospital services to all persons who met county indigency requirements whether or not they were public assistance recipients. The major responsibility for supporting county hospitals rested upon the counties, financed primarily through property taxes, with minor contributions from" other sources. (*Id.* at p. 4.)

Medi-Cal, which began operating March 1, 1966, established "a program of basic and extended health care services for recipients of public assistance and for medically indigent persons." (*Morris v. Williams* (1967) 67 Cal.2d 733, 738 [63 Cal.Rptr. 689, 433 P.2d 697] (*Morris*); *id.* at p. 740; see also Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 103.) It "represent[ed] California's implementation of the federal Medicaid program (42 U.S.C. §§ 1396-1396v), through which the federal government provide[d] financial assistance to states so that they [might] furnish medical care to qualified indigent persons. [Citation.]" (*Robert F. Kennedy Medical Center v. Belshé* (1996) 13 Cal.4th 748, 751 [55 Cal.Rptr.2d 107, 919 P.2d 721] (*Belshé*).) "[B]y meeting the requirements of federal law," Medi-Cal "qualif [ied] California for the receipt of federal funds made available under title XIX of the Social Security Act." (*Morris, supra*, 67 Cal.2d at p. 738.) "Title [XIX] permitted the combination of the major governmental health care systems which provided care for the indigent into a single system financed by the state and federal governments. By 1975, this system, at least as originally proposed, would provide a wide range of health care services for all those who [were] indigent regardless of whether they [were] public assistance recipients ...." (Preliminary Rep., *supra*, at p. 4; see also Act of July 30, 1965, Pub.L. No. 89-97, § 121(a), 79 Stat. 286, reprinted in 1965 U.S. Code ***77** Cong. & Admin. News, p. 378 [states must make effort to liberalize eligibility requirements "with a view toward furnishing by July 1, 1975, comprehensive care and services to substantially all individuals who meet the plan's eligibility standards with respect to income and resources"].)[2]

However, eligibility for Medi-Cal was initially limited only to persons linked to a federal categorical aid program by age (at least 65), blindness, disability, or membership in a family with dependent children within the meaning of the Aid to Families with Dependent Children program (AFDC). (See Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.) pp. 548, 550 (1971 Legislative Analyst's Report).) Individuals possessing one of these characteristics (categorically linked persons) received full benefits if they actually received public assistance payments. (*Id.* at p. 550.) Lesser benefits were available to categorically linked persons who were only medically indigent, i.e., their income and resources, although rendering them ineligible for cash aid, were "not sufficient to meet the cost of health care." (*Morris, supra*, 67 Cal.2d at p. 750; see also 1971 Legis. Analyst's Rep., *supra*, at pp. 548, 550; Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, pp. 105-106.)

Individuals not linked to a federal categorical aid program (non-categorically linked persons) were ineligible for Medi-Cal, regardless of their means. Thus, "a group of citizens, not covered by Medi-Cal and yet unable to afford medical care, remained the responsibility of" the counties. (*County of Santa Clara v. Hall* (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629] (*Hall*).) In establishing Medi-Cal, the Legislature expressly recognized this fact by enacting former section 14108.5, which provided:

"The Legislature hereby declares its concern with the problems which will be facing the counties with respect to the medical care of indigent persons who are not covered [by Medi-Cal] ... and ... whose medical care must be financed entirely by the counties in a time of heavily increasing medical costs." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116.) The Legislature directed the Health Review and Program Council "to study this problem and report its findings to the Legislature no later than March 1, 1967." (*Ibid.*)

Moreover, although it required counties to contribute to the costs of Medi-Cal, the Legislature established a method for determining the amount of their contributions that would "leave them with []sufficient funds to provide hospital care for those persons not eligible for Medi-Cal." (*Hall, supra*, 23 Cal.App.3d at p. 1061, fn. omitted.) Former section 14150.1, ***78** which was known as the "county option" or the "option plan," required a county "to pay the state a sum equal to 100 percent of the county's health care costs (which included both linked and nonlinked individuals) provided in the 1964-1965 fiscal year, with an adjustment for population increase; in return the state would pay the county's entire cost of medical care."[3] (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 581 [159 Cal.Rptr. 1] (*Lackner*).) Under the county option, "the state agreed to assume all county health care costs ... in excess of" the county's payment. (*Id.* at p. 586.) It "made no distinction between 'linked' and 'nonlinked' persons," and "simply guaranteed a medical cost ceiling to counties electing to come within the option plan." (*Ibid.*) "Any difference in actual operating costs and the limit set by the option provision [was] assumed entirely by the state." (Preliminary Rep., *supra*, at p. 10, fn. 2.) Thus, the county option "guarantee[d] state participation in the cost of care for medically indigent persons who [were] not otherwise covered by the basic Medi-Cal program or other repayment programs."[4] (1971 Legis. Analyst's Rep., *supra*, at p. 549.)

Primarily through the county option, Medi-Cal caused a "significant shift in financing of health care from the counties to the state and federal government.... During the first 28 months of the program the state ... paid approximately $76 million for care of non-Medi-Cal indigents in county hospitals." (Preliminary Rep., *supra*, at p. 31.) These state funds paid "costs that would otherwise have been borne by counties through increases in property taxes." (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1974-1975 Budget Bill, Sen. Bill No. 1525 (1973-1974 Reg. Sess.) p. 626 (1974 Legislative Analyst's Report).) "[F]aced with escalating Medi-Cal costs, the Legislature in 1967 imposed strict guidelines on reimbursing counties electing to come under the 'option' plan. ([Former] § 14150.2.) Pursuant to subdivision (c) of [former] section 14150.2, the state imposed a limit on its obligation to pay for medical services to nonlinked persons ***79** served by a county within the 'option' plan." (*Lackner, supra*, 97 Cal.App.3d at p. 589; see also Stats. 1967, ch. 104, § 3, p. 1019; Stats. 1969, ch. 21, § 57, pp. 106-107; 1974 Legis. Analyst's Rep., *supra*, at p. 626.)

In 1971, the Legislature substantially revised Medi-Cal. It extended coverage to certain noncategorically linked minors and adults "who [were] financially unable to pay for their medical care." (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83; see Stats. 1971, ch. 577, §§ 12, 23, pp. 1110-1111, 1115.) These medically indigent individuals met "the income and resource requirements for aid under [AFDC] but [did] not otherwise qualify[] as a public assistance recipient." (56 Ops.Cal.Atty.Gen. 568, 569 (1973).) The Legislature anticipated that this eligibility expansion would bring "approximately 800,000 additional medically needy Californians" into Medi-Cal. (Stats. 1971, ch. 577, § 56, p. 1136.) The 1971 legislation referred to these individuals as " '[n]oncategorically related needy person [s].' " (Stats. 1971, ch. 577, § 23, p. 1115.) Subsequent legislation designated them as "medically indigent person[s]" (MIP's) and provided them coverage under former section 14005.4. (Stats. 1976, ch. 126, § 7, p. 200; *id.* at § 20, p. 204.)

The 1971 legislation also established a new method for determining each county's financial contribution to Medi-Cal. The Legislature eliminated the county option by repealing former section 14150.1 and enacting former section 14150. That section specified (by amount) each county's share of Medi-Cal costs for the 1972-1973 fiscal year and set forth a formula for increasing the share in subsequent years based on the taxable assessed value of certain property. (Stats. 1971, ch. 577, §§ 41, 42, pp. 1131-1133.)

For the 1978-1979 fiscal year, the state assumed each county's share of Medi-Cal costs under former section 14150. (Stats. 1978, ch. 292, § 33, p. 610.) In July 1979, the Legislature repealed former section 14150 altogether, thereby eliminating the counties' responsibility to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 74, p. 1043.) Thus, in November 1979, when the electorate adopted section 6, "the state was funding Medi-Cal coverage for [MIP's] without requiring any county financial contribution." (*Kinlaw, supra*, 54 Cal.3d at p. 329.) The state continued to provide full funding for MIP medical care through 1982.

In 1982, the Legislature passed two Medi-Cal reform bills that, as of January 1, 1983, excluded from Medi-Cal most adults who had been eligible ***80** under the MIP category (adult MIP's or Medically Indigent Adults).[5] (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357; *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706] (*Cooke*).) As part of excluding this population from Medi-Cal, the Legislature created the Medically Indigent Services Account (MISA) as a mechanism for "transfer[ing] [state] funds to the counties for the provision of health care services." (Stats. 1982, ch. 1594, § 86, p. 6357.) Through MISA, the state annually allocated funds to counties based on "the average amount expended" during the previous three fiscal years on Medi-Cal services for county residents who had been eligible as MIP's. (Stats. 1982, ch. 1594, § 69, p. 6345.) The Legislature directed that MISA funds "be consolidated with existing county health services funds in order to provide health services to low-income persons and other persons not eligible for the Medi-Cal program." (Stats. 1982, ch. 1594, § 86, p. 6357.) It further provided: "Any person whose income and resources meet the income and resource criteria for certification for [Medi-Cal] services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.)

After passage of the 1982 legislation, San Diego established a county medical services (CMS) program to provide medical care to adult MIP's. According to San Diego, between 1983 and June 1989, the state fully funded San Diego's CMS program through MISA. However, for fiscal years 1989-1990 and 1990-1991, the state only partially funded San Diego's CMS program. For example, San Diego asserts that, in fiscal year 1990-1991, it exhausted state-provided MISA funds by December 24, 1990. Faced with this shortfall, San Diego's board of supervisors voted in February 1991 to terminate the CMS program unless the state agreed by March 8 to provide full funding for the 1990-1991 fiscal year. After the state refused to provide additional funding, San Diego notified affected individuals and medical service providers that it would terminate the CMS program at midnight on March 19, 1991. The response to the County's notification ultimately resulted in the unfunded mandate claim now before us.

II. Unfunded Mandates

Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which "imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486 [***81** 280 Cal.Rptr. 92, 808 P.2d 235] (*County of Fresno*).) The next year, the voters added article XIII B to the Constitution, which "impose[s] a complementary limit on the rate of growth in governmental spending." (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574 [7 Cal.Rptr.2d 245, 828 P.2d 147].) ([1]) These two constitutional articles "work in tandem, together restricting California governments' power both to levy and to spend for public purposes." (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522].) Their goals are "to protect residents from excessive taxation and government spending. [Citation.]" (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*).)

California Constitution, article XIII B includes section 6, which is the constitutional provision at issue here. It provides in relevant part: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." Section 6 recognizes that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments. (*County of Fresno, supra*, 53 Cal.3d at p. 487.) Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are "ill equipped" to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose. (*County of Fresno, supra*, 53 Cal.3d at p. 487; *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) With certain exceptions, section 6 "[e]ssentially" requires the state "to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [15 Cal.Rptr.2d 547].)

In 1984, the Legislature created a statutory procedure for determining whether a statute imposes state-mandated costs on a local agency within the meaning of section 6. (Gov. Code, § 17500 et seq.). The local agency must file a test claim with the Commission, which, after a public

hearing, decides whether the statute mandates a new program or increased level of service. (Gov. Code, §§ 17521, 17551, 17555.) If the Commission finds a claim to be reimbursable, it must determine the amount of reimbursement. (Gov. Code, § 17557.) The local agency must then follow certain statutory procedures to ***82** obtain reimbursement. (Gov. Code, § 17558 et seq.) If the Legislature refuses to appropriate money for a reimbursable mandate, the local agency may file "an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Gov. Code, § 17612, subd. (c).) If the Commission finds no reimbursable mandate, the local agency may challenge this finding by administrative mandate proceedings under section 1094.5 of the Code of Civil Procedure. (Gov. Code, § 17559.) Government Code section 17552 declares that these provisions "provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6 ...."

III. Administrative and Judicial Proceedings

A. *The Los Angeles Action*

On November 23, 1987, the County of Los Angeles (Los Angeles) filed a claim (the Los Angeles action) with the Commission asserting that the exclusion of adult MIP's from Medi-Cal constituted a reimbursable mandate under section 6. (*Kinlaw, supra*, 54 Cal.3d at p. 330, fn. 2.) Alameda County subsequently filed a claim on November 30, 1987, but the Commission rejected it because of the pending Los Angeles action. (*Id.* at p. 331, fn. 4.) Los Angeles refused to permit Alameda County to join as a claimant, but permitted San Bernardino County to join. (*Ibid.*)

In April 1989, the Commission rejected the Los Angeles claim, finding no reimbursable mandate.[6] (*Kinlaw, supra*, 54 Cal.3d at p. 330, fn. 2.) It found that the 1982 legislation did not impose on counties a new program or a higher level of service for an existing program because counties had a "pre-existing duty" to provide medical care to the medically indigent under section 17000. That section provides in relevant part: "Every county ... shall relieve and support all incompetent, poor, indigent persons ... lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Section 17000 did not impose a reimbursable mandate under section 6, the Commission further reasoned, because it "was enacted prior to January 1, 1975 ...." Finally, the Commission found no mandate because the 1982 legislation "neither establish[ed] the level of care to be provided nor ... define[d] the class of persons determined to be eligible for medical care since these criteria were established by boards of supervisors" pursuant to section 17001.

On March 20, 1990, the Los Angeles Superior Court filed a judgment reversing the Commission's decision and directing issuance of a peremptory ***83** writ of mandate. On April 16, 1990, the Commission and the state filed an appeal in the Second District Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625.)[7] In early 1992, the parties to the Los Angeles action agreed to settle their dispute and to seek dismissal. In April 1992, after learning of this agreement, San Diego sought to intervene. Explaining that it had been waiting for resolution of the action, San Diego requested that the Court of Appeal deny the dismissal request and add (or substitute in) the County as a party. The Court of Appeal did not respond. On December 15, 1992, the parties to the Los Angeles action entered into a settlement agreement that provided for vacation of the superior court judgment and dismissal of the appeal and superior court action. Consistent with the settlement agreement, on December 29, 1992, the Court of Appeal filed an order vacating the superior court judgment, dismissing the appeal, and instructing the superior court to dismiss the action without prejudice on remand.[8]

B. *The San Diego Action*

1. *Administrative Attempts to Obtain Reimbursement*

On March 13, 1991, San Diego submitted an invoice to the State Controller seeking reimbursement of its uncompensated expenditures on the CMS program for fiscal year 1989-1990. The Controller is a member of the Commission. (Gov. Code, § 17525.) On April 12, the Controller returned the invoice "without action," stating that "[n]o appropriation has been given to this office to allow for reimbursement" of medical costs for adult MIP's and noting that litigation was pending regarding the state's reimbursement obligation. On December 18, 1991, San Diego submitted a similar invoice for the 1990-1991 fiscal year. The state has not acted regarding this second invoice. ***84**

2. *Court Proceedings*

Responding to San Diego's notice of intent to terminate the CMS program, on March 11, 1991, the Legal Aid Society of San Diego filed a class action on behalf of CMS program beneficiaries seeking to enjoin termination of the program. The trial court later issued a preliminary

injunction prohibiting San Diego "from taking any action to reduce or terminate" the CMS program.

On March 15, 1991, San Diego filed a cross-complaint and petition for writ of mandate under Code of Civil Procedure section 1085 against the state, the Commission, and various state officers.[9] The cross-complaint alleged that, by excluding adult MIP's from Medi-Cal and transferring responsibility for their medical care to counties, the state had mandated a new program and higher level of service within the meaning of section 6. The cross-complaint further alleged that the state therefore had a duty under section 6 to reimburse San Diego for the entire cost of its CMS program, and that the state had failed to perform its duty.

Proceeding from these initial allegations, the cross-complaint alleged causes of action for indemnification, declaratory and injunctive relief, reimbursement and damages, and writ of mandate. In its first declaratory relief claim, San Diego alleged (on information and belief) that the state contended the CMS program was a nonreimbursable, county obligation. In its claim for reimbursement, San Diego alleged (again on information and belief) that the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement from the State for the costs of such programs." "Under these circumstances," San Diego asserted, "denial of the County's claim by the Commission ... is virtually certain and further administrative pursuit of this claim would be a futile act."

For relief, San Diego requested a judgment declaring the following: (1) that the state must fully reimburse San Diego if it "is compelled to provide any CMS Program services to plaintiffs ... after March 19, 1991"; (2) that section 6 requires the state "to fully fund the CMS Program" (or, alternatively, that the CMS program is discretionary); (3) that the state must pay San Diego for all of its unreimbursed costs for the CMS program during the ***85** 1989-1990 and 1990-1991 fiscal years; and (4) that the state shall assume responsibility for operating any court-ordered continuation of the CMS program. San Diego also requested that the court issue a writ of mandamus requiring the state to fulfill its reimbursement obligation. Finally, San Diego requested issuance of preliminary and permanent injunctions to ensure that the state fulfilled its obligations to the County.

In April 1991, San Diego determined that it could continue operating the CMS program using previously unavailable general fund revenues. Accordingly, San Diego and plaintiffs settled their dispute, and plaintiffs dismissed their complaint.

The matter proceeded solely on San Diego's cross-complaint. The court issued a preliminary injunction and alternative writ in May 1991. At a hearing on June 25, 1991, the court found that the state had an obligation to fund San Diego's CMS program, granted San Diego's request for a writ of mandate, and scheduled an evidentiary hearing to determine damages and remedies. On July 1, 1991, it issued an order reflecting this ruling and granting a peremptory writ of mandate. The writ did not issue, however, because of the pending hearing to determine damages. In December 1992, after an extensive evidentiary hearing and posthearing proceedings on the claim for a peremptory writ of mandate, the court issued a judgment confirming its jurisdiction to determine San Diego's claim, finding that section 6 required the state to fund the entire cost of San Diego's CMS program, determining the amount that the state owed San Diego for fiscal years 1989-1990 and 1990-1991, identifying funds available to the state to satisfy the judgment, and ordering issuance of a peremptory writ of mandate.[10] The court also issued a peremptory writ of mandate directing the state and various state officers to comply with the judgment.

The Court of Appeal affirmed the judgment insofar as it provided that section 6 requires the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required San Diego to spend at least $41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. It remanded the matter to the Commission to determine the reimbursement amount and appropriate statutory remedies. We then granted the state's petition for review.

IV. Superior Court Jurisdiction

([2a]) Before reaching the merits of the appeal, we must address the state's assertion that the superior court lacked jurisdiction to hear San ***86** Diego's mandate claim. According to the state, in *Kinlaw, supra,* 54 Cal.3d 326, we "unequivocally held that the orderly determination of [unfunded] mandate questions demands that only one claim on any particular alleged mandate be entertained by the courts at any given time." Thus, if a test claim is pending, "other potential claims must be held in abeyance ...." Applying this principle, the state asserts that, since "the test claim litigation was pending" in the Los Angeles

action when San Diego filed its cross-complaint seeking mandamus relief, "the superior court lacked jurisdiction from the outset, and the resulting judgment is a nullity. That defect cannot be cured by the settlement of the test claim, which occurred after judgment was entered herein."

In *Kinlaw*, we held that individual taxpayers and recipients of government benefits lack standing to enforce section 6 because the applicable administrative procedures, which "are the exclusive means" for determining and enforcing the state's section 6 obligations, "are available only to local agencies and school districts directly affected by a state mandate ...." (*Kinlaw, supra,* 54 Cal.3d at p. 328.) In reaching this conclusion, we explained that the reimbursement right under section 6 "is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services." (*Id.* at p. 334.) We concluded that "[n]either public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues." (*Id.* at p. 335.)

In finding that individuals do not have standing to enforce the section 6 rights of local agencies, we made several observations in *Kinlaw* pertinent to operation of the statutory process as it applies to entities that do have standing. Citing Government Code section 17500, we explained that "the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6 ... because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process." (*Kinlaw, supra,* 54 Cal.3d at p. 331.) Thus, the governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created." (*Id.* at p. 333.) Specifically, "[t]he legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies ...." (*Id.* at p. 331.) Describing the Commission's application of the test-claim procedure to claims regarding exclusion of adult MIP's from Medi-Cal, we observed: "The test claim by the County of Los Angeles was filed prior to that ***87** proposed by Alameda County. The Alameda County claim was rejected for that reason. (See [Gov. Code,] § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the [adult MIP exclusion] issues .... Los Angeles County declined a request from Alameda County that it be included in the test claim ...." (*Id.* at p. 331, fn. 4.)

Consistent with our observations in *Kinlaw*, we here agree with the state that the trial court should not have proceeded to resolve San Diego's claim for reimbursement under section 6 while the Los Angeles action was pending. A contrary conclusion would undermine one of "the express purpose[s]" of the statutory procedure: to "avoid[] multiple proceedings ... addressing the same claim that a reimbursable state mandate has been created." (*Kinlaw, supra,* 54 Cal.3d at p. 333.)

([3]) However, we reject the state's assertion that the error was jurisdictional. The power of superior courts to perform mandamus review of administrative decisions derives in part from article VI, section 10 of the California Constitution. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 138 [93 Cal.Rptr. 234, 481 P.2d 242]; *Lipari v. Department of Motor Vehicles* (1993) 16 Cal.App.4th 667, 672 [20 Cal.Rptr.2d 246].) That section gives "[t]he Supreme Court, courts of appeal, [and] superior courts ... original jurisdiction in proceedings for extraordinary relief in the nature of mandamus ...." (Cal. Const., art. VI, § 10.) "The jurisdiction thus vested may not lightly be deemed to have been destroyed." (*Garrison v. Rourke* (1948) 32 Cal.2d 430, 435 [196 P.2d 884], overruled on another ground in *Keane v. Smith* (1971) 4 Cal.3d 932, 939 [95 Cal.Rptr. 197, 485 P.2d 261].) "While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. [Citations.] Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication." (*Garrison, supra,* at p. 436.) ([2b]) Here, we find no statutory provision that either "expressly provide[s]" (*id.* at p. 435) or otherwise "clearly intend[s]" (*id.* at p. 436) that the Legislature intended to divest all courts other than the court hearing the test claim of their mandamus jurisdiction.

Rather, following *Dowdall v. Superior Court* (1920) 183 Cal. 348 [191 P. 685] (*Dowdall*), we interpret the governing statutes as simply vesting primary jurisdiction in the court hearing the test claim. In *Dowdall*, we determined the jurisdictional effect of Code of Civil Procedure former section 1699 on actions to settle the account of trustees of a testamentary trust. Code of Civil Procedure former section 1699 provided in part: "Where any trust ***88** has been created by or under any will to continue after distribution, the Superior Court shall not lose jurisdiction of the estate by final distribution, but

shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust." (Stats. 1889, ch. 228, § 1, p. 337.) We explained that, under this section, "the superior court, sitting in probate upon the distribution of an estate wherein the will creates a trust, retain[ed] jurisdiction of the estate for the purpose of the settlement of the accounts under the trust." (*Dowdall, supra*, 183 Cal. at p. 353.) However, we further observed that "the superior court of each county in the state has general jurisdiction in equity to settle trustees' accounts and to entertain actions for injunctions. This jurisdiction is, in a sense, concurrent with that of the superior court, which, by virtue of the decree of distribution, has jurisdiction of a trust created by will. The latter, however, is the primary jurisdiction, and if a bill in equity is filed in any other superior court for the purpose of settling the account of such trustee, that court, upon being informed of the jurisdiction of the court in probate and that an account is to be or has been filed therein for settlement, should postpone the proceeding in its own case and allow the account to be settled by the court having primary jurisdiction thereof." (*Ibid.*)

Similarly, we conclude that, under the statutes governing determination of unfunded mandate claims, the court hearing the test claim has primary jurisdiction. Thus, if an action asserting the same unfunded mandate claim is filed in any other superior court, that court, upon being informed of the pending test claim, should postpone the proceeding before it and allow the court having primary jurisdiction to determine the test claim.

However, a court's erroneous refusal to stay further proceedings does not render those further proceedings void for lack of jurisdiction. As we explained in *Dowdall*, a court that refuses to defer to another court's primary jurisdiction "is not without jurisdiction." (*Dowdall, supra*, 183 Cal. at p. 353.) Accordingly, notwithstanding pendency of the Los Angeles action, the trial court here did not lack jurisdiction to determine San Diego's mandamus petition. (See *Collins v. Ramish* (1920) 182 Cal. 360, 366-369 [188 P. 550] [although trial court erred in refusing to abate action because of former action pending, new trial was not warranted on issues that the trial court correctly decided]; *People* ex rel. *Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 772 [25 Cal.Rptr.2d 192] (*Garamendi*) ["rule of exclusive concurrent jurisdiction is not 'jurisdictional' in the sense that failure to comply renders subsequent proceedings void"]; *Stearns v. Los Angeles City School Dist.* (1966) 244 Cal.App.2d 696, 718 [53 Cal.Rptr. 482, 21 A.L.R.3d 164] [where trial court errs in failing to stay proceedings in ***89** deference to jurisdiction of another court, reversal would be frivolous absent errors regarding the merits].)[11]

The trial court's failure to defer to the primary jurisdiction of the court hearing the Los Angeles action did not prejudice the state. Contrary to the state's assertion, the trial court did not "usurp" the Commission's "authority to determine, in the first place, whether or not legislation creates a mandate." The Commission had already exercised that authority in the Los Angeles action. Moreover, given the settlement of the Los Angeles action, which included vacating the judgment in that action, the trial court's exercise of jurisdiction here did not result in one of the principal harms that the statutory procedure seeks to prevent: multiple decisions regarding an unfunded mandate question. Finally, the lack of an administrative record specifically relating to San Diego's claim did not prejudice the state because the threshold determination of whether a statute imposes a state mandate is an issue of law. (*County of Fresno v. Lehman* (1991) 229 Cal.App.3d 340, 347 [280 Cal.Rptr. 310].) To the extent that an administrative record was necessary, the record developed in the Los Angeles action could have been submitted to the trial court.[12] (See *Los Angeles Unified School Dist. v. State of California* (1988) 199 Cal.App.3d 686, 689 [245 Cal.Rptr. 140].)

We also find that, on the facts of this case, San Diego's failure to submit a test claim to the Commission before seeking judicial relief did not affect the superior court's jurisdiction. Ordinarily, counties seeking to pursue an unfunded mandate claim under section 6 must exhaust their administrative remedies. (*Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621, 640 [21 Cal.Rptr.2d 453]; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 73-77 [222 Cal.Rptr. 750] (*County of Contra Costa*).) However, counties may pursue section 6 claims in superior court without first resorting to administrative remedies if they "can establish an exception to" the exhaustion requirement. (*County of Contra Costa, supra*, 177 Cal.App.3d at p. 77.) The futility exception to the exhaustion requirement applies if a county can "state with assurance that the [Commission] would rule adversely in its own particular case. [Citations.]" (*Lindeleaf v. Agricultural Labor Relations Bd.* (1986) 41 Cal.3d 861, 870 [226 Cal.Rptr. 119, 718 P.2d 106]; see also *County of Contra Costa, supra*, 177 Cal.App.3d at pp. 77-78.) ***90**

We agree with the trial court and the Court of Appeal that the futility exception applied in this case. As we have previously noted, San Diego invoked this exception by alleging in its cross-complaint that the Commission's denial of its claim was "virtually certain" because the Commission had "previously denied the claims of other

counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement ...." Given that the Commission rejected the Los Angeles claim (which alleged the same unfunded mandate claim that San Diego alleged) and appealed the judicial reversal of its decision, the trial court correctly determined that further attempts to seek relief from the Commission would have been futile. Therefore, we reject the state's jurisdictional argument and proceed to the merits of the appeal.

V. Existence of a Mandate Under Section 6

([4]) In determining whether there is a mandate under section 6, we turn to our decision in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318] (*Lucia Mar*). There, we discussed section 6's application to Education Code section 59300, which "requires a school district to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped." (*Lucia Mar*, *supra*, at p. 832.) Before 1979, the Legislature had statutorily required school districts "to contribute to the education of pupils from the districts at the state schools [citations] ...." (*Id.* at pp. 832-833.) The Legislature repealed the statutory requirements in 1979 and, on July 12, 1979, the state assumed full-funding responsibility. (*Id.* at p. 833.) On July 1, 1980, when section 6 became effective, the state still had full-funding responsibility. On June 28, 1981, Education Code section 59300 took effect. (*Lucia Mar*, *supra*, at p. 833.)

Various school districts filed a claim seeking reimbursement under section 6 for the payments that Education Code section 59300 requires. The Commission denied the claim, finding that the statute did not impose on the districts a new program or higher level of service. The trial court and Court of Appeal agreed, the latter "reasoning that a shift in the funding of an existing program is not a new program or a higher level of service" under section 6. (*Lucia Mar*, *supra*, 44 Cal.3d at p. 834.)

We reversed, finding that a contrary result would "violate the intent underlying section 6 ...." (*Lucia Mar*, *supra*, 44 Cal.3d at p. 835.) That section "was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of the [] ***91** restrictions on the taxing and spending power of the local entities" that articles XIII A and XIII B of the California Constitution imposed. (*Lucia Mar*, *supra*, at pp. 835-836.) "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 ... because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B*, the result seems equally violative of the fundamental purpose underlying section 6 ...." (*Id.* at p. 836, italics added, fn. omitted.) We thus concluded in *Lucia Mar* "that because [Education Code] section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts-an obligation the school districts did not have at the time article XIII B was adopted-it calls for [the school districts] to support a 'new program' within the meaning of section 6." (*Ibid.*, fn. omitted.)

The similarities between *Lucia Mar* and the case before us "are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-197[8] the state and county shared the cost of caring for [adult MIP's] under the Medi-Cal program.... [F]ollowing enactment of [article XIII A], the state took full responsibility for both programs." (*Kinlaw, supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.).) As to both programs, the Legislature cited adoption of article XIII A of the California Constitution, and specifically its effect on tax revenues, as the basis for the state's assumption of full funding responsibility. (Stats. 1979, ch. 237, § 10, p. 493; Stats. 1979, ch. 282, § 106, p. 1059.) "Then in 1981 (for handicapped children) and 1982 (for [adult MIP's]), the state sought to shift some of the burden back to the counties." (*Kinlaw, supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.).)

Adopting the Commission's analysis in the Los Angeles action, the state nevertheless argues that *Lucia Mar* "is inapposite." The school program at issue in *Lucia Mar* "had been wholly operated, administered and financed by the state" and "was unquestionably a 'state program.' " " 'In contrast,' " the state argues, " 'the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for' " it under section 17000 and its predecessors.[13] The courts have interpreted section 17000 as "impos[ing] upon counties a duty to ***92** provide hospital and medical services to indigent residents. [Citations.]" (*Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 557 [254 Cal.Rptr. 905].) Thus, the state argues, the source of San Diego's obligation to provide medical care to adult MIP's is

section 17000, not the 1982 legislation. Moreover, because the Legislature enacted section 17000 in 1965, and section 6 does not apply to "mandates enacted prior to January 1, 1975," there is no reimbursable mandate. Finally, the state argues that, because section 17001 give counties "complete discretion" in setting eligibility and service standards under section 17000, there is no mandate. A contrary conclusion, the state asserts, "would erroneously expand the definition of what constitutes a 'new program' under" section 6. As we explain, we reject these arguments.

A. *The Source and Existence of San Diego's Obligation*

1. *The Residual Nature of the Counties' Duty Under Section 17000*

The state's argument that San Diego's obligation to provide medical care to adult MIP's predates the 1982 legislation contains numerous errors. First, the state misunderstands San Diego's obligation under section 17000. That section creates "the *residual* fund" to sustain indigents "who cannot qualify ... under any specialized aid programs." (*Mooney, supra,* 4 Cal.3d at p. 681, italics added; see also *Board of Supervisors v. Superior Court, supra,* 207 Cal.App.3d at p. 562; *Boehm v. Superior Court* (1986) 178 Cal.App.3d 494, 499 [223 Cal.Rptr. 716] [general assistance "is a program of last resort"].) By its express terms, the statute requires a county to relieve and support indigent persons *only* "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (§ 17000.)[14] "Consequently, to the extent that the state or federal governments provide[d] care for [adult MIP's], the [C]ounty's obligation to do so [was] reduced ...." (*Kinlaw, supra,* 54 Cal.3d at p. 354, fn. 14 (dis. opn. of Broussard, J.).)[15]

As we have explained, the state began providing adult MIP's with medical care under Medi-Cal in 1971. Although it initially required counties to ***93** contribute generally to the costs of Medi-Cal, it did not set forth a specific amount for coverage of MIP's. The state was primarily responsible for the costs of the program, and the counties were simply required to contribute funds to defray the state's costs. Beginning with the 1978-1979 fiscal year, the state paid all costs of the Medi-Cal program, including the cost of medical care for adult MIP's. Thus, when section 6 was adopted in November 1979, to the extent that Medi-Cal provided medical care to adult MIP's, San Diego bore no financial responsibility for these health care costs.[16]

The California Attorney General has expressed a similar understanding of Medi-Cal's effect on the counties' medical care responsibility under section 17000. After the 1971 extension of Medi-Cal coverage to MIP's, Fresno County sought an opinion regarding the scope of its duty to provide medical care under section 17000. It asserted that the 1971 repeal of former section 14108.5, which declared the Legislature's concern with the counties' problems in caring for indigents not eligible for Medi-Cal, evidenced a legislative intent to preempt the field of providing health services. (56 Ops.Cal.Atty.Gen., *supra,* at p. 571.) The Attorney General disagreed, concluding that the 1971 change "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (*Id.* at p. 569.) The Attorney General explained: "The statement of concern acknowledged the obligation of counties to continue to provide medical assistance under section 17000; the removal of the statement of concern was not accompanied by elimination of such duty on the part of the counties, *except as the addition of* [*MIP's*] *to the Medi-Cal program would remove the burden on the counties to provide medical care for such persons.*" (*Id.* at p. 571, italics added.) ***94**

Indeed, the Legislature's statement of intent in an uncodified section of the 1982 legislation excluding adult MIP's from Medi-Cal suggests that it also shared our understanding of section 17000. Section 8.3 of the 1982 Medi-Cal revisions expressly declared the Legislature's intent "[i]n eliminating [M]edically [I]ndigent [A]dults from the Medi-Cal program ...." (Stats. 1982, ch. 328, § 8.3, p. 1575; Stats. 1982, ch. 1594, § 86, p. 6357.) It stated in part: "It is further the intent of the Legislature to provide counties with as much flexibility as possible in organizing county health services to serve *the population being transferred.*" (Stats. 1982, ch. 328, § 8.3, p. 1576; Stats. 1982, ch. 1594, § 86, p. 6357, italics added.) If, as the state contends, counties had always been responsible under section 17000 for the medical care of adult MIP's, the description of adult MIP's as "the population being transferred" would have been inaccurate. By so describing adult MIP's, the Legislature indicated its understanding that counties did not have this responsibility while adult MIP's were eligible for Medi-Cal. These sources fully support our rejection of the state's argument that the 1982 legislation did not impose a mandate because, under section 17000, counties had always borne the responsibility for providing medical care to adult MIP's.

2. *The State's Assumption of Full Funding Responsibility for Providing Medical Care to Adult MIP's Under Medi-Cal*

To support its argument that it never relieved counties of

their obligation under section 17000 to provide medical care to adult MIP's, the state characterizes as "temporary" the Legislature's assumption of full-funding responsibility for adult MIP's. According to the state, "any ongoing responsibility of the county was, at best, only temporarily, partially, alleviated (and never supplanted)." The state asserts that the Court of Appeal thus "erred by focusing on one phase in th[e] shifting pattern of arrangements" for funding indigent health care, "a focus which led to a myopic conclusion that the state alone is forever responsible for funding the health care for" adult MIP's.

A comparison of the 1978 and 1979 statutes that eliminated the counties' share of Medi-Cal costs refutes the state's claim. The Legislature expressly limited the effect of the 1978 legislation to one fiscal year, providing that the state "shall pay" each county's Medi-Cal cost share "for the period from July 1, 1978, to June 30, 1979." (Stats. 1978, ch. 292, § 33, p. 610.) The Legislative Counsel's Digest explained that this section would require the state to pay "[a]ll county costs for Medi-Cal" for "the 1978-79 fiscal year only." (Legis. Counsel's Dig., Sen. Bill No. 154, 4 Stats. 1978 (Reg. Sess.), Summary Dig., p. 71.) The digest further explained that the purpose of the bill containing this section was "the *partial* relief of local government from the *temporary* difficulties brought about by the approval of Proposition 13." ***95** (*Id.* at p. 70, italics added.) Clearly, the Legislature knew how to include words of limitation when it intended the effects of its provisions to be temporary.

By contrast, the 1979 legislation contains no such limiting language. It simply provided: "Section 14150 of the Welfare and Institutions Code is repealed." (Stats. 1979, ch. 282, § 74, p. 1043.) In setting forth the need to enact the legislation as an urgency statute, the Legislature explained: "The adoption of Article XIII A ... may cause the curtailment or elimination of programs and services which are vital to the state's public health, safety, education, and welfare. In order that such services not be interrupted, it is necessary that this act take effect immediately." (Stats. 1979, ch. 282, § 106, p. 1059.) In describing the effect of this legislation, the Legislative Counsel first explained that, "[u]nder existing law, the counties pay a specified annual share of the cost of" Medi-Cal. (Legis. Counsel's Dig., Assem. Bill No. 8, 4 Stats. 1979 (Reg. Sess.), Summary Dig., p. 79.) Referring to the 1978 legislation, it further explained that "[f]or the 1978-79 fiscal year only, the state pays ... [¶] ... [a]ll county costs for Medi-Cal ...." (*Ibid.*) The 1979 legislation, the digest continued, "provid[ed] for state assumption of all county costs of Medi-Cal." (*Ibid.*) We find nothing in the 1979 legislation or the Legislative Counsel's summary indicating a legislative intent to eliminate the counties' cost share of Medi-Cal only temporarily.

The state budget process for the 1980-1981 fiscal year confirms that the Legislature's assumption of all Medi-Cal costs was not viewed as "temporary." In the summary of his proposed budget, then Governor Brown described Assembly Bill No. 8, 1981-1982 Regular Session, generally as "a long-term local financing measure" (Governor's Budget for 1980-1981 as submitted to Legislature (1979-1980 Reg. Sess.) Summary of Local Government Fiscal Relief, p. A-30) through which "[t]he total cost of [the Medi-Cal] program was *permanently* assumed by the State ...." (*Id.* at p. A-32, italics added.) Similarly, in describing to the Joint Legislative Budget Committee the Medi-Cal funding item in the proposed budget, the Legislative Analyst explained: "Item 287 includes the state cost of 'buying out' the county share of Medi-Cal expenditures. Following passage of Proposition 13, [Senate Bill No.] 154 appropriated $418 million to relieve counties of all fiscal responsibility for Medi-Cal program costs. Subsequently, [Assembly Bill No.] 8 was enacted, *which made permanent state assumption of county Medi-Cal costs*." (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1980-1981 Budget Bill, Assem. Bill No. 2020 (1979-1980 Reg. Sess.) at p. 721, italics added.) Thus, the state errs in asserting that the 1979 legislation eliminated the counties' financial support of Medi-Cal "only temporarily." ***96**

3. *State Administration of Medical Care for Adult MIP's Under Medi-Cal*

The state argues that, unlike the school program before us in *Lucia Mar, supra,* 44 Cal.3d 830, which "had been wholly operated, administered and financed by the state," the program for providing medical care to adult MIP's " 'has never been operated or administered by' " the state. According to the state, Medi-Cal was simply a state "reimbursement program" for care that section 17000 required counties to provide. The state is incorrect.

One of the legislative goals of Medi-Cal was "to allow eligible persons to secure basic health care in the same manner employed by the public generally, and without discrimination or segregation based purely on their economic disability." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 104.) "In effect, this meant that poorer people could have access to a private practitioner of their choice, and not be relegated to a county hospital program." (*California Medical Assn. v. Brian* (1973) 30 Cal.App.3d 637, 642 [106 Cal.Rptr. 555].) Medi-Cal "provided for reimbursement to both public and private

health care providers for medical services rendered." (*Lackner, supra*, 97 Cal.App.3d at p. 581.) It further directed that, "[i]nsofar as practical," public assistance recipients be afforded "free choice of arrangements under which they shall receive basic health care." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 115.) Finally, since its inception, Medi-Cal has permitted county boards of supervisors to "prescribe rules which authorize the county hospital to integrate its services with those of other hospitals into a system of community service which offers free choice of hospitals to those requiring hospital care. The intent of this section is to eliminate discrimination or segregation based on economic disability so that the county hospital and other hospitals in the community share in providing services to paying patients and to those who qualify for care in public medical care programs." (§ 14000.2.) Thus, "Medi-Cal eligibles were to be able to secure health care in the same manner employed by the general public (i.e., in the private sector or at a county facility)." (1974 Legis. Analyst's Rep., *supra*, at p. 625; see also Preliminary Rep., *supra*, at p. 17.) By allowing eligible persons "a choice of medical facilities for treatment," Medi-Cal placed county health care providers "in competition with private hospitals." (*Hall, supra*, 23 Cal.App.3d at p. 1061.)

Moreover, administration of Medi-Cal over the years has been the responsibility of various state departments and agencies. (§§ 10720-10721, 14061-14062, 14105, 14203; *Belshé, supra*, 13 Cal.4th at p. 751; *Morris, supra*, 67 Cal.2d at p. 741; Summary of Major Events, *supra*, at pp. 2-3, 15.) Thus, "[i]n adopting the Medi-Cal program the state Legislature, for the most part, shifted indigent medical care from being a county responsibility to a State ***97** responsibility under the Medi-Cal program. [Citation.]" (*Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944, 959 [203 Cal.Rptr. 184] (*Bay General*); see also Preliminary Rep., *supra*, at p. 18 [with certain exceptions, Medi-Cal "shifted to the state" the responsibility for administration of the medical care provided to eligible persons].) We therefore reject the state's assertion that, while Medi-Cal covered adult MIP's, county facilities were the sole providers of their medical care, and counties both operated and administered the program that provided that care.

The circumstances we have discussed readily distinguish this case from *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 [38 Cal.Rptr.2d 304], on which the state relies. There, the court rejected the claim that Penal Code section 987.9, which required counties to provide criminal defendants with certain defense funds, imposed an unfunded state mandate. Los Angeles filed the claim after the state, which had enacted appropriations between 1977 and 1990 "to reimburse counties for their costs under" the statute, made no appropriation for the 1990-1991 fiscal year. (*County of Los Angeles v. Commission on State Mandates*, *supra*, at p. 812.) In rejecting the claim, the court first held that there was no state mandate because Penal Code section 987.9 merely implemented the requirements of federal law. (*County of Los Angeles v. Commission on State Mandates*, *supra*, at pp. 814-816.) Thus, the court stated, "[a]ssuming, arguendo, the provisions of [Penal Code] section 987.9 [constituted] a new program" under section 6, there was no state mandate. (*County of Los Angeles v. Commission on State Mandates*, *supra*, at p. 818.) Here, of course, it is unquestionably the state that has required San Diego to provide medical care to indigent persons.

In dictum, the court also rejected the argument that, under *Lucia Mar, supra*, 44 Cal.3d 830, the state's "decision not to reimburse the counties for their programs under [Penal Code] section 987.9" imposed a new program by shifting financial responsibility for the program to counties. (*County of Los Angeles v. Commission on State Mandates, supra*, 32 Cal.App.4th at p. 817.) The court explained: "In contrast [to *Lucia Mar*], the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under [Penal Code] section 987.9. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility." (*Ibid.*) Here, as we have explained, between 1971 and 1983, the state administered and bore financial responsibility for the medical care that adult MIP's received under Medi-Cal. The Medi-Cal program was not simply a ***98** method of reimbursement for county costs. Thus, the state's reliance on this dictum is misplaced.[17]

In summary, our discussion demonstrates the Legislature excluded adult MIP's from Medi-Cal *knowing* and *intending* that the 1982 legislation would trigger the counties' responsibility to provide medical care as providers of last resort under section 17000. Thus, through the 1982 legislation, the Legislature attempted to do precisely that which the voters enacted section 6 to prevent: "transfer[] to [counties] the fiscal responsibility for providing services which the state believed should be extended to the public."[18] (*County of Los Angeles, supra*, 43 Cal.3d at p. 56; see also *City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 68 [A "central purpose" of section 6 was "to prevent the state's transfer of the *cost of government* from *itself* to the local level."].) Accordingly, we view the 1982 legislation as having

mandated a " 'new program' " on counties by "compelling them to accept financial responsibility in whole or in part for a program," i.e., medical care for adult MIP's, "which was funded entirely by the state before the advent of article XIII B."[19] (*Lucia Mar, supra,* 44 Cal.3d at p. 836.)

A contrary conclusion would defeat the purpose of section 6. Under the state's interpretation of that section, because section 17000 was enacted before 1975, the Legislature could eliminate the *entire* Medi-Cal program and shift to the counties under section 17000 complete financial responsibility for medical care that the state has been providing since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded section 17000 obligation. "County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further ...." (*Kinlaw, supra,* 54 Cal.3d at p. 351 (dis. opn. of Broussard, J.).) As we have previously explained, the voters, recognizing that articles XIII A and XIII B left counties "ill equipped" to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. (***99** *County of Los Angeles, supra,* 43 Cal.3d at p. 61.) Thus, it was the voters who decreed that we must, as the state puts it, "focus[] on one phase in th[e] shifting pattern of [financial] arrangements" between the state and the counties. Under section 6, the state simply cannot "compel[] [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B ...."[20] (*Lucia Mar, supra,* 44 Cal.3d at p. 836.)

B. *County Discretion to Set Eligibility and Service Standards*

([5a]) The state next argues that, because San Diego had statutory discretion to set eligibility and service standards, there was no reimbursable mandate. Citing section 16704, the state asserts that the 1982 legislation required San Diego to spend MISA funds "only on those whom the *county* deems eligible *under § 17000*," "gave the county exclusive authority to determine the level and type of benefits it would provide," and required counties "to include [adult MIP's] in their § 17000 eligibility **only to the extent state funds were available and then only for 3 years.**"[21] (Original emphasis.) According to the state, under section 17001, "[t]he counties have ***100** complete discretion over the determination of eligibility, scope of benefits and how the services will be provided."[22]

The state exaggerates the extent of a county's discretion under section 17001. It is true "case law ... has recognized that section 17001 confers broad discretion upon the counties in performing their statutory duty to provide general assistance benefits to needy residents. [Citations.]" (*Robbins v. Superior Court* (1985) 38 Cal.3d 199, 211 [211 Cal.Rptr. 398, 695 P.2d 695] (*Robbins*).) However, there are "clear-cut limits" to this discretion. (*Ibid.*) ([6]) The counties may exercise their discretion "only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. [Citation.] When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. (Gov. Code, § 11374.)" (*Mooney, supra,* 4 Cal.3d at p. 679.) Thus, the counties' eligibility and service standards must "carry out" the objectives of section 17000. (*Mooney, supra,* 4 Cal.3d at p. 679; see also *Poverty Resistance Center v. Hart* (1989) 213 Cal.App.3d 295, 304-305 [261 Cal.Rptr. 545]; § 11000 ["provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program"].) County standards that fail to carry out section 17000's objectives "are void and no protestations that they are merely an exercise of administrative discretion can sanctify them." (*Morris, supra,* 67 Cal.2d at p. 737.) Courts, which have " 'final responsibility for the interpretation of the law,' " must strike them down. (*Id.* at p. 748.) Indeed, despite the counties' statutory discretion, "courts have consistently invalidated ... county welfare regulations that fail to meet statutory requirements. [Citations.]" (*Robbins, supra,* 38 Cal.3d at p. 212.)

1. *Eligibility*

([5b]) Regarding eligibility, we conclude that counties must provide medical care to all adult MIP's. As we emphasized in *Mooney,* section 17000 requires counties to relieve and support " '*all indigent persons* lawfully resident therein, "when such persons are not supported and relieved by their relatives" or by some other means.' " (*Mooney, supra,* 4 Cal.3d at p. 678; see also *Bernhardt v. Board of Supervisors* (1976) 58 Cal.App.3d 806, 811 [130 Cal.Rptr. 189].) Moreover, section 10000 declares that the statutory "purpose" of division 9 of the Welfare and Institutions Code, which includes ***101** section 17000, "is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to *all* of its needy and distressed." (Italics added.) Thus, counties have no discretion to refuse to provide medical care to "indigent persons" within the meaning of section 17000

who do not receive it from other sources.[23] (See *Bell v. Board of Supervisors* (1994) 23 Cal.App.4th 1695, 1706 [28 Cal.Rptr.2d 919] [eligibility standards may not "defeat the purpose of the statutory scheme by depriving qualified recipients of mandated support"]; *Washington v. Board of Supervisors* (1993) 18 Cal.App.4th 981, 985 [22 Cal.Rptr.2d 852] [courts have repeatedly "voided county ordinances which have attempted to redefine eligibility standards set by state statute"].)

Although section 17000 does not define the term "indigent persons," the 1982 legislation made clear that all adult MIP's fall within this category for purposes of defining a county's obligation to provide medical care.[24] As part of its exclusion of adult MIP's, that legislation required counties to participate in the MISA program. (Stats. 1982, ch. 1594, §§ 68, 70, 86, pp. 6343-6347, 6357.) Regarding that program, the 1982 legislation amended section 16704, subdivision (c)(1), to require that a county board of supervisors, in applying for MISA funds, "assure that it will expend such funds only for [specified] health services ... provided to persons certified as eligible for such services pursuant to Section 17000 ...." (Stats. 1982, ch. 1594, § 70, p. 6346.) At the same time, the 1982 legislation amended section 16704, subdivision (c)(3), to provide that "[a]ny person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.) As the state correctly explains, under this provision, "counties had to include [Medically Indigent Adults] in their [section] 17000 eligibility" standards. By requiring counties to make all adult MIP's eligible for services paid for with MISA funds, while at the same time requiring counties to promise to spend such funds *only* on those certified as eligible under section 17000, the Legislature established that all adult MIP's are "indigent persons" for purposes of the counties' duty to provide medical care under section 17000. Otherwise, the counties could not comply with their promise. ***102**

Our conclusion is not affected by language in section 16704, subdivision (c)(3), making it "operative only until June 30, 1985, unless a later enacted statute extends or deletes that date."[25] As we have explained, the subdivision established that adult MIP's are "indigent persons" within the meaning of section 17000 for medical care purposes. As we have also explained, section 17000 requires counties to relieve and support *all* "indigent persons." Thus, even if the state is correct in asserting that section 16704, subdivision (c)(3), is now inoperative and no longer prohibits counties from excluding adult MIP's from eligibility for medical services, section 17000 has that effect.[26]

Additionally, the coverage history of Medi-Cal demonstrates that the Legislature has always viewed all adult MIP's as "indigent persons" within the meaning of section 17000 for medical care purposes. As we have previously explained, when the Legislature created the original Medi-Cal program, which covered only categorically linked persons, it "declar[ed] its concern with the problems which [would] be facing the counties with respect to the medical care of indigent persons who [were] not covered" by Medi-Cal, "whose medical care [had to] be financed entirely by the counties in a time of heavily increasing medical costs." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116 [enacting former § 14108.5].) Moreover, to ensure that the counties' Medi-Cal cost share would not leave counties "with insufficient funds to provide hospital care for those persons not eligible for Medi-Cal," the Legislature also created the county option. (*Hall, supra*, 23 Cal.App.3d at p. 1061.) Through the county option, "the state agreed to assume all county health care costs ... in excess of county costs incurred during the 1964-1965 fiscal year, adjusted for population increases." (*Lackner, supra*, 97 Cal.App.3d at p. 586.) Thus, the Legislature expressly recognized that the categorically linked persons initially eligible for Medi-Cal did not constitute all "indigent persons" entitled to medical care under section 17000, and required the state to share in the financial responsibility for providing that care.

In adding adult MIP's to Medi-Cal in 1971, the Legislature extended Medi-Cal coverage to noncategorically linked persons "who [were] financially unable to pay for their medical care." (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83.) This ***103** description was consistent with prior judicial decisions that, for purposes of a county's duty to provide "indigent persons" with hospitalization, had defined the term to include a person "who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support." (*Goodall v. Brite* (1936) 11 Cal.App.2d 540, 550 [54 P.2d 510].)

Moreover, the fate of amendments to section 17000 proposed at the same time suggests that, in the Legislature's view, the category of "indigent persons" entitled to medical care under section 17000 extended even *beyond* those eligible for Medi-Cal as MIP's. The June 17, 1971, version of Assembly Bill No. 949 amended section 17000 by adding the following: "however, the health needs of such persons shall be met

under [Medi-Cal]." (Assem. Bill No. 949 (1971 Reg. Sess.) § 53.3, as amended June 17, 1971.) The Assembly deleted this amendment on July 20, 1971. (Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971, p. 37.) Regarding this change, the Assembly Committee on Health explained: "The proposed amendment to Section 17000, ... which would have removed the counties' responsibilities as health care provider of last resort, is deleted. This change was originally proposed to clarify the guarantee to hold counties harmless from additional Medi-Cal costs. It is deleted since it cannot remove the fact that counties are, by definition, a 'last resort' for any person, with or without the means to pay, who does not qualify for federal or state aid." (Assem. Com. on Health, Analysis of Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971 (July 21, 1971), p. 4.)

The Legislature's failure to amend section 17000 in 1971 figured prominently in the Attorney General's interpretation of that section only two years later. In a 1973 published opinion, the Attorney General stated that the 1971 inclusion of MIP's in Medi-Cal "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (56 Ops.Cal.Atty.Gen., *supra*, at p. 569.) He based this conclusion on the 1971 legislation, relevant legislative history, and "the history of state medical care programs." (*Id.* at p. 570.) The opinion concluded: "The definition of medically indigent in [the chapter establishing Medi-Cal] is applicable only to that chapter and *does not include all those enumerated in section 17000*. If the former medical care program, by providing care only for a specific group, public assistance recipients, did not affect the responsibility of the counties to provide such service under section 17000, we believe the most recent expansion of the medical assistance program does not affect, *absent an express legislative intent to the contrary*, the duty of the counties under section 17000 to continue to provide services to those eligible under section 17000 but not under [Medi-Cal]." (*Ibid.*, italics added.) The Attorney General's opinion, although not binding, is entitled to considerable weight. ***104** (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 829 [25 Cal.Rptr.2d 148, 863 P.2d 218].) Absent controlling authority, it is persuasive because we presume that the Legislature was cognizant of the Attorney General's construction of section 17000 and would have taken corrective action if it disagreed with that construction. (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17 [270 Cal.Rptr. 796, 793 P.2d 2].)

In this case, of course, we need not (and do not) decide whether San Diego's obligation under section 17000 to provide medical care extended beyond adult MIP's. Our discussion establishes, however, that the obligation extended *at least* that far. The Legislature has made it clear that all adult MIP's are "indigent persons" under section 17000 for purposes of San Diego's obligation to provide medical care. Therefore, the state errs in arguing that San Diego had discretion to refuse to provide medical care to this population.[27]

2. *Service Standards*

([7]) A number of statutes are relevant to the state's argument that San Diego had discretion in setting service standards. Section 17000 requires in general terms that counties "relieve and support" indigent persons. Section 10000, which sets forth the purpose of the division containing section 17000, declares the "legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life," so "as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society." (§ 10000.) "Section 17000, as authoritatively interpreted, mandates that medical care be provided to indigents and section 10000 requires that such care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care ...." (*Tailfeather v. Board of Supervisors* (1996) 48 Cal.App.4th 1223, 1245 [56 Cal.Rptr.2d 255] (*Tailfeather*).)

Courts construing section 17000 have held that it "imposes a mandatory duty upon all counties to provide 'medically necessary care,' not just ***105** emergency care. [Citation.]" (*County of Alameda v. State Bd. of Control* (1993) 14 Cal.App.4th 1096, 1108 [18 Cal.Rptr.2d 487]; see also *Gardner v. County of Los Angeles* (1995) 34 Cal.App.4th 200, 216 [40 Cal.Rptr.2d 271]; § 16704.1 [prohibiting a county from requiring payment of a fee or charge "before [it] renders medically necessary services to ... persons entitled to services under Section 17000"].) It further "ha[s] been interpreted ... to impose a minimum standard of care below which the provision of medical services may not fall." (*Tailfeather, supra*, 48 Cal.App.4th at p. 1239.) In *Tailfeather*, the court stated that "section 17000 requires provision of medical services to the poor at a level which does not lead to unnecessary suffering or endanger life and health ...." (*Id.* at p. 1240.) In reaching this conclusion, it cited *Cooke, supra*, 213 Cal.App.3d at page 404, which held that section 17000 requires counties to provide "dental care sufficient to remedy substantial pain and infection." (See also § 14059.5 [defining "[a] service [as] 'medically necessary' ... when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to

alleviate severe pain"].)

During the years for which San Diego sought reimbursement, Health and Safety Code section 1442.5, former subdivision (c) (former subdivision (c)), also spoke to the level of services that counties had to provide under Welfare and Institutions Code section 17000.[28] As enacted in September 1974, former subdivision (c) provided that, whether a county's duty to provide care to all indigent people "is fulfilled directly by the county or through alternative means, the availability of services, and the quality of the treatment received by people who cannot afford to pay for their health care shall be the same as that available to nonindigent people receiving health care services in private facilities in that county." (Stats. 1974, ch. 810, § 3, p. 1765.) The express "purpose and intent" of the act that contained former subdivision (c) was "to insure that the duty of counties to provide health care to indigents [was] properly and continuously fulfilled." (Stats. 1974, ch. 810, § 1, p. 1764.) Thus, until its repeal in September 1992,[29] former subdivision (c) "[r]equire[d] that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county." (Legis. Counsel's Dig., Sen. Bill No. 2369, 2 Stats. 1974 (Reg. Sess.) Summary Dig., p. 130; see also *Gardner v. County of Los Angeles, supra*, 34 Cal.App.4th at p. 216; ***106** *Board of Supervisors v. Superior Court, supra*, 207 Cal.App.3d at p. 564 [former subdivision (c) required that care provided "be *comparable* to that enjoyed by the nonindigent"].)[30] "For the 1990-91 fiscal year," the Legislature qualified this obligation by providing: "nothing in [former] subdivision (c) ... shall require any county to exceed the standard of care provided by the state Medi-Cal program. Notwithstanding any other provision of law, counties shall not be required to increase eligibility or expand the scope of services in the 1990-91 fiscal year for their programs." (Stats. 1990, ch. 457, § 23, p. 2013.)

Although we have identified statutes relevant to service standards, we need not here define the precise contours of San Diego's statutory health care obligation. The state argues generally that San Diego had discretion regarding the services it provided. However, the state fails to identify either the specific services that San Diego provided under its CMS program or which of those services, if any, were not required under the governing statutes. Nor does the state argue that San Diego could have eliminated all services and complied with statutory requirements. Accordingly, we reject the state's argument that, because San Diego had some discretion in providing services, the 1982 legislation did not impose a reimbursable mandate.[31]

VI. Minimum Required Expenditure

([8]) The Court of Appeal held that, under the governing statutes, the Commission must initially determine the precise amount of any reimbursement due San Diego. It therefore reversed the damages portion of the trial court's judgment and remanded the matter to the Commission for this determination. Nevertheless, the Court of Appeal affirmed the trial court's finding that the Legislature required San Diego to spend at least $41 million on its CMS program for fiscal years 1989-1990 and 1990-1991. In affirming this finding, the Court of Appeal relied primarily on Welfare and Institutions Code section 16990, subdivision (a), as it read at all relevant times. The state contends this provision did not mandate that San Diego spend any minimum amount on the CMS program. It further asserts that the Court of Appeal's "ruling in effect sets a damages baseline, in contradiction to [its] ostensible reversal of the damage award." ***107**

Former section 16990, subdivision (a), set forth the financial maintenance-of-effort requirement for counties that received funding under the California Healthcare for the Indigent Program (CHIP). The Legislature enacted CHIP in 1989 to implement Proposition 99, the Tobacco Tax and Health Protection Act of 1988 (codified at Rev. & Tax. Code, § 30121 et seq.). Proposition 99, which the voters approved on November 8, 1988, increased the tax on tobacco products and allocated the resulting revenue in part to medical and hospital care for certain persons who could not afford those services. (*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 248, 254 [279 Cal.Rptr. 325, 806 P.2d 1360].) During the 1989-1990 and 1990-1991 fiscal years, former section 16990, subdivision (a), required counties receiving CHIP funds, "at a minimum," to "maintain a level of financial support of county funds for health services at least equal to its county match and any overmatch of county funds in the 1988-89 fiscal year," adjusted annually as provided. (Stats. 1989, ch. 1331, § 9, p. 5427.) Applying this provision, the Court of Appeal affirmed the trial court's finding that the state had required San Diego to spend in fiscal years 1989-1990 and 1990-1991 at least $41 million on the CMS program.

We agree with the state that this finding is erroneous. Unlike participation in MISA, which was mandatory, participation in CHIP was voluntary. In establishing CHIP, the Legislature appropriated funds "for allocation to counties *participating* in" the program. (Stats. 1989, ch. 1331, § 10, p. 5436, italics added.) Section 16980, subdivision (a), directed the State Department of Health Services to make CHIP payments "upon application of the

county assuring that it will comply with" applicable provisions. Among the governing provisions were former sections 16990, subdivision (a), and 16995, subdivision (a), which provided: "To be eligible for receipt of funds under this chapter, a county may not impose more stringent eligibility standards for the receipt of benefits under Section 17000 or reduce the scope of benefits compared to those which were in effect on November 8, 1988." (Stats. 1989, ch. 1331, § 9, p. 5431.)

However, San Diego has cited no provision, and we have found none, that *required* eligible counties to participate in the program or apply for CHIP funds. Through Revenue and Taxation Code section 30125, which was part of Proposition 99, the electorate directed that funds raised through Proposition 99 "shall be used to supplement existing levels of service and not to fund existing levels of service." (See also Stats. 1989, ch. 1331, §§ 1, 19, pp. 5382, 5438.) Counties not wanting to supplement their existing levels of service, and who therefore did not want CHIP funds, were not bound by the program's requirements. Those counties, including San Diego, that chose to ***108** seek CHIP funds did so voluntarily.[32] Thus, the Court of Appeal erred in concluding that former section 16990, subdivision (a), mandated a minimum funding requirement for San Diego's CMS program.

Nor did former section 16991, subdivision (a)(5), which the trial court and Court of Appeal also cited, establish a minimum financial obligation for San Diego's CMS program. Former section 16991 generally "establish[ed] a procedure for the allocation of funds to each county receiving funds from the [MISA] ... for the provision of services to persons meeting certain Medi-Cal eligibility requirements, based on the percentage of newly legalized individuals under the federal Immigration Reform and Control Act (IRCA)." (Legis. Counsel's Dig., Assem. Bill No. 75, 4 Stats. 1989 (Reg. Sess.) Summary Dig., p. 548.) Former section 16991, subdivision (a)(5) required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its combined allocation from various sources was less than the funding it received under section 16703 for fiscal year 1988-1989.[33] Nothing about this state reimbursement requirement imposed on San Diego a minimum funding requirement for its CMS program.

Thus, we must reverse the judgment insofar as it finds that former sections 16990, subdivision (a), and 16991, subdivision (a)(5), established a $41 million spending floor for San Diego's CMS program. Instead, the various statutes that we have previously discussed (e.g., §§ 10000, 17000, and Health & Saf. Code, § 1442.5, former subd. (c)), the cases construing those statutes, and any other relevant authorities must guide the Commission's determination of the level of services that San Diego had to provide and any reimbursement to which it is entitled. ***109**

VII. Remaining Issues

([9]) The state raises a number of additional issues. It first complains that a mandamus proceeding under Code of Civil Procedure section 1085 was an improper vehicle for challenging the Commission's position. It asserts that, under Government Code section 17559, review by administrative mandamus under Code of Civil Procedure section 1094.5 is the exclusive method for challenging a Commission decision denying a mandate claim. The Court of Appeal rejected this argument, reasoning that the trial court had jurisdiction under Code of Civil Procedure section 1085 because, under section 6, the state has a ministerial duty of reimbursement when it imposes a mandate.

Like the Court of Appeal, but for different reasons, we reject the state's argument. "[M]andamus pursuant to [Code of Civil Procedure] section 1094.5, commonly denominated 'administrative' mandamus, is mandamus still. It is not possessed of 'a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations.' [Citations.] The full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except where modified by statute. [Citations.]" (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 673-674 [170 Cal.Rptr. 484, 620 P.2d 1032].) Where the entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding brought under Code of Civil Procedure section 1085 as one brought under Code of Civil Procedure section 1094.5 and should deny a demurrer asserting that the wrong mandamus statute has been invoked. (*Woods, supra*, 28 Cal.3d at pp. 673-674; *Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 813-814 [140 Cal.Rptr. 442, 567 P.2d 1162].) Thus, even if San Diego identified the wrong mandamus statute, the error did not affect the trial court's ability to grant mandamus relief.

"In any event, distinctions between traditional and administrative mandate have little impact on this appeal ...." (*McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1584 [18 Cal.Rptr.2d 680].) The determination whether the statutes here at issue established a mandate under section 6 is a question of law. (*County of Fresno v. Lehman, supra*, 229 Cal.App.3d at p. 347.) In reaching

our conclusion, we have relied on no facts that are in dispute. Where, as here, a "purely legal question" is at issue, courts "exercise independent judgment ... , no matter whether the issue arises by traditional or administrative mandate. [Citations.]" (*McIntosh, supra*, 14 Cal.App.4th at p. 1584.) As the state concedes, even under Code of Civil Procedure section 1094.5, a judgment must "be reversed if based on erroneous conclusions of law." Thus, any differences between the two mandamus statutes have had no impact on our analysis. ***110**

The state next contends that the trial court prejudicially erred in denying the "peremptory disqualification" motion that the Director of the Department of Finance filed under Code of Civil Procedure section 170.6. We will not review this ruling, however, because it is reviewable only by writ of mandate under Code of Civil Procedure section 170.3, subdivision (d). (*People v. Webb* (1993) 6 Cal.4th 494, 522-523 [24 Cal.Rptr.2d 779, 862 P.2d 779]; *People v. Hull* (1991) 1 Cal.4th 266 [2 Cal.Rptr.2d 526, 820 P.2d 1036].)

Nor can we address the state's argument that the trial court erred in granting a preliminary injunction. The May 1991 order granting the preliminary injunction was "immediately and separately appealable" under Code of Civil Procedure section 904.1, subdivision (a)(6). (*Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th 640, 645 [4 Cal.Rptr.2d 689].) Thus, the state's attempt to challenge the order in an appeal filed after entry of final judgment in December 1992 was untimely.[34] (See *Chico Feminist Women's Health Center v. Scully* (1989) 208 Cal.App.3d 230, 251 [256 Cal.Rptr. 194].) Moreover, the state's attempt to appeal the order granting the preliminary injunction is moot because of (1) the trial court's July 1 order granting a peremptory writ of mandate, which expressly "supersede[d] and replace[d]" the preliminary injunction order and (2) entry of final judgment. (*Sheward v. Citizens' Water Co.* (1891) 90 Cal. 635, 638-639 [27 P. 439]; *People v. Morse* (1993) 21 Cal.App.4th 259, 264-265 [25 Cal.Rptr.2d 816]; *Art Movers, Inc., supra*, 3 Cal.App.4th at p. 647.)

Finally, the state requests that we reverse the trial court's reservation of jurisdiction regarding an award of attorney fees. This request is premature. In the judgment, the trial court "retain[ed] jurisdiction to determine any right to and amount of attorneys' fees ...." This provision does not declare that San Diego in fact has a right to an award of attorney fees. Nor has San Diego asserted such a right. As San Diego states, at this point, "[t]here is nothing for this Court to review." We will not give an advisory ruling on this issue.

VIII. Disposition

The judgment of the Court of Appeal is affirmed insofar as it holds that the exclusion of adult MIP's from Medi-Cal imposed a mandate on San Diego within the meaning of section 6. The judgment is reversed insofar as it holds that the state required San Diego to spend at least $41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. The matter is ***111** remanded to the Commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c); Welf. & Inst. Code, §§ 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled.

C. J., Mosk, J., Baxter, J., Anderson, J.,[*] and Aldrich, J.,[†]]]]] concurred.

KENNARD, J.

I dissent.

As part of an initiative measure placing spending limits on state and local government, the voters in 1979 added article XIII B to the California Constitution. Section 6 of this article provides that when the state "mandates a new program or higher level of service on any local government," the state must reimburse the local government for the cost of such program or service. Under subdivision (c) of this constitutional provision, however, the state "may, but need not," provide such reimbursement *if the state mandate was enacted before January 1, 1975*. (Cal. Const., art. XIII B, § 6, subd. (c).) Subdivision (c) is the critical provision here.

Because the counties have for many decades been under a state mandate to provide for the poor, a mandate that existed before the voters added article XIII B to the state Constitution, the express language of subdivision (c) of section 6 of article XIII B exempts the state from any *legal obligation* to reimburse the counties for the cost of medical care to the needy. The fact that for a certain period after 1975 the state directly paid under the state Medi-Cal program for these costs did not lead to the creation of a new mandate once the state stopped doing so. To hold to the contrary, as the majority does, is to

render subdivision (c) a nullity.

The issue here is not whether the poor are entitled to medical care. They are. The issue is whether the state or the counties must pay for this care. The majority places this obligation on the state. The counties' win, however, may be a pyrrhic victory. For, in anticipation of today's decision, the Legislature has enacted legislation that will drastically reduce the counties' share of other state revenue, as discussed in part III below.

I

Beginning in 1855, California imposed a legal obligation on the counties to take care of their poor. (*Mooney* v. *Pickett* (1971) 4 Cal.3d 669, 677-678 ***112** [94 Cal.Rptr. 279, 483 P.2d 1231].) Since 1965, this obligation has been codified in Welfare and Institutions Code section 17000. (Stats. 1965, ch. 1784, § 5, p. 4090.) That statute states in full: "Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (Welf. & Inst. Code, § 17000.) Included in this is a duty to provide medical care to indigents. (*Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 557 [254 Cal.Rptr. 905].)

A brief overview of the efforts by federal, state, and local governments to furnish medical services to the poor may be helpful.

Before March 1, 1966, the date on which California began its Medi-Cal program, medical services for the poor "were provided in different ways and were funded by the state, county, and federal governments in varying amounts." (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3.) The Medi-Cal program, which California adopted to implement the federal Medicaid program (42 U.S.C. § 1396 et seq.; see *Morris v. Williams* (1967) 67 Cal.2d 733, 738 [63 Cal.Rptr. 689, 433 P.2d 697]), at first limited eligibility to those persons "linked" to a federal categorical aid program by being over age 65, blind, disabled, or a member of a family with dependent children. (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.), pp. 548, 550.) Persons not linked to federal programs were ineligible for Medi-Cal; they could obtain medical care from the counties. (*County of Santa Clara* v. *Hall* (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629].)

In 1971, the Legislature revised Medi-Cal by extending coverage to certain so-called "noncategorically linked" persons, or "medically indigent persons." (Stats. 1971, ch. 577, §§ 12, 13, 22.5, 23, pp. 1110-1111, 1115.) The revisions included a formula for determining each county's share of Medi-Cal costs for the 1972-1973 fiscal year, with increases in later years based on the assessed value of property. (*Id.* at §§ 41, 42, pp. 1131-1133.)

In 1978, California voters added to the state Constitution article XIII A (Proposition 13), which severely limited property taxes. In that same year, to help the counties deal with the drastic drop in local tax revenue, the Legislature assumed the counties' share of Medi-Cal costs. (Stats. 1978, ch. 292, § 33, p. 610.) In 1979, the Legislature relieved the counties of their obligation to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 106, p. 1059.) ***113** Also in 1979, the voters added to the state Constitution article XIII B, which placed spending limits on state and local governments and added the mandate/reimbursement provisions at issue here.

In 1982, the Legislature removed from Medi-Cal eligibility the category of "medically indigent persons" that had been added in 1971. The Legislature also transferred funds for indigent health care services from the state to the counties through the Medically Indigent Services Account. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Medically Indigent Services Account funds were then combined with county health service funds to provide health care to persons not eligible for Medi-Cal (Stats. 1982, ch. 1594, § 86, p. 6357), and counties were to provide health services to persons in this category "to the extent that state funds are provided" (*id.*, § 70, p. 6346).

From 1983 through June 1989, the state fully funded San Diego County's program for furnishing medical care to the poor. Thereafter, in fiscal years 1989-1990 and 1990-1991, the state partially funded San Diego County's program. In early 1991, however, the state refused to provide San Diego County full funding for the 1990-1991 fiscal year, prompting a threat by the county to terminate its indigent medical care program. This in turn led the Legal Aid Society of San Diego to file an action against the County of San Diego, asserting that Welfare and Institutions Code section 17000 imposed a legal obligation on the county to provide medical care to the poor. The county cross-complained against the state. The county argued that the state's 1982 removal of the category of "medically indigent persons" from Medi-Cal eligibility mandated a "new program or higher level of

service" within the meaning of section 6 of article XIII B of the California Constitution, because it transferred the cost of caring for these persons to the county. Accordingly, the county contended, section 6 required the state to reimburse the county for its cost of providing such care, and prohibited the state from terminating reimbursement as it did in 1991. The county eventually reached a settlement with the Legal Aid Society of San Diego, leading to a dismissal of the latter's complaint.

While the County of San Diego's case against the state was pending, litigation was proceeding in a similar action against the state by the County of Los Angeles and the County of San Bernardino. In that action, the Superior Court for the County of Los Angeles entered a judgment in favor of Los Angeles and San Bernardino Counties. The state sought review in the Second District Court of Appeal in Los Angeles. In December 1992, the parties to the Los Angeles case entered into a settlement agreement providing for dismissal of the appeal and vacating of the superior court judgment. ***114** The Court of Appeal thereafter ordered that the superior court judgment be vacated and that the appeal be dismissed.

The County of San Diego's action against the state, however, was not settled. It proceeded on the county's claim against the state for reimbursement of the county's expenditures for medical care to the indigent.[1] The majority holds that the county is entitled to such reimbursement. I disagree.

II

Article XIII B, section 6 of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, *except that the Legislature may, but need not, provide such subvention of funds for the following mandates:* [¶] ... [¶] *(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975*." (Italics added.)[2]

Of importance here is Welfare and Institutions Code section 17000 (hereafter sometimes section 17000). It imposes a legal obligation on the counties to provide, among other things, medical services to the poor. (*Board of Supervisors* v. *Superior Court*, *supra*, 207 Cal.App.3d at p. 557; *County of San Diego v. Viloria* (1969) 276 Cal.App.2d 350, 352 [80 Cal.Rptr. 869].) Section 17000 was enacted long before and has existed continuously since January 1, 1975, the date set forth in subdivision (c) of section 6 of article XIII B of the California Constitution. Thus, section 17000 falls within subdivision (c)'s language of "[l]egislative mandates enacted prior to January 1, 1975," rendering it exempt from the reimbursement provision of section 6.

Contrary to the majority's conclusion, the Legislature's 1982 legislation removing the category of "medically indigent persons" from Medi-Cal did not meet California Constitution, article XIII B, section 6's requirement of imposing on local government "a new program or higher level of service," and therefore did not entitle the counties to reimbursement from the state under section 6 of article XIII B. The counties' legal obligation to provide medical care arises from section 17000, not from the subsequently enacted ***115** 1982 legislation. The majority itself concedes that the 1982 legislation merely "trigger[ed] the counties' responsibility to provide medical care as providers of last resort under section 17000." (Maj. opn., *ante*, at p. 98.) Although certain actions by the state and the federal government during the 1970's and 1980's may have alleviated the counties' financial burden of providing medical care for the indigent, those actions did not supplant or remove the counties' existing legal obligation under section 17000 to furnish such care. (*Cooke* v. *Superior Court* (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706]; *Madera Community Hospital* v. *County of Madera* (1984) 155 Cal.App.3d 136, 151 [201 Cal.Rptr. 768].)

The state's reimbursement obligation under section 6 of article XIII B of the California Constitution arises only if, after January 1, 1975, the date mentioned in subdivision (c) of section 6, the state imposes on the counties "a new program or higher level of service." That did not occur here. As I pointed out above, the counties' legal obligation to provide for the poor arises from section 17000, enacted long before the January 1, 1975, cutoff date set forth in subdivision (c) of section 6. That statutory obligation remained in effect when during a certain period after 1975 the state assumed the financial burden of providing medical care to the poor, in an effort to help the counties deal with a drastic drop in local revenue as a result of the voters' passage of Proposition 13, which severely limited property taxes. Because the counties' statutory obligation to provide health care to the poor was created before 1975 and has existed unchanged since that time, the state's 1982 termination of Medi-Cal eligibility for "medically indigent persons" did not create a "new program or higher level of service" within the meaning of section 6 of article XIII B, and therefore did not obligate the state to reimburse the counties for their expenditures in health care for the poor.

III

In imposing on the state a legal obligation to reimburse the counties for their cost of furnishing medical services to the poor, the majority's holding appears to bail out financially strapped counties. Not so.

Today's decision will immediately result in a reduction of state funds available to the counties. Here is why. In 1991, the Legislature added section 11001.5 to the Revenue and Taxation Code, providing that 24.33 percent of the moneys collected by the Department of Motor Vehicles as motor vehicle license fees must be deposited in the State Treasury to the credit of the Local Revenue Fund. In anticipation of today's decision, the Legislature stated in subdivision (d) of this statute: "This section shall cease to be operative on ***116** the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal [that]: [¶] ... [¶] (2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." (Rev. & Tax. Code, § 11001.5, subd. (d); see also *id*., § 10753.8, subd. (b).)

The loss of such revenue, which the Attorney General estimates at "hundreds of millions of dollars," may put the counties in a serious financial bind. Indeed, realization of the scope of this revenue loss appears to explain why the County of Los Angeles, after a superior court victory in its action seeking state reimbursement for the cost of furnishing medical care to "medically indigent persons," entered into a settlement with the state under which the superior court judgment was effectively obliterated by a stipulated reversal. (See *Neary v. Regents of University of California* (1992) 3 Cal.4th 273 [10 Cal.Rptr.2d 859, 834 P.2d 119].) In a letter addressed to the Second District Court of Appeal, sent while the County of Los Angeles was engaged in settlement negotiations with the state, the county's attorney referred to the legislation mentioned above in these terms: "This legislation was quite clearly written with this case in mind. Consequently, to pursue this matter, *the County of Los Angeles risks losing a funding source it must have to maintain its health services programs at current levels.* The additional funding that might flow to the County from a final judgment in its favor in this matter, is several years away *and is most likely of a lesser amount than this County's share of the vehicle license fees*." (Italics added.) Thus, the County of Los Angeles had apparently determined that a legal victory entitling it to reimbursement from the state for the cost of providing medical care to the category of "medically indigent persons" would not in fact serve its economic interests.

I have an additional concern. According to the majority, whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state. This means that so long as section 17000 continues to exist, an increase in state funding to a particular county for the care of the poor, once undertaken, may be irreversible, thus locking the state into perpetual financial assistance to that county for health care to the needy. This would, understandably, be a major disincentive for the Legislature to ever increase the state's funding of a county's medical care for the poor.

The rigidity imposed by today's holding will have unfortunate consequences should the state's limited financial resources prove insufficient to ***117** reimburse the counties under section 6 of article XIII B of the California Constitution for the "new program or higher level of service" of providing medical care to the poor under section 17000. In that event, the state may be required to modify this "new program or higher level of service" in order to reconcile the state's reimbursement obligation with its finite resources and its other financial commitments. Such modifications are likely to take the form of limitations on eligibility for medical care or on the amount or kinds of medical care that the counties must provide to the poor under section 17000. A more flexible system-one that actively encouraged shared state and county responsibility for indigent medical care, using a variety of innovative funding mechanisms-would be less likely to result in a curtailment of medical services to the poor.

And if the Legislature is unable or unwilling to appropriate funds to comply with the majority's reimbursement order, the law allows the county to file "in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Gov. Code, § 17612, subd. (c); see maj. opn., *ante*, at p. 82.) Such a declaration would do nothing to alleviate the plight of the poor.

Conclusion

The dispute in this case ultimately arises from a collision between the taxing limitations on the counties imposed by article XIII A of the state Constitution and the preexisting, open-ended mandate imposed on them under Welfare and Institutions Code section 17000 to provide medical care for the poor. As I have explained, the Legislature's

assumption thereafter of some of the resulting financial burden to the counties did not repeal section 17000' s mandate, nor did the Legislature's later termination of its financial support create a new mandate. In holding to the contrary, the majority imposes on the Legislature an obligation that the Legislature does not have under the law.

I recognize that my resolution of this issue-that under existing law the state has *no legal obligation* to reimburse the counties for health expenditures for the poor-would leave the counties in the same difficult position in which they find themselves now: providing funding for indigent medical care while maintaining other essential public services in a time of fiscal austerity. But complex policy questions such as the structuring and funding of indigent medical care are best left to the counties, the Legislature, and ultimately the electorate, rather than to the courts. It is the counties that must figure out how to allocate the limited budgets imposed on them by the electorate's adoption of articles XIII A and XIII B of the California Constitution among indigent medical care programs and a host of other pressing ***118** and essential needs. It is the Legislature that must decide whether to furnish financial assistance to the counties so they can meet their section 17000 obligations to provide for the poor, and whether to continue to impose the obligations of section 17000 on the counties. It is the electorate that must decide whether, given the ever-increasing costs of meeting the needs of indigents under section 17000, counties should be afforded some relief from the taxing and spending limits of articles XIII A and XIII B, both enacted by voters' initiative. These are hard choices, but for the reasons just given they are better made by the representative branches of government and the electorate than by the courts. ***119**

Footnotes

* Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

† Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

1 Except as otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

2 Congress later repealed the requirement that states work towards expanding eligibility. (See Cal. Health and Welfare Agency, The Medi-Cal Program: A Brief Summary of Major Events (Mar. 1990) p. 1 (Summary of Major Events).)

3 Former section 14150.1 provided in relevant part: "[A] county may elect to pay as its share [of Medi-Cal costs] one hundred percent ... of the county cost of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county .... If the county so elects, the county costs of health care in any fiscal year shall not exceed the total county costs of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county ...." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 121.)

4 Former section 14150 provided the standard method for determining the counties' share of Medi-Cal costs. Under it, "a county was required to pay the state a specific sum, in return for which the state would pay for the medical care of all [categorically linked] individuals .... Financial responsibility for nonlinked individuals ... remained with the counties." (*Lackner*, *supra*, 97 Cal.App.3d at p. 581.)

5 In this opinion, the terms "adult MIP's" and "Medically Indigent Adults" refer only to those persons who were excluded from the Medi-Cal program by the 1982 legislation.

6 San Diego lodged with the trial court a copy of the Commission's decision in the Los Angeles action.

7 In setting forth the facts relating to the Los Angeles action, we rely in part on the appellate record from that action, of which we take judicial notice. (Evid. Code, §§ 452, subd. (d), 459.)

8 The settlement resulted from 1991 legislation that changed the system of health care funding as of June 30, 1991. (See § 17600 et seq.; Stats. 1991, chs. 87, 89, pp. 231-235, 243-341.) That legislation provided counties with new revenue sources, including a portion of state vehicle license fees, to fund health care programs. However, the legislation declared that the statutes providing counties with vehicle license fees would "cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal" that "[t]he state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." (Rev. & Tax. Code, §§ 10753.8, subd. (b)(2), 11001.5, subd. (d)(2); see also Stats. 1991, ch. 89, § 210, p. 340.) Los Angeles and San Bernardino Counties settled their action to avoid triggering these provisions. Unlike the dissent, we do not believe that consideration of these recently enacted provisions is appropriate in analyzing the 1982 legislation. Nor do we assume, as the dissent does, that our decision necessarily triggers these provisions. That issue is not before us.

9 The cross-complaint named the following state officers: (1) Kenneth W. Kizer, Director of the Department of Health Services; (2) Kim Belshé, Acting Secretary of the Health and Welfare Agency; (3) Gray Davis, the State Controller; (4) Kathleen Brown, the State Treasurer; and (5) Thomas Hayes, the Director of the Department of Finance. Where the context suggests, subsequent references in this opinion to "the state" include these officers.

10 The judgment dismissed all of San Diego's other claims.

11 In *Garamendi*, *supra*, 20 Cal.App.4th at pages 771-775, the court discussed procedural requirements for raising a claim that another court has already exercised its concurrent jurisdiction. Given our conclusion that the trial court's error here was not jurisdictional, we express no opinion about this discussion in *Garamendi* or the sufficiency of the state's efforts to raise the issue in this case.

12 Notably, in discussing the options still available to San Diego, the state asserts that San Diego "might have been able to go to superior court and file a [mandamus] petition based on the record of the prior test claim."

13 "County General Assistance in California dates from 1855, and for many years afforded the only form of relief to indigents." (*Mooney* v . *Pickett* (1971) 4 Cal.3d 669, 677 [94 Cal.Rptr. 279, 483 P.2d 1231] (*Mooney*).) Section 17000 is substantively identical to former section 2500, which was enacted in 1937. (Stats. 1937, chs. 369, 464, pp. 1097, 1406.)

14 See also *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639 [122 P.2d 526] (construing former section 2500); *Jennings v. Jones* (1985) 165 Cal.App.3d 1083, 1091 [212 Cal.Rptr. 134] (counties must support all indigent persons "having no other means of support"); *Union of American Physicians & Dentists v. County of Santa Clara* (1983) 149 Cal.App.3d 45, 51, fn. 10 [196 Cal.Rptr. 602]; *Rogers v. Detrich* (1976) 58 Cal.App.3d 90, 95 [128 Cal.Rptr. 261] (counties have duty of support "where such support is not otherwise furnished").

15 In asserting that Medi-Cal coverage did not supplant San Diego's obligation under section 17000, the dissent incorrectly relies on *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] (*Madera*) and *Cooke*, *supra*, 213 Cal.App.3d 401. (Dis. opn., *post*, at p. 115.) In *Madera*, the court voided a county ordinance that extended county benefits under section 17000 only to persons " 'meeting all eligibility standards for the Medi-Cal program.' " (*Madera*, *supra*, 155 Cal.App.3d at p. 150.) The court explained: "Because all funding for the Medi-Cal program comes from either the federal or the state government ..., [c]ounty has denied any financial obligation whatsoever from county funds for the medical care of its indigent and poor residents." (*Ibid.*) Thus, properly understood, *Madera* held only that Medi-Cal does not relieve counties of their obligation to provide medical care to persons who are "indigent" within the meaning of section 17000 but who are ineligible for Medi-Cal. The limit of *Madera*'s holding is apparent from the court's reliance on a 1979 opinion of the Attorney General discussing the scope of a county's authority under section 17000. (*Madera*, *supra*, 155 Cal.App.3d at pp. 151-152.) The Attorney General explained that "[t]he county obligation [under section 17000] to provide general relief extends to those indigents who do not qualify under specialized aid programs, ... including Medi-Cal." (62 Ops.Cal.Atty.Gen. 70, 71, fn. 1 (1979).) Moreover, the *Madera* court expressly recognized that state and federal programs "alleviate, to a greater or lesser extent, [a] [c]ounty's burden." (*Madera*, *supra*, 155 Cal.App.3d at p. 151.) In *Cooke*, the court simply made a passing reference to *Madera* in dictum describing the coverage history of Medi-Cal. (*Cooke*, *supra*, 213 Cal.App.3d at p. 411.) It neither analyzed the issue before us nor explained the meaning of the dictum that the dissent cites.

16 As we have previously explained, even before 1971 the state, through the county option, assumed much of the financial responsibility for providing medical care to adult MIP's.

17 Because *County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th 805, is distinguishable, we need not (and do not) express an opinion regarding the court's analysis in that decision or its conclusions.

18 The state properly does not contend that the provision of medical care to adult MIP's is not a "program" within the meaning of section 6. (See *County of Los Angeles*, *supra*, 43 Cal.3d at p. 56 [section 6 applies to "programs that carry out the governmental function of providing services to the public"].)

19 Alternatively, the 1982 legislation can be viewed as having mandated an increase in the services that counties were providing through existing section 17000 programs, by adding adult MIP's to the indigent population that counties already had to serve under that section. (See *County of Los Angeles*, *supra*, 43 Cal.3d at p. 56 ["subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs' "].)

20 In reaching a contrary conclusion, the dissent ignores the electorate's purpose in adopting section 6. The dissent also mischaracterizes our decision. We do not hold that "whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state." (Dis. opn., *post*, at p. 116.) Rather, we hold that section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before adoption of section 6. Whether the state may discontinue assistance that it initiated after section 6's adoption is a question that is not before us.

21 As amended in 1982, section 16704, subdivision (c)(1), provided in relevant part: "The [county board of supervisors] shall assure that it will expend [MISA] funds only for the health services specified in Sections 14132 and 14021 provided to persons certified as eligible for such services pursuant to Section 17000 and shall assure that it will incur no less in net costs of county funds for county health services in any fiscal year than the amount required to obtain the maximum allocation under Section 16702." (Stats. 1982, ch. 1594, § 70, p. 6346.) Section 16704, subdivision (c)(3), provided in relevant part: "Any person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided. Such persons may be held financially liable for these services based upon the person's ability to pay. A county may not establish a payment requirement which would deny medically necessary services. This section shall not be construed to mandate that a county provide any specific level or type of health care service .... The provisions of this paragraph shall become inoperative if a court ruling is issued which decrees that the provisions of this paragraph mandates [*sic*] that additional state funds be provided and which requires that additional state reimbursement be made to counties for costs incurred under this paragraph. This paragraph shall be operative only until June 30, 1983, unless a later enacted statute extends or deletes that date." (Stats. 1982, ch. 1594, § 70, pp. 6346-6347.)

22 Section 17001 provides: "The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county."

23 We disapprove *Bay General*, *supra*, 156 Cal.App.3d at pages 959-960, insofar as it (1) states that a county's responsibility under section 17000 extends only to indigents as defined by the county's board of supervisors, and (2) suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of section 17000 but do not qualify for Medi-Cal.

24 Our conclusion is limited to this aspect of a county's duty under section 17000. We express no opinion regarding the scope of a county's duty to provide other forms of relief and support under section 17000.

25 The 1982 legislation made the subdivision operative until June 30, 1983. (Stats. 1982, ch. 1594, § 70, p. 6347.) In 1983, the Legislature repealed and reenacted section 16704, and extended the operative date of subdivision (c)(3) to June 30, 1985. (Stats. 1983, ch. 323, §§ 131.1, 131.2, pp. 1079-1080.)

26 Given our analysis, we express no opinion about the statement in *Cooke*, *supra*, 213 Cal.App.3d at page 412, footnote 9, that the "life" of section 16704, subdivision (c)(3), "was implicitly extended" by the fact that the "paragraph remains in the statute despite three subsequent amendments to the statute ...."

27 Although asserting that nothing required San Diego to provide "all" adult MIP's with medical care, the state never precisely identifies which adult MIP's were legally entitled to medical care and which ones were not. Nor does the state ever directly assert that some adult MIP's were not "indigent persons" under section 17000. On the contrary, despite its argument, the state seems to suggest that San Diego's medical care obligation under section 17000 extended even beyond adult MIP's. It asserts: "At no time prior to or following 1983 did Medi-Cal ever provide medical services to, or

pay for medical services provided to, all persons who could not afford such services and therefore might be deemed 'medically indigent.' ... For some period prior to 1983, Medi-Cal paid for services for *some* indigent adults under its 'medically indigent adults' category.... [A]t *no time* did the state ever assume financial responsibility for all adults who are too indigent to afford health care." (Original italics.)

28 The state argues that former subdivision (c) is irrelevant to our determination because, like section 17000, it "predate[d] 1975." Our previous analysis rejecting this argument in connection with section 17000 applies here as well.

29 Statutes 1992, chapter 719, section 2, page 2882, repealed former subdivision (c) and enacted a new subdivision (c) in its place. This urgency measure was approved by the Governor on September 14, 1992, and filed with the Secretary of State on September 15, 1992.

30 We disapprove *Cooke*, *supra*, 213 Cal.App.3d at page 410, to the extent it held that Health and Safety Code section 1442.5, former subdivision (c), was merely "a limitation on a county's ability to close facilities or reduce services provided in those facilities," and was irrelevant absent a claim that a "county facility was closed [or] that any services in [the] county ... were reduced." Although former subdivision (c) was contained in a section that dealt in part with closures and service reductions, nothing limited its reach to that context.

31 During further proceedings before the Commission to determine the amount of reimbursement due San Diego, the state may argue that particular services available under San Diego's CMS program exceeded statutory requirements.

32 Consistent with the electorate's direction, in its application for CHIP funds, San Diego assured the state that it would "[e]xpend [CHIP] funds only to supplement existing levels of services provided and not to fund existing levels of service ...." Because San Diego's initial decision to seek CHIP funds was voluntary, the evidence it cites of state threats to withhold CHIP funds if it eliminated the CMS program is irrelevant.

33 Former section 16991, subdivision (a)(5), provided in full: "If the sum of funding that a county received from its allocation pursuant to Section 16703, the amount of reimbursement it received from federal State Legalization Impact Assistance Grant [(SLIAG)] funding for indigent care, and its share of funding provided in this section is less than the amount of funding the county received pursuant to Section 16703 in fiscal year 1988-89 the state shall reimburse the county for the amount of the difference. For the 1990-91 fiscal year, if the sum of funding received from its allocation, pursuant to Section 16703 and the amount of reimbursement it received from [SLIAG] Funding for indigent care that year is less than the amount of funding the county received pursuant to Section 16703 in the 1988-89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement." (Stats. 1989, ch. 1331, § 9, p. 5428.)

34 Despite its argument here, when it initially appealed, the state apparently recognized that it could no longer challenge the May 1991 order. In its March 1993 notice of appeal, it appealed only from the judgment entered December 18, 1992, and did not mention the May 1991 order.

* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

† Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

1 I agree with the majority that the superior court had jurisdiction to decide this case. (Maj. opn., *ante,* at pp. 86-90.)

2 Section 6 of article XIII B pertains to two types of mandates: new programs and higher levels of service. The words "such subvention" in the first paragraph of this constitutional provision makes the subdivision (c) exemption applicable to both types of mandates.

KeyCite Yellow Flag - Negative Treatment
Opinion Amended on Denial of Rehearing by Defenders of Wildlife v. Browner, 9th Cir., December 7, 1999

191 F.3d 1159
United States Court of Appeals,
Ninth Circuit.

DEFENDERS OF WILDLIFE and The Sierra Club, Petitioners,
v.
Carol M. BROWNER, in her official capacity as Administrator of the United States Environmental Protection Agency, Respondent.
City of Tempe, Arizona; City of Tucson, Arizona; City of Mesa, Arizona; Pima County, Arizona; and City of Phoenix, Arizona, Intervenors–Respondents.

No. 98–71080.
|
Argued and Submitted Aug. 11, 1999.
|
Decided Sept. 15, 1999.

Synopsis
Environmental organizations sought review of Environmental Protection Agency (EPA) decision to issue National Pollution Discharge Elimination System (NPDES) permits to five municipalities, for their separate storm sewers, without requiring numeric limitations to ensure compliance with state water-quality standards. The Court of Appeals, Graber, Circuit Judge, held that: (1) organizations had standing; (2) municipal storm-sewer discharges did not have to strictly comply with state water-quality standards; but (3) EPA had discretion to require that municipal discharges comply with such standards.

Petition denied.

West Headnotes (8)

[1] **Environmental Law**
Cognizable interests and injuries, in general

For purpose of statute authorizing any interested person to seek judicial review of Environmental Protection Agency (EPA) decision issuing or denying any National Pollution Discharge Elimination System (NPDES) permit, "any interested person" means any person that satisfies the injury-in-fact requirement for Article III standing. U.S.C.A. Const. Art. 3, § 2, cl. 1; Federal Water Pollution Control Act Amendments of 1972, § 509(b)(1)(F), 33 U.S.C.A. § 1369(b)(1)(F).

2 Cases that cite this headnote

[2] **Environmental Law**
Organizations, associations, and other groups

Environmental organizations had standing to seek judicial review of Environmental Protection Agency (EPA) decision to issue National Pollution Discharge Elimination System (NPDES) permits for municipalities' storm sewers based on allegation that organizations' members used and enjoyed ecosystems affected by storm water discharges and sources thereof governed by the permits. U.S.C.A. Const. Art. 3, § 2, cl. 1; Federal Water Pollution Control Act Amendments of 1972, § 509(b)(1)(F), 33 U.S.C.A. § 1369(b)(1)(F).

6 Cases that cite this headnote

[3] **Environmental Law**
Permit and certification proceedings

Although best practicable control technology (BPT) requirement for National Pollution Discharge Elimination System (NPDES) permits takes into account issues of practicability, the Environmental Protection Agency (EPA) also is under a specific obligation to require that level of effluent control which is needed to implement existing water quality standards without regard to the limits of practicability. Federal Water Pollution Control Act Amendments of 1972, §§ 301(b)(1)(A, C), 402(a)(1), 33 U.S.C.A. §§ 1311(b)(1)(A, C), 1342(a)(1).

11 Cases that cite this headnote

[4] **Environmental Law**
Discharge of pollutants

Water Quality Act amendments to the Clean Water Act do not require municipal storm-sewer discharges to strictly comply with state water-quality standards, in order to obtain National Pollution Discharge Elimination System (NPDES) permit, but instead prescribe separate standard requiring reduction of discharge of pollutants to maximum extent practicable, in view of Act's distinction between municipal and industrial discharges. Federal Water Pollution Control Act Amendments of 1972, §§ 301(b)(1)(C), 402(p)(3)(B)(iii), 33 U.S.C.A. §§ 1311(b)(1)(C), 1342(p)(3)(B)(iii).

15 Cases that cite this headnote

[5] **Administrative Law and Procedure**
Plain, literal, or clear meaning; ambiguity

Questions of congressional intent that can be answered with traditional tools of statutory construction are still firmly within the province of the courts under *Chevron*, which governs review of an agency's interpretation of a statute.

5 Cases that cite this headnote

[6] **Statutes**
Language and intent, will, purpose, or policy
Statutes
Statute as a Whole; Relation of Parts to Whole and to One Another

Using traditional tools of statutory construction when interpreting a statute, courts look first to the words that Congress used, and, rather than focusing just on the word or phrase at issue, courts look to the entire statute to determine Congressional intent.

6 Cases that cite this headnote

[7] **Statutes**
Express mention and implied exclusion; expressio unius est exclusio alterius

Where Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.

5 Cases that cite this headnote

[8] **Environmental Law**
Conditions and limitations

Environmental Protection Agency (EPA) is not prohibited from requiring, under Clean Water Act, that municipal storm-sewer discharges strictly comply with state water-quality standards, but has discretion to determine appropriate pollution controls. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(3)(B)(iii), 33 U.S.C.A. § 1342(p)(3)(B)(iii).

13 Cases that cite this headnote

Attorneys and Law Firms

***1160** Jennifer Anderson and David Baron, Arizona Center for Law in the Public Interest, Phoenix, Arizona, for the petitioners.

Alan Greenberg, Attorney, U.S. Department of Justice, Environment & Natural Resources Division, Denver, Colorado, for the respondent.

Craig Reece, Phoenix City Attorney's Office, Phoenix, Arizona; Stephen J. Burg, Mesa City Attorney's Office,

Mesa, Arizona; Timothy Harrison, Tucson City Attorney's Office, Tucson, Arizona; Harlan C. Agnew, Deputy County Attorney, Tucson, Arizona; and Charlotte Benson, Tempe City Attorney's Office, Tempe, Arizona, for the intervenors-respondents.

***1161** David Burchmore, Squire, Sanders & Dempsey, Cleveland, Ohio, for amici curiae.

Petition to Review a Decision of the Environmental Protection Agency. EPA No. 97–3.

Before: NOONAN, THOMPSON, and GRABER, Circuit Judges.

Opinion

GRABER, Circuit Judge:

Petitioners challenge the Environmental Protection Agency's (EPA) decision to issue National Pollution Discharge Elimination System (NPDES) permits to five municipalities, for their separate storm sewers, without requiring numeric limitations to ensure compliance with state water-quality standards. Petitioners sought administrative review of the decision within the EPA, which the Environmental Appeals Board (EAB) denied. This timely petition for review ensued. For the reasons that follow, we deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Title 26 U.S.C. § 1342(a)(1) authorizes the EPA to issue NPDES permits, thereby allowing entities to discharge some pollutants. In 1992 and 1993, the cities of Tempe, Tucson, Mesa, and Phoenix, Arizona, and Pima County, Arizona (Intervenors), submitted applications for NPDES permits. The EPA prepared draft permits for public comment; those draft permits did not attempt to ensure compliance with Arizona's water-quality standards.

Petitioner Defenders of Wildlife objected to the permits, arguing that they must contain numeric limitations to ensure strict compliance with state water-quality standards. The State of Arizona also objected.

Thereafter, the EPA added new requirements:

> To ensure that the permittee's activities achieve timely compliance with applicable water quality standards (Arizona Administrative Code, Title 18, Chapter 11, Article 1), the permittee shall implement the [Storm Water Management Program], monitoring, reporting and other requirements of this permit in accordance with the time frames established in the [Storm Water Management Program] referenced in Part I.A.2, and elsewhere in the permit. This timely implementation of the requirements of this permit shall constitute a schedule of compliance authorized by Arizona Administrative Code, section R18–11–121(C).

The Storm Water Management Program included a number of structural environmental controls, such as storm-water detention basins, retention basins, and infiltration ponds. It also included programs to remove illegal discharges.

With the inclusion of those "best management practices," the EPA determined that the permits ensured compliance with state water-quality standards. The Arizona Department of Environmental Quality agreed:

> The Department has reviewed the referenced municipal NPDES storm-water permit pursuant to Section 401 of the Federal Clean Water Act to ensure compliance with State water quality standards. We have determined that, based on the information provided in the permit, and the fact sheet, adherence to provisions and requirements set forth in the final municipal permit, will protect the water quality of the receiving water.

On February 14, 1997, the EPA issued final NPDES permits to Intervenors. Within 30 days of that decision, Petitioners requested an evidentiary hearing with the regional administrator. *See* 40 C.F.R. § 124.74. Although Petitioners requested a hearing, they conceded that they raised only a legal issue and that a hearing was, in fact, unnecessary. Specifically, Petitioners raised only the legal question whether the Clean Water Act (CWA) requires numeric limitations to ensure strict compliance with state

water-quality standards; they did not raise the factual question whether the management practices that the EPA chose would be effective.

***1162** On June 16, 1997, the regional administrator summarily denied Petitioners' request. Petitioners then filed a petition for review with the EAB. *See* 40 C.F.R. § 124.91(a). On May 21, 1998, the EAB denied the petition, holding that the permits need not contain numeric limitations to ensure strict compliance with state water-quality standards. Petitioners then moved for reconsideration, *see* 40 C.F.R. § 124.91(i), which the EAB denied.

JURISDICTION

[1] [2] Title 33 U.S.C. § 1369(b)(1)(F) authorizes "any interested person" to seek review in this court of an EPA decision "issuing or denying any permit under section 1342 of this title." "Any interested person" means any person that satisfies the injury-in-fact requirement for Article III standing. *See Natural Resources Defense Council, Inc. v. EPA*, 966 F.2d 1292, 1297 (9th Cir.1992) [*NRDC II*]. It is undisputed that Petitioners satisfy that requirement. Petitioners allege that "[m]embers of Defenders and the Club use and enjoy ecosystems affected by storm water discharges and sources thereof governed by the above-referenced permits," and no other party disputes those facts. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 565–66, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) ("[A] plaintiff claiming injury from environmental damage must use the area affected by the challenged activity."); *see also NRDC II*, 966 F.2d at 1297 ("NRDC claims, inter alia, that [the] EPA has delayed unlawfully promulgation of storm water regulations and that its regulations, as published, inadequately control storm water contaminants. NRDC's allegations ... satisfy the broad standing requirement applicable here.").

Intervenors argue, however, that they were not parties when this action was filed and that this court cannot redress Petitioners' injury without them. Their real contention appears to be that they are indispensable parties under Federal Rule of Civil Procedure 19. We need not consider that contention, however, because in fact Intervenors have been permitted to intervene in this action and to present their position fully. In the circumstances, Intervenors have suffered no injury.

DISCUSSION

A. *Standard of Review*

The Administrative Procedures Act (APA), 5 U.S.C. §§ 701–06, provides our standard of review for the EPA's decision to issue a permit. *See American Mining Congress v. EPA*, 965 F.2d 759, 763 (9th Cir.1992). Under the APA, we generally review such a decision to determine whether it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

On questions of statutory interpretation, we follow the approach from *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). *See NRDC II*, 966 F.2d at 1297 (so holding). In *Chevron*, 467 U.S. at 842–44, 104 S.Ct. 2778, the Supreme Court devised a two-step process for reviewing an administrative agency's interpretation of a statute that it administers. *See also Bicycle Trails Council of Marin v. Babbitt*, 82 F.3d 1445, 1452 (9th Cir.1996) ("The Supreme Court has established a two-step process for reviewing an agency's construction of a statute it administers."). Under the first step, we employ "traditional tools of statutory construction" to determine whether Congress has expressed its intent unambiguously on the question before the court. *Chevron*, 467 U.S. at 843 n. 9, 104 S.Ct. 2778. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842–43, 104 S.Ct. 2778 (footnote omitted). If, instead, Congress has left a gap for the administrative agency to fill, we proceed to step two. *See id.* at 843, 104 S.Ct. 2778. At step two, we must uphold the administrative regulation unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Id.* at 844, 104 S.Ct. 2778.

***1163** B. *Background*

The CWA generally prohibits the "discharge of any pollutant," 33 U.S.C. § 1311(a), from a "point source" into the navigable waters of the United States. *See* 33 U.S.C. § 1362(12)(A). An entity can, however, obtain an NPDES permit that allows for the discharge of some pollutants. *See* 33 U.S.C. § 1342(a)(1).

[3] Ordinarily, an NPDES permit imposes effluent limitations on such discharges. *See* 33 U.S.C. § 1342(a)(1) (incorporating effluent limitations found in 33 U.S.C. § 1311). First, a permit-holder "shall ... achiev [e] ... effluent limitations ... which shall require the application of the best practicable control technology

[BPT] currently available." 33 U.S.C. § 1311(b)(1)(A). Second, a permit-holder "*shall ... achiev[e] ... any more stringent limitation,* including those *necessary to meet water quality standards,* treatment standards or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title)." 33 U.S.C. § 1311(b)(1)(C) (emphasis added). Thus, although the BPT requirement takes into account issues of practicability, *see Rybachek v. EPA,* 904 F.2d 1276, 1289 (9th Cir.1990), the EPA also "is under a specific obligation to require that level of effluent control which is needed to implement existing water quality standards without regard to the limits of practicability," *Oklahoma v. EPA,* 908 F.2d 595, 613 (10th Cir.1990) (internal quotation marks omitted), *rev'd on other grounds sub nom. Arkansas v. Oklahoma,* 503 U.S. 91, 112 S.Ct. 1046, 117 L.Ed.2d 239 (1992). *See also Ackels v. EPA,* 7 F.3d 862, 865–66 (9th Cir.1993) (similar).

The EPA's treatment of storm-water discharges has been the subject of much debate. Initially, the EPA determined that such discharges generally were exempt from the requirements of the CWA (at least when they were uncontaminated by any industrial or commercial activity). *See* 40 C.F.R. § 125.4 (1975).

The Court of Appeals for the District of Columbia, however, invalidated that regulation, holding that "the EPA Administrator does not have authority to exempt categories of point sources from the permit requirements of § 402 [33 U.S.C. § 1342]." *Natural Resources Defense Council, Inc. v. Costle,* 568 F.2d 1369, 1377 (D.C.Cir.1977). "Following this decision, [the] EPA issued proposed and final rules covering storm water discharges in 1980, 1982, 1984, 1985 and 1988. These rules were challenged at the administrative level and in the courts." *American Mining Congress,* 965 F.2d at 763.

Ultimately, in 1987, Congress enacted the Water Quality Act amendments to the CWA. *See NRDC II,* 966 F.2d at 1296 ("Recognizing both the environmental threat posed by storm water runoff and [the] EPA's problems in implementing regulations, Congress passed the Water Quality Act of 1987 containing amendments to the CWA.") (footnotes omitted). Under the Water Quality Act, from 1987 until 1994,[1] most entities discharging storm water did not need to obtain a permit. *See* 33 U.S.C. § 1342(p).

Although the Water Quality Act generally did not require entities discharging storm water to obtain a permit, it did require such a permit for discharges "with respect to which a permit has been issued under this section before February 4, 1987," 33 U.S.C. § 1342(p)(2)(A); discharges "associated with industrial activity," 33 U.S.C. § 1342(p)(2)(B); discharges from a "municipal separate sewer system serving a population of [100,000] or more," 33 U.S.C. § 1342(p)(2)(C) & (D); and "[a] discharge for which the Administrator ... determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States," 33 U.S.C. § 1342(p)(2)(E).

***1164** When a permit is required for the discharge of storm water, the Water Quality Act sets two different standards:

> (A) Industrial discharges
>
> Permits for discharges associated with industrial activity shall meet all applicable provisions of this section *and section 1311* of this title.
>
> (B) Municipal discharge
>
> Permits for discharges from municipal storm sewers—
>
> (i) may be issued on a system or jurisdiction-wide basis;
>
> (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
>
> (iii) *shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator ... determines appropriate for the control of such pollutants.*

33 U.S.C. § 1342(p)(3) (emphasis added).

C. *Application of Chevron*

[4] The EPA and Petitioners argue that the Water Quality Act is ambiguous regarding whether Congress intended for municipalities to comply strictly with state water-quality standards, under 33 U.S.C. § 1311(b)(1)(C). Accordingly, they argue that we must proceed to step two of *Chevron* and defer to the EPA's interpretation that the statute does require strict compliance. *See Zimmerman v. Oregon Dep't of Justice,* 170 F.3d 1169, 1173 (9th Cir.1999) ("At step two, we must uphold the administrative regulation unless it is arbitrary, capricious, or manifestly contrary to the statute.") (citation and internal quotation marks omitted), *cert. denied,* 531 U.S. 1189, 121 S.Ct. 1186, 149 L.Ed.2d 103, 68 USLW 3129

(1999).

Intervenors and *amici*, on the other hand, argue that the Water Quality Act expresses Congress' intent unambiguously and, thus, that we must stop at step one of *Chevron*. *See, e.g.*, *National Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 118 S.Ct. 927, 938–39, 140 L.Ed.2d 1 (1998) ("Because we conclude that Congress has made it clear that the *same* common bond of occupation must unite each member of an occupationally defined federal credit union, we hold that the NCUA's contrary interpretation is impermissible under the first step of *Chevron.*") (emphasis in original); *Sierra Club v. EPA*, 118 F.3d 1324, 1327 (9th Cir.1997) ("Congress has spoken clearly on the subject and the regulation violates the provisions of the statute. Our inquiry ends at the first prong of *Chevron.*"). We agree with Intervenors and *amici:* For the reasons discussed below, the Water Quality Act unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C). That being so, we end our inquiry at the first step of the *Chevron* analysis.

[5] [6] "[Q]uestions of congressional intent that can be answered with 'traditional tools of statutory construction' are still firmly within the province of the courts" under *Chevron*. *NRDC II*, 966 F.2d at 1297 (citation omitted). "Using our 'traditional tools of statutory construction,' *Chevron*, 467 U.S. at 843 n. 9, 104 S.Ct. 2778, 81 L.Ed.2d 694, when interpreting a statute, we look first to the words that Congress used." *Zimmerman*, 170 F.3d at 1173 (alterations, citations, and internal quotation marks omitted). "Rather than focusing just on the word or phrase at issue, we look to the entire statute to determine Congressional intent." *Id.* (alterations, citations, and internal quotation marks omitted).

As is apparent, Congress expressly required *industrial* storm-water discharges to comply with the requirements of 33 U.S.C. § 1311. *See* 33 U.S.C. § 1342(p)(3)(A) ("Permits for discharges associated with industrial activity *shall meet all applicable provisions of* this section and *section 1311* of this title.") (emphasis added). By incorporation, then, industrial ***1165** storm-water discharges "*shall ... achiev[e] ... any more stringent limitation*, including those necessary to meet water quality standards, treatment standards or schedules of compliance, established pursuant to any State law or regulation (under authority preserved by section 1370 of this title)." 33 U.S.C. § 1311(b)(1)(C) (emphasis added); *see also* Sally A. Longroy, *The Regulation of Storm Water Runoff and its Impact on Aviation*, 58 J. Air. L. & Com. 555, 565–66 (1993) ("Congress further *singled out* industrial storm water dischargers, all of which are on the high-priority schedule, and requires them to satisfy all provisions of section 301 of the CWA [33 U.S.C. § 1311].... Section 301 further mandates that NPDES permits include requirements that receiving waters meet water quality based standards.") (emphasis added). In other words, industrial discharges must comply strictly with state water-quality standards.

Congress chose not to include a similar provision for municipal storm-sewer discharges. Instead, Congress required municipal storm-sewer discharges "to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator ... determines appropriate for the control of such pollutants." 33 U.S.C. § 1342(p)(3)(B)(iii).

[7] The EPA and Petitioners argue that the difference in wording between the two provisions demonstrates ambiguity. That argument ignores precedent respecting the reading of statutes. Ordinarily, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983) (citation and internal quotation marks omitted); *see also United States v. Hanousek*, 176 F.3d 1116, 1121 (9th Cir.1999) (stating the same principle), *petition for cert. filed*, 68 USLW 3138 (Aug. 23, 1999). Applying that familiar and logical principle, we conclude that Congress' choice to require industrial storm-water discharges to comply with 33 U.S.C. § 1311, but not to include the same requirement for municipal discharges, must be given effect. When we read the two related sections together, we conclude that 33 U.S.C. § 1342(p)(3)(B)(iii) does not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).

Application of that principle is significantly strengthened here, because 33 U.S.C. § 1342(p)(3)(B) *is not merely silent* regarding whether municipal discharges must comply with 33 U.S.C. § 1311. Instead, § 1342(p)(3)(B)(iii) *replaces* the requirements of § 1311 with the requirement that municipal storm-sewer dischargers "reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator ... determines appropriate for the control of such pollutants." 33 U.S.C. § 1342(p)(3)(B)(iii). In the circumstances, the statute unambiguously demonstrates

that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).

Indeed, the EPA's and Petitioners' interpretation of 33 U.S.C. § 1342(p)(3)(B)(iii) would render that provision superfluous, a result that we prefer to avoid so as to give effect to all provisions that Congress has enacted. *See Government of Guam ex rel. Guam Econ. Dev. Auth. v. United States,* 179 F.3d 630, 634 (9th Cir.1999) ("This court generally refuses to interpret a statute in a way that renders a provision superfluous."), *as amended,* 1999 WL 604218 (9th Cir. Aug.12, 1999). As all parties concede, § 1342(p)(3)(B)(iii) creates a lesser standard than § 1311. Thus, if § 1311 continues to apply to municipal storm-sewer discharges, ***1166** the more stringent requirements of that section always would control.

Contextual clues support the plain meaning of § 1342(p)(3)(B)(iii), which we have described above. The Water Quality Act contains other provisions that undeniably exempt certain discharges from the permit requirement altogether (and therefore from § 1311). For example, "[t]he Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture." 33 U.S.C. § 1342(*l*)(1). Similarly, a permit is not required for certain storm-water runoff from oil, gas, and mining operations. *See* 33 U.S.C. § 1342(*l*)(2). Read in the light of those provisions, Congress' choice to exempt municipal storm-sewer discharges from strict compliance with § 1311 is not so unusual that we should hesitate to give effect to the statutory text, as written.

Finally, our interpretation of § 1342(p)(3)(B)(iii) is supported by this court's decision in *NRDC II.* There, the petitioner had argued that "the EPA has failed to establish substantive controls for municipal storm water discharges as required by the 1987 amendments." *NRDC II,* 966 F.2d at 1308. This court disagreed with the petitioner's interpretation of the amendments:

> Prior to 1987, municipal storm water dischargers were subject to the same substantive control requirements as industrial and other types of storm water. In the 1987 amendments, *Congress retained the existing, stricter controls for industrial storm water dischargers but prescribed new controls for municipal storm water discharge.*

Id. (emphasis added). The court concluded that, under 33 U.S.C. § 1342(p)(3)(B)(iii), "*Congress did not mandate a minimum standards approach. " Id.* (emphasis added). The question in *NRDC II* was not whether § 1342(p)(3)(B)(iii) required strict compliance with state water-quality standards, *see* 33 U.S.C. § 1311(b)(1)(C). Nonetheless, the court's holding applies equally in this action and further supports our reading of 33 U.S.C. § 1342(p).

In conclusion, the text of 33 U.S.C. § 1342(p)(3)(B), the structure of the Water Quality Act as a whole, and this court's precedent all demonstrate that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).

D. *Required Compliance with 33 U.S.C. § 1311(b)(1)(C)*

[8] We are left with Intervenors' contention that the EPA may not, under the CWA, require strict compliance with state water-quality standards, through numerical limits or otherwise. We disagree.

Although Congress did not require municipal storm-sewer discharges to comply strictly with § 1311(b)(1)(C), § 1342(p)(3)(B)(iii) states that "[p]ermits for discharges from municipal storm sewers ... shall require ... *such other provisions as the Administrator ... determines appropriate for the control of such pollutants.*" (Emphasis added.) That provision gives the EPA discretion to determine what pollution controls are appropriate. As this court stated in *NRDC II,* "Congress gave the administrator discretion to determine what controls are necessary.... NRDC's argument that the EPA rule is inadequate cannot prevail in the face of the clear statutory language." 966 F.2d at 1308.

Under that discretionary provision, the EPA has the authority to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants. The EPA also has the authority to require less than strict compliance with state water-quality standards. The EPA has adopted an interim approach, which "uses best management practices (BMPs) in first-round storm water permits ... to provide for the attainment of water quality standards." The EPA applied that approach to the permits at issue here. Under 33 U.S.C. § 1342(p)(3)(B)(iii), the EPA's choice to include ***1167** either management practices or numeric limitations in the permits was within its discretion. *See NRDC II,* 966 F.2d at 1308 ("Congress did not mandate a minimum standards approach or specify that [the] EPA develop minimal performance requirements."). In the circumstances, the EPA did not act arbitrarily or capriciously by issuing permits to Intervenors.

PETITION DENIED.

191 F.3d 1159, 30 Envtl. L. Rep. 20,116, 99 Cal. Daily Op. Serv. 7618, 1999 Daily Journal D.A.R. 9661, 1999 Daily Journal D.A.R. 12,369

All Citations

Footnotes

1 As enacted, the Water Quality Act extended the exemption to October 1, 1992. Congress later amended the Act to change that date to October 1, 1994. *See* Pub.L. No. 102–580.

End of Document

1 Cal.5th 749
Supreme Court of California

DEPARTMENT OF FINANCE et al., Plaintiffs and Respondents,
v.
COMMISSION ON STATE MANDATES, Defendant and Respondent;
County of Los Angeles et al., Real Parties in Interest and Appellants.

S214855
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Filed 8/29/2016
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As Modified on Denial of Rehearing 11/16/2016

Synopsis

Background: Department of Finance, State Water Resources Control Board, and regional water quality control board filed petition for writ of administrative mandamus seeking to overturn decision of Commission on State Mandates that regional board's conditions on permit authorizing local agencies to operate storm drain systems constituted state mandates subject to reimbursement. The Superior Court, Los Angeles County, No. BS130730, Ann I. Jones, J., granted petition. Local agencies appealed. The Court of Appeal, Johnson, J., affirmed. Local agencies petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Corrigan, J., held that:

[1] permit itself did not indicate that permit conditions were federal mandates not subject to reimbursement;

[2] Commission was not required to defer to regional board's conclusion that challenged conditions were federally mandated;

[3] condition requiring local agencies to conduct inspections of certain facilities and construction sites was not a federal mandate; and

[4] condition requiring local agencies to install and maintain trash receptacles was not a federal mandate.

Reversed and remanded.

Opinion, 163 Cal.Rptr.3d 439, superseded.

Cuéllar, J., filed separate concurring and dissenting opinion with which Liu and Kruger, JJ., concurred.

West Headnotes (14)

[1] **Environmental Law**
Purpose

Federal Clean Water Act (CWA) is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the nation's water. Federal Water Pollution Control Act § 101, 33 U.S.C.A. § 1251 et seq.

Cases that cite this headnote

[2] **Environmental Law**
Discharge of pollutants

State permitting system for issuing permits for pollutant discharge from storm sewer system regulates discharges under both state and federal law. Federal Water Pollution Control Act § 101, 33 U.S.C.A. § 1251 et seq.; Cal. Water Code §§ 13370(c), 13372(a), 13374, 13377.

Cases that cite this headnote

[3] **Administrative Law and Procedure**
Scope

Ordinarily, when scope of review in trial court is whether administrative decision is supported by substantial evidence, the scope of review on appeal is the same; however, appellate court independently reviews conclusions as to the meaning and effect of constitutional and

statutory provisions.

Cases that cite this headnote

[4] **Trial**
Construction of writings

Question whether statute or executive order imposes a mandate is a question of law.

1 Cases that cite this headnote

[5] **Municipal Corporations**
Power and Duty to Tax in General
States
Limitation of amount of indebtedness or expenditure
Taxation
Power of legislature in general

Constitutional provision restricting amounts state and local governments may appropriate and spend each year from proceeds of taxes and provision imposing direct constitutional limit on state and local power to adopt and levy taxes work in tandem, together restricting state and local governments' power both to levy and to spend for public purposes. Cal. Const. arts. 13A, 13B.

Cases that cite this headnote

[6] **Municipal Corporations**
Power and Duty to Tax in General
States
Limitation of amount of indebtedness or expenditure
States
Limitation of use of funds or credit
Taxation
Power of legislature in general

Reimbursement provision in constitutional provision providing that, if legislature or state agency required local government to provide new program or higher level of service, local government is entitled to reimbursement from state for associated costs, was included in recognition of the fact that provision restricting amounts state and local governments may appropriate and spend each year from proceeds of taxes and provision imposing direct constitutional limit on state and local power to adopt and levy taxes severely restrict taxing and spending powers of local governments. Cal. Const. arts. 13A, 13B, § 6(a).

3 Cases that cite this headnote

[7] **Municipal Corporations**
Power and Duty to Tax in General
States
Limitation of amount of indebtedness or expenditure
States
Limitation of use of funds or credit
Taxation
Power of legislature in general

Purpose of constitutional provision providing that, if legislature or state agency required local government to provide new program or higher level of service, local government is entitled to reimbursement from state for associated costs is to prevent state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ill equipped to assume increased financial responsibilities because of the taxing and spending limitations imposed by constitutional articles restricting amounts state and local governments may appropriate and spend each year from proceeds of taxes and imposing direct constitutional limit on state and local power to adopt and levy taxes. Cal. Const. arts. 13A, 13B, § 6(a).

3 Cases that cite this headnote

[8] **Environmental Law**
Conditions and limitations

Permit issued by regional water quality board authorizing local agencies to operate storm drain systems, which contained conditions designed to maintain quality of state water and to comply with federal Clean Water Act, did not itself demonstrate what conditions would have been imposed had federal Environmental Protection Agency (EPA) granted permit, and thus permit itself did not indicate that conditions were federal mandates not subject to reimbursement under constitutional provision requiring state to reimburse local agency for costs associated with new program or higher level of service mandated by legislature or state agency; in issuing permit, regional board was implementing both state and federal law and was authorized to include conditions more exacting than federal law required. Federal Water Pollution Control Act § 101, 33 U.S.C.A. § 1251 et seq.; 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(19); Cal. Const. art. XIII B, § 6(a); Cal. Water Code §§ 13001, 13370(c), 13372(a), 13374, 13377; Cal. Gov't Code §§ 17514, 17556(c).

1 Cases that cite this headnote

[9] **Environmental Law**
Conditions and limitations

Commission on State Mandates was not required to defer to regional water quality control board's conclusion that challenged conditions contained in permits issued by regional board authorizing local agencies to operate storm drain systems were federally mandated, and thus qualified for exception to constitutional provision requiring state to reimburse local agency for costs associated with new program or higher level of service mandated by legislature or state agency; state had burden to show challenged conditions were mandated by federal law, requiring Commission to defer to regional board would have failed to honor legislature's intent in creating Commission, and policies supporting constitutional provision would have been undermined if Commission were required to defer to regional board on federal mandate question. Federal Water Pollution Control Act § 101, 33 U.S.C.A. § 1251 et seq.; 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(19); Cal. Const. art. XIIIB, § 6(a); Cal. Water Code §§ 13001, 13370(c); Cal. Gov't Code §§ 17514, 17556(c).

1 Cases that cite this headnote

[10] **Environmental Law**
Water pollution

In trial court action challenging regional water quality control board's authority to impose specific permit conditions for discharging pollutants from storm sewer system, board's findings regarding what conditions satisfied federal standard are entitled to deference. Federal Water Pollution Control Act §§ 402, 402, 33 U.S.C.A. §§ 1342(a)(1), 1342(a)(2); 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(19); Cal. Water Code §§ 13001, 13263(a), 13370(c).

2 Cases that cite this headnote

[11] **Environmental Law**
Water pollution

In trial court action challenging regional water quality control board's authority to impose specific permit conditions for discharging pollutants from storm sewer system, party challenging the board's decision would have the burden of demonstrating its findings were not supported by substantial evidence or that the board otherwise abused its discretion. 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(19); Cal. Water Code §§ 13001, 13263(a), 13370(c).

1 Cases that cite this headnote

[12] **States**
State expenses and charges and statutory liabilities

Typically, the party claiming the applicability of

exception to constitutional provision providing that, if legislature or state agency required local government to provide new program or higher level of service, local government is entitled to reimbursement from state for associated costs, bears the burden of demonstrating that exception applies. Cal. Const. art. XIII B, § 6; Cal. Gov't Code § 17556(c).

2 Cases that cite this headnote

[13] **Environmental Law**
Conditions and limitations

Condition contained in permit issued by regional water quality board authorizing local agencies to operate storm drain systems, which required local agencies to conduct inspections of certain commercial and industrial facilities and construction sites, was not a federal mandate, but rather was a state mandate subject to reimbursement under constitutional provision providing that, if legislature or state agency required local government to provide new program or higher level of service, local government was entitled to reimbursement from state for associated costs; neither federal Clean Water Act (CWA) nor Environmental Protection Agency (EPA) regulations required local agencies to inspect facilities or construction sites, state and federal law required regional board to conduct inspections, and regional board exercised its discretion and shifted obligation to conduct inspections to local agencies. Federal Water Pollution Control Act §§ 402, 402, 33 U.S.C.A. §§ 1342(p)(3)(A), 1342(p)(3)(B)(iii); 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(14)(x), 122.26(b)(19), 122.26(d)(2)(iv)(B)(1), 122.26(d)(2)(iv)(C)(1), 122.26(d)(2)(iv)(D)(3); Cal. Const. art. XIII B, § 6(a); Cal. Water Code §§ 13001, 13260, 13263, 13267(c), 13370(c); Cal. Gov't Code §§ 17514, 17556(c).

1 Cases that cite this headnote

[14] **Environmental Law**
Conditions and limitations

Condition contained in permit issued by regional water quality board authorizing local agencies to operate storm drain systems, which required local agencies to install and maintain trash receptacles at transit stops, was not a federal mandate, but rather was a state mandate subject to reimbursement under constitutional provision providing that, if legislature or state agency required local government to provide new program or higher level of service, local government was entitled to reimbursement from state for associated costs; while local agencies were required to include a description of practices for operating and maintaining roadways and procedures for reducing impact of discharges from storm sewers in their permit application under federal Clean Water Act (CWA) and Environmental Protection Agency (EPA) regulation, issuing agency had discretion whether to make those practices conditions of the permit, and EPA had issued permits in other cities that did not include trash receptacle condition. Federal Water Pollution Control Act § 101, 33 U.S.C.A. § 1251 et seq.; 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(19), 122.26(d)(2)(iv)(A)(3); Cal. Const. art. XIII B, § 6(a); Cal. Water Code §§ 13001, 13370(c); Cal. Gov't Code §§ 17514, 17556(c).

See 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, § 119.

2 Cases that cite this headnote

****359 ***48** Ct.App. 2/1 B237153, Los Angeles County Super. Ct. No. BS130730

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Opinion

Corrigan, J.

****360** ***754** Under our state Constitution, if the

Legislature or a state agency requires a local government to provide a new program or higher level of service, the local government is entitled to reimbursement from the state for the associated costs. (Cal. Const., art. XIII B, § 6, subd. (a).) There are exceptions, however. Under one of them, if the new program or increased service is mandated by a federal law or regulation, reimbursement is not required. (Gov. Code, § 17556, subd. (c).)

The services in question here are provided by local agencies that operate storm drain systems pursuant to a state-issued permit. Conditions in that permit are designed to maintain the quality of California's water, and to comply with the federal Clean Water Act. The Court of Appeal held that certain permit conditions were federally mandated, and thus not reimbursable. We reverse, concluding that no federal law or regulation imposed the conditions nor did the federal regulatory system require the state to impose them. Instead, the permit conditions were imposed as a result of the state's discretionary action.

**361 I. BACKGROUND

The Regional Water Quality Control Board, Los Angeles Region (the Regional Board) is a state agency. It issued a permit authorizing Los Angeles County, the Los Angeles County Flood Control District, and 84 cities (collectively, the Operators) to operate storm drainage systems.[1] ***50 Permit *755 conditions required that the Operators take various steps to reduce the discharge of waste and pollutants into state waters. The conditions included installing and maintaining trash receptacles at transit stops, as wells as inspecting certain commercial and industrial facilities and construction sites.

Some Operators sought reimbursement for the cost of satisfying the conditions. The Commission on State Mandates (the Commission) concluded each required condition was a new program or higher level of service, mandated by the state rather than by federal law. However, it found the Operators were only entitled to state reimbursement for the costs of the trash receptacle condition, because they could levy fees to cover the costs of the required inspections. (See discussion, *post*, at p. 12.) The trial court and the Court of Appeal disagreed, finding that all of the requirements were federally mandated.

We granted review. To resolve this issue, it is necessary to consider both the permitting system and the reimbursement obligation in some detail.

A. The Permitting System

The Operators' municipal storm sewer systems discharge both waste and pollutants.[2] State law controls "waste" discharges. (Wat. Code, § 13265.) Federal law regulates discharges of "pollutant[s]." (33 U.S.C. § 1311(a).) Both state and later-enacted federal law require a permit to operate such systems.

California's Porter–Cologne Water Quality Control Act (Porter–Cologne Act or the Act; Wat. Code, § 13000 et seq.) was enacted in 1969. It established the State Water Resources Control Board (State Board), along with nine regional water quality control boards, and gave those agencies "primary responsibility for the coordination and control of water quality." (Wat. Code, § 13001; see *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619, 26 Cal.Rptr.3d 304, 108 P.3d 862 (*City of Burbank*).) The State Board establishes statewide policy. The regional boards formulate and *756 adopt water quality control plans and issue permits governing the discharge of waste. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128 (*Building Industry*).)

The Porter–Cologne Act requires any person discharging, or proposing to discharge, waste that could affect the quality of state waters to file a report with the appropriate regional board. (***51 Wat. Code, § 13260, subd. (a)(1).) The regional board then "shall prescribe requirements as to the nature" of the discharge, implementing any applicable water quality control plans. (Wat. Code, § 13263, subd. (a).) The Operators must follow **362 all requirements set by the Regional Board. (Wat. Code, §§ 13264, 13265.)

[1]The federal Clean Water Act (the CWA; 33 U.S.C. § 1251 et seq.) was enacted in 1972, and also established a permitting system. The CWA is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. (*City of Burbank, supra,* 35 Cal.4th at p. 620, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The CWA prohibits pollutant discharges unless they comply with: (1) a permit (see 33 U.S.C. §§ 1328, 1342, 1344); (2) established effluent limitations or standards (see 33 U.S.C. §§ 1312, 1317); or (3) established national standards of performance (see 33 U.S.C. § 1316). (33 U.S.C. § 1311(a).) The CWA allows any state to adopt and enforce its own water quality standards and limitations, so long as those standards and limitations are not "less stringent" than those in effect under the CWA. (33 U.S.C. § 1370.)

The CWA created the National Pollutant Discharge Elimination System (NPDES), authorizing the Environmental Protection Agency (EPA) to issue a permit for any pollutant discharge that will satisfy all requirements established by the CWA or the EPA Administrator. (33 U.S.C. § 1342(a)(1), (a)(2).) The federal system notwithstanding, a state may administer its own permitting system if authorized by the EPA.[3] If the EPA concludes a state has adequate authority to administer its proposed program, it must grant approval (33 U.S.C. § 1342(b)) and suspend its own issuance of permits (33 U.S.C. § 1342(c)(1)).[4]

[2] ***757** California was the first state authorized to issue its own pollutant discharge permits. (*People of St. of Cal., etc. v. Environmental Pro. Agcy.* (9th Cir. 1975) 511 F.2d 963, 970, fn. 11, revd. on other grounds in *Environmental Protection Agency v. California* (1976) 426 U.S. 200, 96 S.Ct. 2022, 48 L.Ed.2d 578.) Shortly after the CWA's enactment, the Legislature amended the Porter–Cologne Act, adding chapter 5.5 (Wat. Code, § 13370 et seq.) to authorize state issuance of permits (Wat. Code, § 13370, subd. (c)). The Legislature explained the amendment was "in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to [the Porter–Cologne Act]." (*Ibid*.) The Legislature provided that Chapter 5.5 be "construed to ensure consistency" with the CWA. (Wat. Code, § 13372, subd. (a).) It directed that state and regional boards issue waste discharge requirements "ensur[ing] compliance with all applicable provisions of the [CWA] ... *together with any more stringent effluent standards or limitations* necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." *****52** (Wat. Code, § 13377, italics added.) To align the state and federal permitting systems, the legislation provided that the term " 'waste discharge requirements' " under the Act was equivalent to the term " 'permits' " under the CWA. (Wat. Code, § 13374.) Accordingly, California's permitting system now regulates discharges under both state and federal law. (*WaterKeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal.App.4th 1448, 1452, 126 Cal.Rptr.2d 389; accord *Building Industry, supra*, 124 Cal.App.4th at p. 875, 22 Cal.Rptr.3d 128.)

In 1987, Congress amended the CWA to clarify that a permit is required for any discharge from a municipal storm sewer system serving a population of 100,000 or more. (33 U.S.C. § 1342(p)(2)(C), (D).) Under those amendments, a permit may be issued either on a system- or jurisdiction-wide basis, must effectively prohibit non-storm water discharges into the storm sewers, and must "require controls to reduce the discharge of ****363** pollutants *to the maximum extent practicable*." (33 U.S.C. § 1342(p)(3)(B), italics added.) The phrase "maximum extent practicable" is not further defined. How that phrase is applied, and by whom, are important aspects of this case.

EPA regulations specify the information to be included in a permit application. (See 40 C.F.R. § 122.26(d)(1)(i)-(vi), (d)(2)(i)-(viii).) Among other things, an applicant must set out a proposed management program that includes management practices; control techniques; and system, design, and engineering methods to reduce the discharge of pollutants to the maximum extent practicable. (40 C.F.R. § 122.26(d)(2)(iv).) The permit-issuing agency has discretion to determine which practices, whether or not proposed by the applicant, will be imposed as conditions. (*Ibid*.)

***758 B. The Permit in Question**

In 2001, Los Angeles County (the County), acting for all Operators, applied for a permit from the Regional Board. The board issued a permit (the Permit), with conditions intended to "reduce the discharge of pollutants in storm water to the Maximum Extent Practicable" in the Operators' jurisdiction. The Permit stated that its conditions implemented *both* the Porter–Cologne Act and the CWA.

Part 4 of the Permit contains the four requirements at issue. Part 4(C) addresses commercial and industrial facilities, and required the Operators to inspect certain facilities twice during the five-year term of the Permit. Inspection requirements were set out in substantial detail.[5] Part 4(E) of the Permit addresses construction sites. It required each Operator to "implement a program to control runoff from construction activity at all construction sites within its jurisdiction," and to inspect each construction *****53** site of one acre or greater at least "once during the wet season."[6] Finally, Part 4(F) of the Permit addresses pollution from public agency activities. Among other things, it directed each Operator not otherwise regulated to "[p]lace trash receptacles at all transit stops within its jurisdiction," and to maintain them as necessary.

C. Local Agency Claims

1. Applicable procedures for seeking reimbursement

As mentioned, when the Legislature or a state agency requires a local government to provide a new program or higher level of service, the state must "reimburse that local government for the costs of the program or increased level of service." (Cal. Const., art. XIII B, § 6, subd. (a) (hereafter, ***759** section 6).)[7] However, reimbursement is not required if "[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation." (Gov. Code, § 17556, subd. (c).)

****364** The Legislature has enacted comprehensive procedures for the resolution of reimbursement claims (Gov. Code, § 17500 et seq.) and created the Commission to adjudicate them. (Gov. Code, §§ 17525, 17551.) It also established "a test-claim procedure to expeditiously resolve disputes affecting multiple agencies." (*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 285 Cal.Rptr. 66, 814 P.2d 1308 (*Kinlaw*).)

The first reimbursement claim filed with the Commission is called a test claim. (Gov. Code, § 17521.) The Commission must hold a public hearing, at which the Department of Finance (the Department), the claimant, and any other affected department or agency may present evidence. (Gov. Code, §§ 17551, 17553.) The Commission then determines "whether a state mandate exists and, if so, the amount to be reimbursed." (*Kinlaw, supra*, 54 Cal.3d at p. 332, 285 Cal.Rptr. 66, 814 P.2d 1308.) The Commission's decision is reviewable by writ of mandate. (Gov. Code, § 17559.)

2. The test claims

The County and other Operators filed test claims with the Commission, seeking reimbursement for the Permit's inspection and trash receptacle requirements. The Department, State Board, and Regional Board (collectively, the State) responded that the Operators were not entitled to reimbursement because each requirement was federally mandated.

The Department argued that the EPA had delegated its federal permitting authority to the Regional Board, which acted as an administrator for the EPA, ensuring the state's program complied with the CWA. The Department acknowledged the Regional Board had discretion to set detailed permit conditions, but urged that the challenged conditions were required for the Permit to comply with federal law.

*****54** The State and Regional Boards argued somewhat differently. They contended the CWA required the Regional Board to impose specific permit ***760** controls to reduce the discharge of pollutants to the "maximum extent practicable." Thus, when the Regional Board determined the Permit's conditions, those conditions were part of the federal mandate. The State and Regional Boards also argued that the challenged conditions were "animated" by EPA regulations. In support of the trash receptacle requirement, they relied on 40 Code of Federal Regulations part 122.26(d)(2)(iv)(A)(3).[8] In support of the inspection requirements, they relied on 40 Code of Federal Regulations part 122.26(d)(2)(iv)(B)(1),[9] (C)(1),[10] and (D)(3).[11]

****365** The Operators argued the conditions were not mandated by federal law, because nothing in the CWA or in the cited federal regulations required them to install trash receptacles or perform the required site inspections. They also submitted evidence showing that none of the challenged requirements were ***761** contained in their previous permits issued by the Regional Board, nor were they imposed on other municipal storm sewer systems by the EPA.

As to the inspection requirements, the Operators argued that state law required *****55** the *state and regional boards* to regulate discharges of waste. This regulatory authority included the power to inspect facilities and sites. The Regional Board had used the Permit conditions to shift those inspection responsibilities to them. They also presented evidence that the Regional Board was required to inspect industrial facilities and construction sites for compliance with statewide permits issued by the State Board (see *ante*, 207 Cal.Rptr.3d at pp. 52, 53, fns. 5, 6, 378 P.3d at p. 363, fns. 5, 6). They urged that the Regional Board had shifted that obligation to the Operators as well. Finally, the Operators submitted a declaration from a county employee indicating the Regional Board had offered to pay the County to inspect industrial facilities *on behalf of* the Regional Board, but revoked that offer after including the inspection requirement in the Permit.

The EPA submitted comments to the Commission indicating that the challenged permit requirements were designed to reduce the discharge of pollutants to the "maximum extent practicable." Thus, the EPA urged the requirements fell "within the scope" of federal regulations and other EPA guidance regarding storm water management programs. The Bay Area Stormwater Management Agencies Association, the League of

California Cities, and the California State Association of Counties submitted comments urging that the challenged requirements were state, rather than federal, mandates.

3. The commission's decision

By a four-to-two vote, the Commission partially approved the test claims, concluding none of the challenged requirements were mandated by federal law. However, the Commission determined the Operators were not entitled to reimbursement for the inspection requirements because they had authority to levy fees to pay for the required inspections. Under Government Code section 17556, subdivision (d), the constitutional reimbursement requirement does not apply if the local government has the authority to levy fees or assessments sufficient to pay for the mandated program or service.

4. Petitions for writ of mandate

The State challenged the Commission's determination that the requirements were state mandates. By cross-petition, the County and certain cities challenged the Commission's finding that they could impose fees to pay for the inspections.

The trial court concluded that, because each requirement fell "within the maximum extent practicable standard," they were federal mandates not ***762** subject to reimbursement. It granted the State's petition and ordered the Commission to issue a new statement of decision. The court did not reach the cross-claims relating to fee authority. Certain Operators appealed.[12] The Court of Appeal affirmed, concluding as a matter of law that the trash receptacle and inspection requirements were federal mandates.

****366 II. DISCUSSION**

A. Standard of Review

[3] [4]Courts review a decision of the Commission to determine whether it is supported by substantial evidence. (Gov. Code, § 17559.) Ordinarily, when the scope of review in the trial court is whether the administrative decision is supported by substantial evidence, the scope of review on appeal is the same. (*****56** *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814, 38 Cal.Rptr.2d 304 (*County of Los Angeles*).) However, the appellate court independently reviews conclusions as to the meaning and effect of constitutional and statutory provisions. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, 53 Cal.Rptr.2d 521.) The question whether a statute or executive order imposes a mandate is a question of law. (*Ibid.*) Thus, we review the entire record before the Commission, which includes references to federal and state statutes and regulations, as well as evidence of other permits and the parties' obligations under those permits, and independently determine whether it supports the Commission's conclusion that the conditions here were not federal mandates. (*Ibid.*)

B. Analysis

The parties do not dispute here that each challenged requirement is a new program or higher level of service. The question here is whether the requirements were mandated by a federal law or regulation.

1. The federal mandate exception

[5]Voters added article XIII B to the California Constitution in 1979. Also known as the "Gann limit," it "restricts the amounts state and local governments may appropriate and spend each year from the 'proceeds of taxes.' " (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 58–59, 266 Cal.Rptr. 139, 785 P.2d 522 (*City of Sacramento*).) "Article XIII B is to be distinguished from article XIII A, which was adopted as Proposition 13 at ***763** the June 1978 election. Article XIII A imposes a direct constitutional limit on state and local power to *adopt and levy taxes*. Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend for public purposes." (*Id.* at p. 59, fn. 1, 266 Cal.Rptr. 139, 785 P.2d 522.)

[6] [7]The "concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.) The reimbursement provision in section 6 was included in recognition of the

fact "that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81, 61 Cal.Rptr.2d 134, 931 P.2d 312 (*County of San Diego*).) The purpose of section 6 is to prevent "the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose." (*County of San Diego*, at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Thus, with certain exceptions, section 6 "requires the state 'to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.' " (*County of San Diego*, at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

As noted, reimbursement is not required if the statute or executive order imposes "a requirement that is mandated by a federal law or regulation," unless the state mandate imposes costs that exceed the federal mandate. (Gov. Code, § 17556, subd. (c).) The question here is how to apply that *****57** exception when federal law requires a local agency to obtain a permit, authorizes the state to issue the permit, and provides the state discretion in determining which conditions are necessary to achieve a general standard established by federal law, and when state law allows the imposition of conditions that exceed the federal standard. Previous decisions ****367** of this court and the Courts of Appeal provide guidance.

In *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, this court addressed local governments' reimbursement claims for the costs of extending unemployment insurance protection to their employees. (*Id.*, at p. 59, 266 Cal.Rptr. 139, 785 P.2d 522.) Since 1935, the applicable federal law had provided powerful incentives for states to implement their own unemployment insurance programs. Those incentives included federal subsidies and a substantial federal tax credit for all corporations in states with certified federal programs. (*Id.* at p. 58, 266 Cal.Rptr. 139, 785 P.2d 522.) California had implemented such a program. (*Ibid.*) In 1976, Congressional legislation required ***764** that unemployment insurance protection be extended to local government employees. (*Ibid.*) If a state failed to comply with that directive, it "faced [the] loss of the federal tax credit and administrative subsidy." (*Ibid.*) The Legislature passed a law requiring local governments to participate in the state's unemployment insurance program. (*Ibid.*)

Two local governments sought reimbursement for the costs of complying with that requirement. Opposing the claims, the state argued its action was compelled by federal law. This court agreed, reasoning that, if the state had "failed to conform its plan to new federal requirements as they arose, its businesses [would have] faced a new and serious penalty" of double taxation, which would have placed those businesses at a competitive disadvantage against businesses in states complying with federal law. (*City of Sacramento, supra*, 50 Cal.3d at p. 74, 266 Cal.Rptr. 139, 785 P.2d 522.) Under those circumstances, we concluded that the "state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses." (*Ibid.*) Because "[t]he alternatives were so far beyond the realm of practical reality that they left the state '*without discretion*' to depart from federal standards," we concluded "the state acted in response to a federal 'mandate.' " (*Ibid.* italics added.)

County of Los Angeles, supra, 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304, involved a different kind of federal compulsion. In *Gideon v. Wainwright* (1963) 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799, the United States Supreme Court held that states were required by the federal Constitution to provide counsel to indigent criminal defendants. That requirement had been construed to include "the right to the use of any experts that will assist counsel in preparing a defense." (*County of Los Angeles*, at p. 814, 38 Cal.Rptr.2d 304.) The Legislature enacted Penal Code section 987.9, requiring local governments to provide indigent criminal defendants with experts for the preparation of their defense. (*County of Los Angeles*, at p. 811, fn. 3, 38 Cal.Rptr.2d 304.) Los Angeles County sought reimbursement for the costs of complying with the statute. The state argued the statute's requirements were mandated by federal law.

The state prevailed. The Court of Appeal reasoned that, even without Penal Code section 987.9, the county would have been "responsible for providing ancillary services" under binding Supreme Court precedent. (*County of Los Angeles, supra*, 32 Cal.App.4th at p. 815, 38 Cal.Rptr.2d 304.) Penal Code section 987.9 merely codified an existing federal mandate. (*****58** *County of Los Angeles*, at p. 815, 38 Cal.Rptr.2d 304.)

Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547 (*Hayes*) provides a contrary example. *Hayes* involved the federal Education of the Handicapped Act (EHA; 20 U.S.C. § 1401 et seq.). EHA was a "comprehensive measure designed to provide all handicapped children with basic educational opportunities." (*Hayes*, at p. 1594, 15 Cal.Rptr.2d 547 ***765**) EHA required each state to adopt an implementation plan, and mandated "certain substantive and procedural requirements," but left "primary

responsibility for implementation to the state." (*Hayes*, at p. 1594, 15 Cal.Rptr.2d 547.)

Two local governments sought reimbursement for the costs of special education assessment hearings which were required under the state's adopted plan. The state argued the requirements imposed under its plan were federally mandated. The *Hayes* court rejected that argument. Reviewing ****368** the historical development of special education law (*Hayes, supra,* 11 Cal.App.4th at pp. 1582–1592, 15 Cal.Rptr.2d 547), the court concluded that, so far as the state was concerned, the requirements established by the EHA were federally mandated. (*Hayes*, at p. 1592, 15 Cal.Rptr.2d 547.) However, that conclusion "mark[ed] the starting point rather than the end of [its] consideration." (*Ibid.*) The court explained that, in determining whether federal law requires a specified function, like the assessment hearings, the focus of the inquiry is whether the "manner of implementation of the federal program was left to the *true discretion* of the state." (*Id.* at p. 1593, 15 Cal.Rptr.2d 547, italics added.) If the state "has adopted an implementing statute or regulation pursuant to the federal mandate," and had "no 'true choice' " as to the manner of implementation, the local government is not entitled to reimbursement. (*Ibid.*) If, on the other hand, "the manner of implementation of the federal program was left to the true discretion of the state," the local government might be entitled to reimbursement. (*Ibid.*)

According to the *Hayes* court, the essential question is how the costs came to be imposed upon the agency required to bear them. "If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government." (*Hayes, supra,* 11 Cal.App.4th at p. 1594, 15 Cal.Rptr.2d 547.) Applying those principles, the court concluded that, to the extent "the state implemented the [EHA] by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to" reimbursement. (*Ibid.*)

From *City of Sacramento*, *County of Los Angeles*, and *Hayes*, we distill the following principle: If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a "true choice," the requirement is not federally mandated.

Division of Occupational Safety & Health v. State Bd. of Control (1987) 189 Cal.App.3d 794, 234 Cal.Rptr. 661 (*Division of Occupational Safety*) is ***766** instructive. The federal Occupational Safety and Health Act (Fed. OSHA; 29 U.S.C. § 651 et seq.) preempted states from regulating matters covered by Fed. OSHA unless a *****59** state had adopted its own plan and gained federal approval. (*Division of Occupational Safety*, at p. 803, 234 Cal.Rptr. 661.) No state was obligated to adopt its own plan. But, if a state did so, the plan had to include standards at least as effective as Fed. OSHA's and extend those standards to state and local employees. California adopted its own plan, which was federally approved. The state then issued a regulation that, according to local fire districts, required them to maintain three-person firefighting teams. Previously, they had been permitted to maintain two-person teams. (*Division of Occupational Safety*, at pp. 798–799, 234 Cal.Rptr. 661.) The local fire districts sought reimbursement for the increased level of service. The state opposed, arguing the requirement was mandated by federal law.

The court agreed with the fire districts. As the court explained, a Fed. OSHA regulation arguably required the maintenance of three-person firefighting teams. (*Division of Occupational Safety, surpra,* 189 Cal.App.3d at p. 802, 234 Cal.Rptr. 661.) However, that federal regulation specifically excluded local fire districts. (*Id.* at p. 803, 234 Cal.Rptr. 661.) Had the state elected to be governed by *Fed. OSHA standards*, that exclusion would have allowed those fire districts to maintain two-person teams. (*Division of Occupational Safety*, at p. 803, 234 Cal.Rptr. 661.) The conditions for approval of the *state's plan* required effective enforcement and coverage of public employees. But those conditions did not make the costs of complying with the state regulation federally mandated. "[T]he decision to establish ... a federally approved [local] plan is an option which the state exercises ****369** freely." (*Ibid.*) In other words, the state was not "*compelled* to ... extend jurisdiction over occupational safety to local governmental employers," which would have otherwise fallen under a federal exclusion. (*Ibid.*) Because the state "was not required to promulgate [the state regulation] to comply with federal law, the exemption for federally mandated costs does not apply." (*Id.* at p. 804, 234 Cal.Rptr. 661.)[13]

San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589 (*San Diego Unified*) provides another example. In *Goss v. Lopez* (1975) 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725, the United States Supreme Court held that if a school principal chose to recommend a student for

expulsion, federal due process principles required the school district to give that student a hearing. Education Code section 48918 provided for expulsion hearings. (*San Diego Unified*, at p. 868, 16 Cal.Rptr.3d 466, 94 P.3d 589.) Under Education Code section 48915, a school principal had ***767** *discretion* to recommend expulsion under certain circumstances, but was compelled to recommend expulsion for a student who possessed a firearm. (*San Diego Unified*, at p. 869, 16 Cal.Rptr.3d 466, 94 P.3d 589.) Federal law at the time did not require expulsion for a student who brought a gun to school. (*Id.* at p. 883, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

The school district argued it was entitled to reimbursement of *all* expulsion hearing costs. This court drew a distinction between discretionary and mandatory expulsions. We concluded the costs of hearings for *discretionary* expulsions flowed from a federal mandate. (*****60** *San Diego Unified, supra,* 33 Cal.4th at pp. 884–890, 16 Cal.Rptr.3d 466, 94 P.3d 589.)[14] We declined, however, to extend that rule to the costs related to *mandatory* expulsions. Because it was *state law* that required an expulsion recommendation for firearm possession, all hearing costs triggered by the mandatory expulsion provision were reimbursable state-mandated expenses. (*Id.* at pp. 881–883, 16 Cal.Rptr.3d 466, 94 P.3d 589). As was the case in *Hayes*, the key factor was how the costs came to be imposed on the entity that was required to bear them. The school principal could avoid the cost of a federally-mandated hearing by choosing not to recommend an expulsion. But, when a state statute *required* an expulsion recommendation, the attendant hearing costs did not flow from a federal mandate. (*San Diego Unified, supra,* 33 Cal.4th at p. 881, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

2. Application

Review of the Commission's decision requires a determination as to whether federal statutory, administrative, or case law imposed, or compelled the Regional Board to impose, the challenged requirements on the Operators.

It is clear federal law did not compel the Regional Board to impose these particular requirements. There was no evidence the state was compelled to administer its *own* permitting system rather than allowing the EPA do so under the CWA. (33 U.S.C. § 1342(a).) In this respect, the case is similar to *Division of Occupational Safety, supra,* 189 Cal.App.3d 794, 234 Cal.Rptr. 661. Here, as in that case, the state chose to administer its own program, finding it was "in the interest of the people of the state, *in order to avoid direct regulation by the federal government* of persons already subject to regulation" under state law. (Wat. Code, § 13370, subd. (c), italics added.) Moreover, the Regional Board was not required by federal law to impose any specific permit conditions. The federal CWA broadly directed the board to issue permits with conditions designed to reduce pollutant discharges to the maximum ****370** extent practicable. But the EPA's regulations gave the board discretion to determine which ***768** specific controls were necessary to meet that standard. (40 C.F.R. § 122.26(d)(2)(iv).) This case is distinguishable from *City of Sacramento, supra,* 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, where the state risked the loss of subsidies and tax credits for all its resident businesses if it failed to comply with federal legislation. Here, the State was not compelled by federal law to impose any particular requirement. Instead, as in *Hayes, supra,* 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, the Regional Board had discretion to fashion requirements which it determined would meet the CWA's maximum extent practicable standard.

[8] [9]The State argues the Commission failed to account for the flexibility in the CWA's regulatory scheme, which conferred discretion on the State and regional boards in deciding what conditions were necessary to comply with the CWA. In exercising that discretion, those agencies were required to rely on their scientific, technical, and experiential knowledge. Thus, the State contends the Permit itself is the best indication of what requirements *would have been imposed* by the EPA if the Regional Board had not done so, and the Commission should have deferred to *****61** the board's determination of what conditions federal law required.

We disagree that the Permit itself demonstrates what conditions would have been imposed had the EPA granted the Permit. In issuing the Permit, the Regional Board was implementing both state and federal law and was authorized to include conditions more exacting than federal law required. (*City of Burbank, supra,* 35 Cal.4th at pp. 627–628, 26 Cal.Rptr.3d 304, 108 P.3d 862.) It is simply not the case that, because a condition was in the Permit, it was, ipso facto, required by federal law.

[10] [11]We also disagree that the Commission should have deferred to the Regional Board's conclusion that the challenged requirements were federally mandated. That determination is largely a question of law. Had the Regional Board found, when imposing the disputed permit conditions, that those conditions were the only means by which the maximum extent practicable standard could be implemented, deference to the board's expertise

in reaching that finding would be appropriate. The board's legal authority to administer the CWA and its technical experience in water quality control would call on sister agencies as well as courts to defer to that finding.[15] The State, however, provides no authority for the proposition that, absent such a finding, the Commission should defer to a state agency as to whether requirements were state or federally mandated. Certainly, in a trial court action challenging the *board's authority* to impose specific permit conditions, the board's findings regarding what conditions satisfied the federal standard would be entitled to deference. (See, e.g., *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1384, 38 Cal.Rptr.3d 450, citing *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817–818, 85 Cal.Rptr.2d 696, 977 P.2d 693 ***769**) Resolution of those questions would bring into play the particular technical expertise possessed by members of the regional board. In those circumstances, the party challenging the board's decision would have the burden of demonstrating its findings were not supported by substantial evidence or that the board otherwise abused its discretion. (*Rancho Cucamonga*, at p. 1387, 38 Cal.Rptr.3d 450; *Building Industry, supra,* 124 Cal.App.4th at pp. 888–889, 22 Cal.Rptr.3d 128.)

Reimbursement proceedings before the Commission are different. The question here was not whether the Regional Board had authority to impose the challenged requirements. It did. The narrow question here was who will pay for them. In answering that legal question, the Commission applied California's constitutional, statutory, and common law to the single issue of reimbursement. In the context of these proceedings, the State has the burden to show the challenged conditions were mandated by federal law.

[12]Section 6 establishes a general rule requiring reimbursement of all state-mandated costs. Government Code section 17556, subdivision (c), codifies an exception to that ****371** rule. Typically, the party claiming the applicability of an exception bears the burden of demonstrating that it applies. (See *Simpson Strong–Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 23, 109 Cal.Rptr.3d 329, 230 P.3d 1117; see also, *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 67, 172 Cal.Rptr.3d 56, 325 P.3d 460.) Here, the State must explain why federal law mandated these requirements, rather than forcing the Operators to prove the opposite. The State's proposed rule, requiring the Commission to defer to the Regional Board, would leave the Commission with no role to play on the narrow question of who must pay. Such a result would fail to honor the Legislature's *****62** intent in creating the Commission.

Moreover, the policies supporting article XIII B of the California Constitution and section 6 would be undermined if the Commission were required to defer to the Regional Board on the federal mandate question. The central purpose of article XIII B is to rein in local government spending. (*City of Sacramento, supra,* 50 Cal.3d at pp. 58–59, 266 Cal.Rptr. 139, 785 P.2d 522.) The purpose of section 6 is to protect local governments from state attempts to impose or shift the costs of new programs or increased levels of service by entitling local governments to reimbursement. (*County of San Diego, supra,* 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Placing the burden on the state to demonstrate that a requirement is federally mandated, and thus excepted from reimbursement, serves those purposes.

Applying the standard of review described above, we evaluate the entire record and independently review the Commission's determination the challenged conditions were not federal mandates. We conclude the Commission was correct. These permit conditions were not federally mandated.

***770** *a) The inspection requirements*

[13]Neither the CWA's "maximum extent practicable" provision nor the EPA regulations on which the State relies expressly required the Operators to inspect these particular facilities or construction sites. The CWA makes no mention of inspections. (33 U.S.C. § 1342(p)(3)(B)(iii).) The regulations required the Operators to include in their permit application a description of priorities and procedures for inspecting certain industrial facilities and construction sites, but suggested that the Operators would have discretion in selecting which facilities to inspect. (See C.F.R. § 122.26(d)(2)(iv)(C)(1).) The regulations do not mention commercial facility inspections at all.

Further, as the Operators explained, state law made the *Regional Board* responsible for regulating discharges of waste within its jurisdiction. (Wat. Code, §§ 13260, 13263.) This regulatory authority included the power to "inspect the facilities of any person to ascertain whether ... waste discharge requirements are being complied with." (Wat. Code, § 13267, subd. (c).) Thus, state law imposed an overarching mandate that the Regional Board inspect the facilities and sites.

In addition, federal law and practice required the Regional

Board to inspect all industrial facilities and construction sites. Under the CWA, the State Board, as an issuer of NPDES permits, was required to issue permits for storm water discharges "associated with industrial activity." (33 U.S.C. § 1342(p)(3)(A).) The term "industrial activity" includes "construction activity." (40 C.F.R. § 122.26(b)(14)(x).) The Operators submitted evidence that the State Board had satisfied its obligation by issuing a general industrial activity stormwater permit and a general construction activity stormwater permit. Those statewide permits imposed controls designed to reduce pollutant discharges from industrial facilities and construction sites. Under the CWA, those facilities and sites could operate under the statewide permits rather than obtaining site-specific pollutant discharge permits.

The Operators showed that, in those statewide permits, the State Board had placed responsibility for inspecting facilities and sites on the *Regional Board*. The Operators submitted letters from the EPA indicating the State and regional boards were responsible for enforcing the terms of the statewide permits. The Operators also noted the State Board was authorized *****63** to charge a fee to facilities and sites that subscribed to the statewide permits (****372** Wat. Code, § 13260, subd. (d)), and that a portion of that fee was earmarked to pay the Regional Board for "inspection and regulatory compliance issues." (Wat. Code, § 13260, subd. (d)(2)(B)(iii).) Finally, there was evidence the Regional Board offered to pay the County to inspect industrial facilities. There would have been little reason to make that offer if federal law required the County to inspect those facilities.

***771** This record demonstrates that the Regional Board had primary responsibility for inspecting these facilities and sites. It shifted that responsibility to the Operators by imposing these Permit conditions. The reasoning of *Hayes, supra,* 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, provides guidance. There, the EHA required the state to provide certain services to special education students, but gave the state discretion in implementing the federal law. (*Hayes*, at p. 1594, 15 Cal.Rptr.2d 547.) The state exercised its "true discretion" by selecting the specific requirements it imposed on local governments. As a result, the *Hayes* court held the costs incurred by the local governments were state-mandated costs. (*Ibid.*) Here, state and federal law required the Regional Board to conduct inspections. The Regional Board exercised its discretion under the CWA, and shifted that obligation to the Operators. That the Regional Board did so while exercising its permitting authority under the CWA does not change the nature of the Regional Board's action under section 6. Under the reasoning of *Hayes*, the inspection requirements were not federal mandates.

The State argues the inspection requirements were federally mandated because the CWA required the Regional Board to impose permit controls, and the EPA regulations contemplated that some kind of operator inspections would be required. That the EPA regulations contemplated some form of inspections, however, does not mean that federal law required the scope and detail of inspections required by the Permit conditions.[16] As explained, the evidence before the Commission showed the opposite to be true.

b) The trash receptacle requirement

[14]The Commission concluded the trash receptacle requirement was not a federal mandate because neither the CWA nor the regulation cited by the State explicitly required the installation and maintenance of trash receptacles. The State contends the requirement was mandated by the CWA and by the EPA regulation that directed the Operators to include in their application a "description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems." (40 C.F.R. § 122.26(d)(2)(iv)(A)(3).)

The Commission's determination was supported by the record. While the Operators were required to include a description of practices and procedures in their permit application, the issuing agency has discretion whether to make ***772** those practices conditions of the permit. (40 C.F.R. § 122.26(d)(2)(iv).) No regulation cited by the State required trash receptacles at *****64** transit stops. In addition, there was evidence that the EPA had issued permits to other municipal storm sewer systems in Anchorage, Boise, Boston, Albuquerque, and Washington, D.C. that did not require trash receptacles at transit stops. The fact the EPA itself had issued permits in other cities, but did not include the trash receptacle condition, undermines the argument that the requirement was federally mandated.

c) Conclusion

Although we have upheld the Commission's determination on the federal mandate question, the State raised other arguments in its writ petition. Further, the issues presented in the Operators' cross-petition were not

addressed by either the trial court or the Court of Appeal. We remand the matter so those issues can be addressed in the first instance.

****373 III. DISPOSITION**

We reverse the judgment of the Court of Appeal and remand for further proceedings consistent with our opinion.

We Concur:

Cantil–Sakauye, C.J.

Werdegar, J.

Chin, J.

CONCURRING AND DISSENTING OPINION BY CUÉLLAR, J.

A local government is entitled to reimbursement from the state when the Legislature or a state agency requires it to provide new programs or increased service. (Cal. Const., art. XIII B, § 6, subd. (a).) But one crucial exception coexists with this rule. It applies where the new program or increased service is mandated by a federal statute or regulation. (Gov. Code, § 17556, subd. (c).) We consider in this case whether certain conditions to protect water quality included in a permit from the Regional Water Quality Board, Los Angeles Region (Regional Board or Board)—specifically, installation and maintenance of trash receptacles at transit stops, as well as inspections of certain commercial and industrial facilities and construction sites—constitute state mandates subject to reimbursement, or federal mandates within the statutory reimbursement exception.

What the majority concludes is that federal law did not compel imposition of the conditions, and that the local agencies would not necessarily have been required to comply with them had they not been imposed by the state. In doing so, the majority upholds and treats as correct a decision by the Commission on State Mandates (the Commission) that is flawed in its approach and far too parsimonious in its analysis. This is no small feat: not ***773** only must the majority discount any expertise the Regional Board might bring to bear on the mandate question (see maj. opn., *ante*, 207 Cal.Rptr.3d at pp. 61–62, 378 P.3d at pp. 370–371), but it must also overlook the Commission's reliance on an overly narrow analytical framework and prop up the Commission's decision with evidence on which the agency *could have relied*, rather than that on which it did (see *id.* at pp. 62–64, 378 P.3d at pp. 371–373).

Moreover, when the majority considers whether the permit conditions are indeed federally mandated, it purports to apply de novo review to the Commission's legal determination. (See maj. opn., *ante*, at pp. 207 Cal.Rptr.3d at pp. 55, 61, 62, 378 P.3d at pp. 365, 370, 371.) What it actually applies seems far more deferential to the Commission's decision—something akin to substantial evidence review—despite the Commission's own failure in affording deference *****65** to the Regional Board and, more generally, its reliance on the wrong decision-making framework. (Cf. *People v. Barnwell* (2007) 41 Cal.4th 1038, 1052, 63 Cal.Rptr.3d 82, 162 P.3d 596 ["A substantial evidence inquiry examines the record in the light most favorable to the judgment and upholds it if the record contains reasonable, credible evidence of solid value upon which a reasonable trier of fact *could* have relied in reaching the conclusion in question"].) Indeed, what the majority overlooks is that the Commission itself should have considered the effect of the evidence on which the majority now relies in deciding whether the challenged permit conditions were necessary to comply with federal law. And in doing so, the Commission should have extended a measure of deference to the Regional Board's expertise in administering the statutory scheme. (See *County of Los Angeles v. Cal. State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985, 997, 50 Cal.Rptr.3d 619 (*State Water Board*).)

Because the Commission failed to do so, and because the Commission's interpretation of the federal Clean Water Act (the CWA; 33 U.S.C. § 1251 et seq.) failed to account for the complexities of the statute, I would reverse the Court of Appeal's judgment and remand with instructions for the Commission to reconsider its decision. So I concur in the majority's judgment reversing the Court of Appeal, but dissent from its conclusion upholding the Commission's decision rather than remanding the matter for further proceedings.

I.

To determine whether it is the state rather than local governments that should bear ****374** the entirety of the

financial burden associated with a new program or increased service, the Commission must examine the nature of the federal scheme in question. That scheme is the CWA, a statute Congress amended in 1972 to establish the National Pollutant Discharge Elimination System (the NPDES) as a means of achieving and enforcing limitations on ***774** pollutant discharges. (See *EPA v. State Water Resources Control Bd.* (1976) 426 U.S. 200, 203–204, 96 S.Ct. 2022, 48 L.Ed.2d 578.) The role envisioned for the states under the NPDES is a major one, encompassing both the opportunity to assume the primary responsibility for the implementation and enforcement of federal effluent discharge limitations by issuing permits as well as the discretion to enact requirements that are more onerous than the federal standard. (See 33 U.S.C. §§ 1251(b), 1342(b).)

But states undertaking such implementation must do so in a manner that complies with regulations promulgated by the Environmental Protection Agency (the EPA), as well as the CWA's broad provisions (including the "maximum extent practicable" standard (33 U.S.C. § 1342(p)(3)(B)(iii))), and subject to the EPA's continuing revocation authority (see *id.*, § 1342(c)(3)). Despite the breadth of the requirements the statute imposes on states assuming responsibility for permitting enforcement and the expansive nature of the EPA's revocation authority, neither the statute nor its implementing regulations include a safe harbor provision establishing a minimum level of compliance with the federal standard—an absence the majority tacitly acknowledges. (See maj. opn., *ante*, 207 Cal.Rptr.3d at p. 60, 378 P.3d at p. 369 ["the Regional Board was not required by federal law to impose any specific permit conditions"].) Instead, implementation of the federal mandate requires the state agency—here, the Regional Board—to exercise technical judgments about the feasibility of alternative permitting conditions *****66** necessary to achieve compliance with the federal statute.

With no statutory safe harbor that the Regional Board could have relied on to ensure the EPA's approval of the state permitting process, the Board interpreted the federal standard in light of the statutory text, implementing regulations, and its technical appraisal of potential alternatives. In discharging its own role, the Commission was then bound to afford the Regional Board a measure of "sister-agency" deference. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031 [explaining that "the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation"].) In this case, the Regional Board informed localities that, in its view, the various permit conditions it imposed would satisfy the maximum extent practicable standard. The EPA agreed the requirements were within the scope of the federal standard. The Regional Board's judgment that these conditions will control pollutant discharges to the extent required by federal law is at the core of the agency's institutional expertise. That expertise merits a measure of deference because the Regional Board's ken includes not only its greater familiarity with the CWA (relative to other entities), but also technical knowledge relevant to judgments about the water quality consequences of particular permitting conditions relevant to the provisions of the ***775** CWA. (See, e.g., 33 U.S.C. § 1342(p)(3)(B)(iii) [requiring that permits include "management practices, control techniques and system, design and engineering methods, and such other provisions as ... the State determines appropriate for the control of such pollutants"].) Casting aside the Regional Board's expertise on the issue at hand, the majority nonetheless upholds the Commission's ruling.

Remand to the Commission would have been the more appropriate course for multiple reasons. First, the Commission applied the wrong framework for its analysis. It failed to consider all the evidence relevant to whether the permit conditions were necessary for compliance with federal law. The commission compounded its error by relying on an interpretation of the CWA that misconstrues the federal statutory scheme governing the state permitting process.

****375** In particular, the Commission treated the problem as essentially a simple matter of searching the statutory text and regulations for precisely the same terms used by the Regional Board's permit conditions. Unless the requirement in question is referenced explicitly in a federal statutory or regulatory provision, the Commission's analysis suggests, the requirement cannot be a federal mandate. With respect to trash receptacles, the Commission stated: "Because installing and maintaining trash receptacles at transit stops is not expressly required of cities or counties or municipal separate storm sewer dischargers in the federal statutes or regulations, these are activities that 'mandate costs that exceed the mandate in the federal law or regulation.' " And with respect to industrial facility inspections, the Commission said this: "Inasmuch as the federal regulation (40 CFR § 122.26 (c)) authorizes coverage under a statewide general permit for the inspections of industrial activities, and the federal regulation (40 CFR § 122.26 (d)(2)(iv)(D)) does not expressly require those inspections to be performed by the county or cities (or the 'owner or operator of the discharge') the Commission finds that the

state has freely chosen to impose *****67** these activities on the permittees." (Fn. omitted.)

Existing law does not support this method of determining what constitutes a federal mandate. Instead, our past decisions emphasize the need to consider the implications of multiple statutory provisions and broader statutory context when interpreting federal law to determine if a given condition constitutes a federal mandate. (See *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76, 266 Cal.Rptr. 139, 785 P.2d 522 (*City of Sacramento*); see also *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 890, 16 Cal.Rptr.3d 466, 94 P.3d 589 ["challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, *in context*, de minimis—should be treated as part and parcel of the underlying federal mandate" (italics added)].) In contrast, ***776** the Commission's overly narrow approach to determining what constitutes a federal mandate risks creating a standard that will never be met so long as the state retains any shred of discretion to implement a federal program. It cannot be that so long as a federal statute or regulation does not expressly require every permit term issued by a state agency, then the permit is a state, rather than a federal, mandate. But this is precisely how the Commission analyzed the issue—an analysis that, remarkably, the majority does not even question. Instead, the majority combs the record for evidence that could have supported the result the Commission reached. In so doing, the majority implicitly acknowledges that the Commission's approach to resolving the question at the heart of this case was deficient.

But if the Commission applied the wrong framework for its analysis, the right course is to remand. Doing so would obviate the need to cobble together scattered support for a decision by the Commission that was premised, in the first instance, on the Commission's own misconstrual of the inquiry before it. Instead, we should give the Commission an opportunity to reevaluate its conclusion in light of the entire record and to, where appropriate, solicit further information from the parties to shed light on what permit conditions are necessary for compliance with federal law.

The potential consequences of allowing the Commission to continue on its present path are quite troubling. For if the law were as the Commission suggests, the state would be unduly discouraged from participating in federal programs like the NPDES—even though participation might otherwise be in California's interest—if the state knows ex ante that it will be unable to pass along the expenses to the local areas that experience the most costs and benefits from the mandate at issue. Our law on unfunded mandates does not compel such a result. Nor is there an apparent prudential rationale in support of it.

The Commission's approach also fails to appreciate the EPA's role in implementing (through its interpretation and enforcement of the CWA) statutory requirements that the CWA describes in relatively broad terms. Indeed, what may be "practicable" in Los Angeles ****376** may not be in San Francisco, much less in Kansas City or Detroit. (See *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 889, 22 Cal.Rptr.3d 128 (*Building Industry Assn.*) [explaining that "the maximum extent practicable standard is a highly flexible concept that depends on balancing numerous factors, including the particular control's technical feasibility, cost, public acceptance, regulatory compliance, and effectiveness"].) It also suggests a lack of understanding of two interrelated matters on which the Regional *****68** Board likely has expertise: the consequences of the measures included as permit conditions relative to any ***777** alternatives and the interpretation of a complex federal statute governing regulation of the environment.

Second, beyond failing to consider all the relevant evidence bearing on the necessity of the imposed permit conditions, the Commission failed to extend any meaningful deference to the Regional Board's conclusions—even though such deference was warranted given that the nature of the decisions involved in interpreting the CWA included evaluating appropriate alternatives and determining which of those were necessary to satisfy the federal standard. (See *State Water Board, supra,* 143 Cal.App.4th at p. 997, 50 Cal.Rptr.3d 619 ["we defer to the regional board's expertise in construing language which is not clearly defined in statutes involving pollutant discharge into storm drain sewer systems"]; *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1384, 38 Cal.Rptr.3d 450 (*Rancho Cucamonga*) ["consideration [should be] given to the [regional board's] interpretations of its own statutes and regulations"]; *Building Industry Assn., supra,* 124 Cal.App.4th at p. 879, fn. 9, 22 Cal.Rptr.3d 128 ["we do consider and give due deference to the Water Boards' statutory interpretations [of the CWA] in this case"]; see also *Cal. Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 389–390, 196 Cal.Rptr.3d 94, 362 P.3d 792 [explaining that "an agency's expertise and technical knowledge, especially when it pertains to a complex technical statute, is relevant to the court's assessment of the value of an agency interpretation"].) In the direct challenge to the permit at issue here, the local

agencies argued that the Regional Board exceeded even those requirements associated with the maximum extent practicable standard, an argument the appellate court rejected in an unpublished section of its opinion. Because of its failure to afford any deference to the Regional Board or to conduct an analysis more consistent with the relevant standard of review, the Commission essentially forces the Board to defend its decision twice: once on direct challenge and a second time before the Commission.

Conditions as prosaic as trash receptacle requirements initially may not seem to implicate the Regional Board's expertise. Yet its unique experience and technical competence matter even with respect to these conditions, because the use of such conditions implicates a decision not to use alternatives that might require greater conventional expert judgment to evaluate. Moreover, the Regional Board is likely to accumulate a distinct and greater degree of knowledge regarding issues such as the reactions of stakeholders to different requirements, and related factors relevant to determining which conditions are necessary to satisfy the CWA's maximum extent practicable standard.

The Commission acknowledged that the State Water Resources Control Board—as well as the EPA—believed the permit requirements did not exceed ***778** this federal standard. "The comments of the State Water Board and U.S. EPA," the Commission noted, "assert that the permit conditions merely implement a federal mandate under the federal Clean Water Act and its regulations." But the Commission afforded these conclusions no clear deference in determining whether the requirements were state mandates.

Nor is the majority correct in suggesting that the Commission had only a limited responsibility, if it had one at all, to extend any deference to the Regional Board. (See maj. opn., *****69** *ante*, 207 Cal.Rptr.3d at pp. 61–62, 378 P.3d at pp. 370–371.) The Regional Board's judgment as to whether the imposed permit ****377** conditions were necessary to comply with federal law was a prerequisite to the Commission's own task, which was to review the Board's determination in light of all the relevant evidence. To the extent ambiguity exists as to whether the Regional Board's conclusions incorporated any findings that these conditions were necessary to meet the federal standard (see *id.* at pp. 61–62, 378 P.3d at pp. 370–371), remand to clarify the Board's position is in order. By instead simply upholding the Commission's conclusion without remand, the majority displaces any meaningful role for the Regional Board's expert judgment.

The majority does so even though courts have routinely emphasized the pivotal role regional boards play in interpreting the CWA's intricate mandate. (See *State Water Board, supra*, 143 Cal.App.4th at p. 997, 50 Cal.Rptr.3d 619; *Rancho Cucamonga, supra*, 135 Cal.App.4th at p. 1384, 38 Cal.Rptr.3d 450.) And for good reason: If the Regional Board's judgment is that the trash receptacle and inspection requirements are necessary to control pollutant discharges to the maximum extent practicable, such a conclusion is well within the purview of its expertise. Unsurprisingly, then, we have never concluded that the technical knowledge relevant to interpreting the requirements of the CWA—a statute that lacks a safe harbor and where discerning what phrases such as maximum extent practicable mean given existing conditions and technology is complex—lies beyond the ambit of the Regional Board's expertise, or otherwise proves distinct from the sort of expertise that merits deference.

Third, the Commission devoted insufficient attention in its analysis to the role of states in implementing the CWA, and to how that role can be harmonized with the significant protections against unfunded mandates that the state Constitution provides. (See Cal. Const., art. XIII B, § 6, subd. (a).) By allowing states to assume such an important role in implementing its provisions, the CWA reflects principles of cooperative federalism. (See 33 U.S.C. §§ 1251(b), 1342(b); see also *Boise Cascade Corp. v. EPA* (9th Cir. 1991) 942 F.2d 1427, 1430 ["The federal-state relationship established by the [Clean Water] Act is ... illustrated in Congress' goal of encouraging states to 'assume the major role in the operation of the NPDES program' "].) In accordance with the CWA's express provisions, California chose to assume ***779** the responsibility for implementation of the NPDES program in the state—a role that requires further specification of permitting conditions. (See 33 U.S.C. § 1342(c)(3) [states must administer permitting programs "in accordance with requirements of this section," including compliance with the maximum extent practicable standard].) In the process, the state must comply with the constitutional protections against unfunded mandates requiring reimbursement of localities if permit conditions exceed what is necessary to comply with the relevant federal mandate. But given the nature of the relevant CWA provisions—and particularly the maximum extent practicable standard—it is wrong to assume that the conditions at issue in this case exceed what is necessary to comply with the CWA simply because neither the statute nor its regulations explicitly mention those conditions. The consequence of that assumption, moreover, risks discouraging the state from assuming cooperative

federalism responsibilities—and may even encourage the state to withdraw from administering the NPDES. Indeed, counsel for the state indicated at oral argument that if the Commission's reasoning were upheld—and the state were required to foot the bill for any *****70** conditions not expressly mentioned in the applicable federal statutes or regulations—it might think twice about entering into such arrangements of cooperative federalism.

In light of these concerns with the Commission's approach to this case, it is difficult to see the basis for—or utility of—upholding the Commission's decision, even under the inscrutable standard of review the majority employs. (See *California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 586, 128 Cal.Rptr.2d 514 [substantial evidence review requires that all evidence be considered, including evidence that does not support the agency's decision]; see also *Sierra Club v. U.S. Army Corps of Engineers* (2d Cir. 1983) 701 F.2d 1011, 1030 ["the court may properly be skeptical as to whether an [agency report's] conclusions have a substantial basis in fact if the responsible agency has ****378** apparently ignored the conflicting views of other agencies having pertinent expertise"].) The better course, in my view, would be for us to articulate the appropriate standard for evaluating the question whether these permit conditions are state mandates and then remand for the Commission to apply it in the first instance.

II.

The Commission relied on a narrow approach that only compares the terms of a permit with the text of the CWA and its implementing regulations. Instead, the Commission should have employed a more flexible methodology in determining whether the permit conditions were federally mandated. Such a flexible approach accords with our prior case law. (See *City of Sacramento, supra*, 50 Cal.3d at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522 [whether local government appropriations are ***780** federally mandated and therefore exempt from taxing and spending limitations under section 9, subdivision (b), of article XIII B of the California Constitution depends on, inter alia, the nature and purpose of the federal program, whether its design suggests an intent to coerce, when state or local participation began, and the legal and practical consequences of nonparticipation or withdrawal].) Moreover, it would have the added benefit of not discouraging the state from participating in ventures of cooperative federalism.

The majority may be correct that the facts of *City of Sacramento* are distinguishable. (See maj. opn., *ante*, 207 Cal.Rptr.3d at p. 60, 378 P.3d at p. 369.) In that case, the state risked forsaking subsidies and tax credits for its resident businesses if it failed to comply with federal law requiring that unemployment insurance protection be extended to local government employees. (*Id.* at p. 56, 378 P.3d at p. 366 .) Here, in contrast, the negative consequences of failing to comply with federal law may seem less severe, at least in fiscal terms: the EPA may determine that the state is not in compliance with the CWA and reassert authority over permitting. (See 33 U.S.C. § 1342(c)(3).) But *City of Sacramento* nonetheless remains relevant, even though a precisely comparable level of coercion may not exist here. The flexible approach we articulated in that case remains the best way to ensure that some weight is given to the Regional Board's technical expertise, and the conclusions resulting therefrom, while also taking account of the cooperative federalism arrangements built into the CWA.

So instead of adopting an approach foreign to our precedent, the Commission should have begun its analysis with the statutory and regulatory text—and then it should have considered other relevant materials and record evidence bearing on whether the permit conditions are necessary *****71** to satisfy federal law. Crucially, such evidence includes how the federal regulatory scheme operates in practice. The Commission could have examined, for instance, previous permits issued by the EPA in similarly situated jurisdictions, comparing them to the inspection and trash receptacle requirements the Regional Board imposed here and giving due consideration to the EPA's conclusion that the maximum extent practicable standard is applied in a highly site-specific and flexible manner in order to account for unique local challenges and conditions. (See 64 Fed. Reg. 68722, 68754 (Dec. 8, 1999).) The Commission could also have considered whether, instead of identifying permitting conditions necessary to comply with the CWA, the state shifted onto local governments responsibility to conduct inspections or provide trash receptacles. The majority wisely notes that these are factors the Commission *could* have examined. (See maj. opn., *ante*, at pp. 62–64, 378 P.3d at pp. 371–373.) But the Commission mentioned this evidence only briefly, failing to grapple in any meaningful way with its implications for the issue at hand. We should allow the Commission an opportunity to do so in the first instance.

***781** The Commission should have also accorded appropriate deference to the Regional Board's conclusions regarding how best to comply with the federal maximum extent practicable standard. One way to ensure that such deference is given would be to place on

the party seeking reimbursement the burden of demonstrating that the challenged permit conditions clearly exceed the federal standard, or that they were otherwise unnecessary ****379** to reduce pollutant discharges to the maximum extent practicable. Doing so would make sense where the state is implementing a federal program that envisions routine state participation, the federal program does not itself define the minimum degree of compliance required, and the state's implementing agency reasonably determines in its expertise that certain conditions are necessary to comply with the applicable federal standard.

* * *

The Commission's decision—and the approach that produced it—fails to accord with existing law and with the nature of the applicable federal scheme. The state is not responsible for reimbursing localities for permit conditions that are necessary to comply with federal law, a circumstance that renders interpretation of the CWA central to this case. A core principle of the CWA is to facilitate cooperative federalism, by allowing states to take on a critical responsibility in exchange for compliance with a set of demanding standards overseen by a federal agency capable of withdrawing approval for noncompliance. (See *Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239 ["The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters' "]; *Shell Oil Co. v. Train* (9th Cir. 1978) 585 F.2d 408, 409 ["Shell's complaint must be read against the background of the cooperative federal-state scheme for the control of water pollution"].) The Commission failed to interpret the statute in light of nuances in its text and structure. And it failed to offer even a modicum of deference to the Regional Board's interpretation, despite the Board's clear expertise that the technical nature of the questions necessary to interpret the scope of the CWA demands.

Accordingly, I would remand the matter to the Court of Appeal with directions that it instruct the Commission to reconsider its decision. On reconsideration, the Commission should appropriately defer to the *****72** Regional Board, consider all relevant evidence bearing on the question at hand, and ensure the evidence clearly shows the challenged permit conditions were not necessary to comply with the federal mandate. This is the standard that most ***782** thoroughly reflects our existing law and the nature of the CWA. Any dilution of it exacerbates the risk of undermining the nuanced federal-state arrangement at the heart of the CWA.

We Concur:

Liu, J.

Kruger, J.

All Citations

1 Cal.5th 749, 378 P.3d 356, 207 Cal.Rptr.3d 44, 16 Cal. Daily Op. Serv. 9501, 2016 Daily Journal D.A.R. 8996, 2016 Daily Journal D.A.R. 11,393

Footnotes

1 The cities involved are the Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier.

2 The systems at issue here are "municipal separate storm sewer systems," sometimes referred to by the acronym "MS4." (40 C.F.R. § 122.26(b)(19) (2001).) A "municipal separate storm sewer" is a system owned or operated by a public agency with jurisdiction over disposal of waste and designed or used for collecting or conveying storm water. (40 C.F.R. § 122.26(b)(8) (2001).) Unless otherwise indicated, all further citations to the Code of Federal Regulations are to the 2001 version.

3 For a state to acquire permitting authority, the governor must give the EPA a "description of the program [the state] proposes to establish," and the attorney general must affirm that the laws of the state "provide adequate authority to carry out the described program." (33 U.S.C. § 1342(b).)

4 The EPA may withdraw approval of a state's program (33 U.S.C. § 1342(c)(3)), and also retains some supervisory authority: States must inform the EPA of all permit applications received and of any action related to the consideration of a submitted application (33 U.S.C. § 1342(d)(1)).

5 As to commercial facilities, Part 4(C)(2)(a) required each Operator to inspect each restaurant, automotive service facility, retail gasoline outlet, and automotive dealership within its jurisdiction, and to confirm that the facility employed best management practices in compliance with state law, county and municipal ordinances, a Regional Board resolution, and the Operators' storm water quality management program (SQMP). For each type of facility, the Permit set forth specific inspection tasks.
Part 4(C)(2)(b) addressed industrial facilities, requiring the Operators to inspect them and confirm that each complied with county and municipal ordinances, a Regional Board resolution, and the SQMP. The Operators also were required to inspect industrial facilities for violations of the general industrial activity stormwater permit, a statewide permit issued by the State Board that regulates discharges from industrial facilities. (See discussion, *post*, at pp. 62–63, 378 P.3d at pp. 371–372.)

6 Part 4(E)(4) required inspections for violations of the general construction activity stormwater permit, another statewide permit issued by the State Board. (See discussion, *post*, at pp. 62–63, 378 P.3d at pp. 371–372.)

7 " 'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur ... as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution." (Gov. Code, § 17514.)

8 40 Code of Federal Regulations part 122.26(d)(2)(iv)(A) provides that the proposed management plan in an operator's permit application must be based, in part, on a "description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls," and that, at a minimum, that description shall include, among other things, a "description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities." (40 C.F.R. § 122.26(d)(2)(iv)(A), (A)(3).)

9 40 Code of Federal Regulations part 122.26(d)(2)(iv)(B) provides that the proposed management plan in an operator's permit application must be based, in part, on a "description of a program, including a schedule, to detect and remove ... illicit discharges and improper disposal into the storm sewer," and that the proposed program shall include a "description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system." (40 C.F.R. § 122.26(d)(2)(iv)(B), (B)(1).)

10 40 Code of Federal Regulations part 122.26(d)(2)(iv)(C) provides that the proposed management plan in an operator's permit application must be based, in part, on a "description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system," and that the program shall "[i]dentify priorities and procedures for inspections and establishing and implementing control measures for such discharges." (40 C.F.R. § 122.26(d)(2)(iv)(C), (C)(1).)

11 40 Code of Federal Regulations part 122.26(d)(2)(iv)(D) provides that the proposed management plan in an operator's permit application must be based, in part, on a "description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system," which shall include, a "description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality." (40 C.F.R. § 122.26(d)(2)(iv)(D), (D)(3).)

12 The appellants are County and the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palo Verdes, Signal Hill, Vernon, and Westlake Village.

13 In the end, the court held that the challenged state regulation did not obligate the local fire district to maintain three-person firefighting teams. Accordingly, the state regulation did not mandate an increase in costs. (*Division of Occupational Safety, supra,* 189 Cal.App.3d at pp. 807–808, 234 Cal.Rptr. 661.)

14 To the extent Education Code section 48918 imposed requirements that went beyond the mandate of federal law, those requirements were merely incidental to the federal mandate, and at most resulted in "a de minimis cost." (*San Diego Unified, supra,* 33 Cal.4th at p. 890, 16 Cal.Rptr.3d 466, 94 P.3d 589.) The State does not argue here that the costs of the challenged permit conditions were de minimis.

15 Of course, this finding would be case specific, based among other things on local factual circumstances.

16 The State also relied on a 2008 letter from the EPA indicating that the requirements to inspect industrial facilities and construction sites fell within the maximum extent practicable standard under the CWA. That letter, however, does not indicate that federal law required municipal storm sewer system operators to inspect all industrial facilities and construction sites within their jurisdictions.

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18 Cal.App.5th 661
Court of Appeal,
Third District, California.

DEPARTMENT OF FINANCE et al., Plaintiffs and Respondents,
v.
COMMISSION ON STATE MANDATES,
Defendant;
County of San Diego et al., Real Parties in Interest and Appellants.

C070357
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Filed 12/19/2017

Synopsis
Background: State petitioned for writ of administrative mandate, asserting that Commission on State Mandates erred in ruling that conditions imposed on a federal and state storm water permit held by municipal government permittees were state, and not federal, mandates. The Superior Court, Sacramento County, No. 34-2010-80000604-CU-WM-GDS, Allen Sumner, J., granted petition in part. Permittees appealed.

Holdings: The Court of Appeal, Nicholson, J., held that:

[1] provision of Clean Water Act granting regional water quality board discretion to meet "maximum extent practicable" standard in providing for pollutant reduction in storm water permits was not a federal mandate, and thus permittees were required to be reimbursed for cost of meeting permit condition requiring reduction of pollutants to maximum extent practicable, and

[2] Environmental Protection Agency (EPA) regulation requiring storm water permittees to describe, in permit application, practices for operating and maintaining streets and procedures for reducing the impact of discharges from storm sewer systems was also not a federal mandate.

Reversed and remanded.

West Headnotes (9)

[1] **States**
Exercise of supreme executive authority
Statutes
Questions of law or fact

The question whether a statute or executive order imposes a mandate is a question of law.

Cases that cite this headnote

[2] **Environmental Law**
Discharge of pollutants

Provision of Clean Water Act granting regional water quality board discretion to meet "maximum extent practicable" standard in providing for pollutant reduction in storm water permits was not a federal mandate, and therefore, under state constitution's subvention provision, reimbursement of local government permittees was required for cost of storm water permit condition requiring reduction of pollutants to "maximum extent practicable"; regulation vested board with discretion to choose how permittees were to meet the standard at issue, and exercise of that discretion resulted in imposition of state mandate. Cal. Const. art. XIII B, § 6; Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(p)(3)(B)(iii); Cal. Gov't Code § 17556(c).

Cases that cite this headnote

[3] **States**
State expenses and charges and statutory liabilities

To be a "federal mandate" that would trigger exception to state constitutional subvention provision's requirement for reimbursement of local government for cost of increased program or service requirements, the federal law or regulation must expressly or explicitly require the condition imposed in the permit. Cal. Const.

art. XIII B, § 6; Cal. Gov't Code § 17556(c).

Cases that cite this headnote

[4] **Environmental Law**
Discharge of pollutants

Federal Environmental Protection Agency (EPA) regulation requiring storm water permittees to describe, in permit application, practices for operating and maintaining streets and procedures for reducing the impact of discharges from storm sewer systems was not a federal mandate for street sweeping and cleaning of storm sewer systems, and therefore, under state constitution's subvention provision, reimbursement of local government permittees was required for cost of storm water permit condition requiring street sweeping and cleaning of storm sewer system, where EPA regulation did not expressly require the scope and detail of street sweeping and facility maintenance that permit imposed. Cal. Const. art. XIII B, § 6; Cal. Gov't Code § 17556(c); 40 C.F.R. § 122.26(d)(2)(iv)(A)(3).

Cases that cite this headnote

[5] **Environmental Law**
Discharge of pollutants

Federal Environmental Protection Agency (EPA) regulation requiring storm water permit applicants to describe procedures for developing and enforcing controls to reduce discharge of pollutants which received discharges from areas of new development and significant redevelopment was not a federal mandate for storm water permittees to develop a hydromodification plan, and therefore, under state constitution's subvention provision, reimbursement of local government permittees was required for cost of storm water permit condition requiring development of hydromodification plan; regulation did not require a hydromodification plan nor restrict regional water quality board from exercising its discretion to require a specific type of plan. Cal. Const. art. XIII B, § 6; Cal. Gov't Code § 17556(c); 40 C.F.R. § 122.26(d)(2)(iv)(A)(2).

Cases that cite this headnote

[6] **Environmental Law**
Discharge of pollutants

Federal Environmental Protection Agency (EPA) regulation requiring storm water permit applicants to describe procedures for developing and enforcing controls to reduce discharge of pollutants which received discharges from areas of new development and significant redevelopment was not a federal mandate for storm water permittees to implement particular low impact development requirements, and therefore, under state constitution's subvention provision, reimbursement of local government permittees was required for cost of storm water permit condition requiring implementation of specified low impact development management practices; nothing in regulation required regional water quality board to impose specific requirements at issue. Cal. Const. art. XIII B, § 6; Cal. Gov't Code § 17556(c); 40 C.F.R. § 122.26(d)(2)(iv)(A)(2).

1 Cases that cite this headnote

[7] **Environmental Law**
Discharge of pollutants

Federal Environmental Protection Agency (EPA) regulations requiring storm water permit applicants to describe various proposed educational programs in permit application was not a federal mandate for particular educational requirements imposed by permit granted to municipal government permittees, and therefore, under state constitution's subvention provision, permittees were required to be reimbursed for cost of such educational requirements; educational program and list of topics required by permit, including use of all media as appropriate to measurably increase impacts of

urban runoff and best management practices, surpassed what federal regulations required. Cal. Const. art. XIII B, § 6; Cal. Gov't Code § 17556(c); 40 C.F.R. §§ 122.26(d)(2)(iv)(A)(6), 122.26(d)(2)(iv)(A)(6), (B)(6), (D)(4), 122.26(d)(2)(iv)(B)(6), 122.26(d)(2)(iv)(D)(4).

Cases that cite this headnote

[8] **Environmental Law**
Discharge of pollutants

Federal Environmental Protection Agency (EPA) regulation allowing storm water permit applicants to propose a management program that imposed controls beyond a single jurisdiction was not a federal mandate for storm water permittees to implement regional and watershed urban runoff management programs, and therefore, under state constitution's subvention provision, local government permittees were required to be reimbursed for cost of such programs when programs were required by permit; regulation merely gave regional water quality board the discretion to require controls on a systemwide, watershed, or jurisdictional basis. Cal. Const. art. XIII B, § 6; Cal. Gov't Code § 17556(c); 40 C.F.R. § 122.26(d)(2)(iv).

Cases that cite this headnote

[9] **Environmental Law**
Discharge of pollutants

Federal Environmental Protection Agency (EPA) regulation requiring storm water permit applications to show that applicant had legal authority to control, through interagency agreements, the contribution of pollutants to a different jurisdiction was not a federal mandate for permittees to collaborate or to execute an agreement that established a management structure, and therefore, under state constitution's subvention provision, local government permittees were required to be reimbursed for cost of permit requirements to execute such an agreement; regulation required regional water quality board to assure itself that permittees had authority to address runoff pollution regionally, but it did not require board to define how permittees would organize themselves to do so. Cal. Const. art. XIII B, § 6; Cal. Gov't Code § 17556(c); 40 C.F.R. § 122.26(d)(2)(i)(D).

See 9 Witkin, Summary of Cal. Law (11th ed. 2017) Taxation, § 119 et seq.

Cases that cite this headnote

****849** APPEAL from a judgment of the Superior Court of Sacramento County, Allen Sumner, Judge. Reversed with directions. (Super. Ct. No. 34-2010-80000604-CU-WM-GDS)

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No appearance for Defendant.

Opinion

NICHOLSON, J.

***667** The California Constitution requires the state to provide a subvention of funds to compensate local governments for the costs of a new program or higher level of service the state mandates. (Cal. Const., art. XIII B, § 6 (section 6).) Subvention is not available if the state imposes a requirement that is mandated by the federal government, unless the state order mandates costs that exceed those incurred under the federal mandate. (Gov. Code, § 17556, subd. (c).) The Commission on State Mandates (the Commission) adjudicates claims for subvention.

****850** In *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 207 Cal.Rptr.3d 44, 378 P.3d 356 (*Department of Finance*), the California Supreme Court upheld a Commission ruling that certain conditions a regional water quality control board imposed on a storm water discharge permit issued under federal and state law required subvention and were not federal mandates. The high court found no federal law, regulation, or administrative case authority expressly required the conditions. It ruled the federal requirement that the permit reduce pollution impacts to the "maximum extent practicable" was not a federal mandate, but rather vested the regional board with discretion to choose which conditions to impose to meet the standard. The permit conditions resulting from the exercise of that choice were state mandates.

In this appeal, we face the same issue. The parties and the permit conditions are different, but the legal issue is the same—whether the Commission correctly determined that conditions imposed on a federal and state storm water permit by a regional water quality control board are state mandates. The Commission reached its decision by applying the standard the Supreme Court later adopted in *Department of Finance*. The trial court, reviewing the case before *Department of Finance* was issued, concluded the Commission had applied the wrong standard, and it remanded the matter to the Commission for further proceedings.

Following the analytical regime established by *Department of Finance*, we reverse the trial court's judgment. We conclude the Commission applied the correct standard and the permit requirements are state mandates. We reach this conclusion on the same grounds the high court in *Department of Finance* reached its conclusion. No federal law, regulation, or administrative case authority expressly required the conditions. The requirement to reduce pollution impacts to the "maximum extent practicable" was not a federal mandate, but instead vested the regional board with discretion to choose which conditions to impose to meet the standard. The permit conditions resulting from the exercise of that choice in this instance were state mandates.

***668** We remand the matter so the trial court may consider other issues the parties raised in their pleadings but the court did not address.

BACKGROUND

In *Department of Finance*, the Supreme Court explained the storm water discharge permitting system and the constitutional reimbursement system in detail. We quote from the opinion at length:

A. *The storm water discharge permitting system*

"The Operators' municipal storm sewer systems discharge both waste and pollutants.[1] State law controls 'waste' discharges. (Wat. Code, § 13265.) Federal law regulates discharges of 'pollutant[s].' (33 U.S.C. § 1311(a).) Both state and later-enacted federal law require a permit to operate such systems.

"California's Porter-Cologne Water Quality Control Act (Porter-Cologne Act ****851** or the Act; Wat. Code, § 13000 et seq.) was enacted in 1969. It established the State Water Resources Control Board (State Board), along with nine regional water quality control boards, and gave those agencies 'primary responsibility for the coordination and control of water quality.' (Wat. Code, § 13001; see *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619, 26 Cal.Rptr.3d 304, 108 P.3d 862 (*City of Burbank*).) The State Board establishes statewide policy. The regional boards

formulate and adopt water quality control plans and issue permits governing the discharge of waste. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128 (*Building Industry*).)

"The Porter-Cologne Act requires any person discharging, or proposing to discharge, waste that could affect the quality of state waters to file a report with the appropriate regional board. (Wat. Code, § 13260, subd. (a)(1).) The regional board then 'shall prescribe requirements as to the nature' of the discharge, implementing any applicable water quality control plans. (Wat. Code, § 13263, subd. (a).) The Operators must follow all requirements set by the Regional Board. (Wat. Code, §§ 13264, 13265.)

"The federal Clean Water Act (the CWA; 33 U.S.C. § 1251 et seq.) was enacted in 1972, and also established a permitting system. The CWA is a ***669** comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. (*City of Burbank, supra*, 35 Cal.4th at p. 620, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The CWA prohibits pollutant discharges unless they comply with (1) a permit (see 33 U.S.C. §§ 1328, 1342, 1344); (2) established effluent limitations or standards (see 33 U.S.C. §§ 1312, 1317); or (3) established national standards of performance (see 33 U.S.C. § 1316). (33 U.S.C. § 1311(a).) The CWA allows any state to adopt and enforce its own water quality standards and limitations, so long as those standards and limitations are not 'less stringent' than those in effect under the CWA. (33 U.S.C. § 1370.)

"The CWA created the National Pollutant Discharge Elimination System (NPDES), authorizing the Environmental Protection Agency (EPA) to issue a permit for any pollutant discharge that will satisfy all requirements established by the CWA or the EPA Administrator. (33 U.S.C. § 1342(a)(1), (2).) The federal system notwithstanding, a state may administer its own permitting system if authorized by the EPA.[2] If the EPA concludes a state has adequate authority to administer its proposed program, it must grant approval (33 U.S.C. § 1342(b)) and suspend its own issuance of permits (33 U.S.C. § 1342(c)(1)).[[3]

"California was the first state authorized to issue its own pollutant discharge permits. (*People ex rel. State Water Resources Control Bd. v. Environmental Protection Agency* (9th Cir. 1975) 511 F.2d 963, 970, fn. 11, revd. on other grounds in ****852** *EPA v. State Water Resources Control Board* (1976) 426 U.S. 200, 96 S.Ct. 2022, 48 L.Ed.2d 578.) Shortly after the CWA's enactment, the Legislature amended the Porter-Cologne Act, adding chapter 5.5 (Wat. Code, § 13370 et seq.) to authorize state issuance of permits (Wat. Code, § 13370, subd. (c)). The Legislature explained the amendment was 'in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to [the Porter-Cologne Act].' (*Ibid.*) The Legislature provided that chapter 5.5 be 'construed to ensure consistency' with the CWA. (Wat. Code, § 13372, subd. (a).) It directed that state and regional boards issue waste discharge requirements 'ensur[ing] compliance with all applicable provisions of the [CWA] ... *together with any more stringent effluent standards or limitations* necessary to implement water quality control plans, ***670** or for the protection of beneficial uses, or to prevent nuisance.' (Wat. Code, § 13377, italics added.)[4] To align the state and federal permitting systems, the legislation provided that the term ' "waste discharge requirements" ' under the Act was equivalent to the term ' "permits" ' under the CWA. (Wat. Code, § 13374.) Accordingly, California's permitting system now regulates discharges under both state and federal law. (*WaterKeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal.App.4th 1448, 1452, 126 Cal.Rptr.2d 389; accord, *Building Industry, supra*, 124 Cal.App.4th at p. 875, 22 Cal.Rptr.3d 128.)

"In 1987, Congress amended the CWA to clarify that a permit is required for any discharge from a municipal storm sewer system serving a population of 100,000 or more. (33 U.S.C. § 1342(p)(2)(C), (D).) Under those amendments, a permit may be issued either on a system- or jurisdiction-wide basis, must effectively prohibit non-stormwater discharges into the storm sewers, and must 'require controls to reduce the discharge of pollutants *to the maximum extent practicable*.' (33 U.S.C. § 1342(p)(3)(B), italics added.) The phrase 'maximum extent practicable' is not further defined. How that phrase is applied, and by whom, are important aspects of this case.

"EPA regulations specify the information to be included in a permit application. (See 40 C.F.R. § 122.26(d)(1)(i)-(vi), (2)(i)-(viii).) Among other things, an applicant must set out a proposed management program that includes management practices; control techniques; and system, design, and engineering methods to reduce the discharge of pollutants to the maximum extent practicable. (40 C.F.R. § 122.26(d)(2)(iv).) The permit-issuing agency has discretion to determine which practices, whether or not proposed by the applicant, will be imposed as conditions. (*Ibid.*)" (*Department of Finance, supra*, 1 Cal.5th at pp. 755-757, 207 Cal.Rptr.3d 44, 378 P.3d 356, original italics.)[5]

B. *The permit before us*

In 2007, the Regional Water Quality Control Board, San Diego Region (the San Diego Regional Board), issued a permit to real parties in interest and appellants, the County of San Diego and the cities located in the county (the "permittees" or "copermittees").[6] The permit was actually a renewal ****853** of an ***671** NPDES permit first issued in 1990 and renewed in 2001. The San Diego Regional Board stated the new permit "specifies requirements necessary for the Copermittees to reduce the discharge of pollutants in urban runoff to the maximum extent practicable (MEP)." The San Diego Regional Board found that although the permittees had generally been implementing the management programs required in the 2001 permit, "urban runoff discharges continue to cause or contribute to violations of water quality standards. This [permit] contains new or modified requirements that are necessary to improve Copermittees' efforts to reduce the discharge of pollutants in urban runoff to the MEP and achieve water quality standards."

The permit requires the permittees to implement various programs to manage their urban runoff that were not required in the 2001 permit. It requires the permittees to implement programs in their own jurisdictions. It requires the permittees in each watershed to collaborate to implement programs to manage runoff from that watershed, and it requires all of the permittees in the region to collaborate to implement programs to manage regional runoff. The permit also requires the permittees to assess the effectiveness of their programs and collaborate in their efforts.

The specific permit requirements involved in this case require the permittees to do the following:

> (1) As part of their jurisdictional management programs:
>
> > (a) Sweep streets at certain times, depending on the amount of debris they generate, and report the number of curb miles swept and tons of material collected;
> >
> > (b) Inspect, maintain, and clean catch basins, storm drain inlets, and other storm water conveyances at specified times and report on those activities;
> >
> > (c) Collaboratively develop and individually implement a hydromodification management plan to manage increases in runoff discharge rates and durations;[7]
> >
> > (d) Collectively update the best management practices requirements listed in their local Standard Urban Storm Water Mitigation Plans (SUSMP's) and add low impact development best management practices for new real property development and redevelopment;
> >
> > ***672** (e) Individually implement an education program using all media to inform target communities about municipal separate storm sewer systems (MS4's) and impacts of urban runoff, and to change the communities' behavior and reduce pollutant releases to MS4's;
>
> (2) As part of their watershed management programs, collaboratively develop and implement watershed water quality activities and education activities within established schedules and by means of frequent regularly scheduled meetings;
>
> (3) As part of their regional management programs:
>
> > (a) Collaboratively develop and implement a regional urban runoff management program to reduce the ****854** discharge of pollutants from MS4's to the maximum extent practicable;
> >
> > (b) Collaboratively develop and implement a regional education program focused on residential sources of pollutants;
>
> (4) Annually assess the effectiveness of the jurisdictional, watershed, and regional urban runoff management programs, and collaboratively develop a long-term effectiveness assessment to assess the effectiveness of all of the urban runoff management programs; and
>
> (5) Jointly execute a memorandum of understanding, joint powers authority, or other formal agreement that defines the permittees' responsibilities under the permit and establishes a management structure, standards for conducting meetings, guidelines for workgroups, and a process to address permittees' noncompliance with the formal agreement.

The permittees estimated complying with these conditions would cost them more than $66 million over the life of the permit.

C. *Reimbursement for state mandates*

"[W]hen the Legislature or a state agency requires a local government to provide a new program or higher level of service, the state must 'reimburse that local government

for the costs of the program or increased level of service.' (Cal. Const., art. XIII B, § 6, subd. (a) (hereafter, section 6).)[8]" (*Department of Finance, supra,* 1 Cal.5th at pp. 758-759, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

***673** "Voters added article XIII B to the California Constitution in 1979. Also known as the ' "Gann limit," ' it 'restricts the amounts state and local governments may appropriate and spend each year from the "proceeds of taxes." ' (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 58-59, 266 Cal.Rptr. 139, 785 P.2d 522 (*City of Sacramento*).) 'Article XIII B is to be distinguished from article XIII A, which was adopted as Proposition 13 at the June 1978 election. Article XIII A imposes a direct constitutional limit on state and local power to *adopt and levy taxes*. Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend for public purposes.' (*Id.* at p. 59, fn. 1, 266 Cal.Rptr. 139, 785 P.2d 522.)

"The 'concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public.' (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].) The reimbursement provision in section 6 was included in recognition of the fact 'that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments.' (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81 [61 Cal.Rptr.2d 134, 931 P.2d 312] (*County of San Diego*).) The ****855** purpose of section 6 is to prevent 'the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are "ill equipped" to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.' (*County of San Diego,* at p. 81 [61 Cal.Rptr.2d 134, 931 P.2d 312].) Thus, with certain exceptions, section 6 'requires the state "to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies." ' (*County of San Diego,* at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.)" (*Department of Finance, supra,* 1 Cal.5th at pp. 762-763, 207 Cal.Rptr.3d 44, 378 P.3d 356, original italics.)

A significant exception to section 6's subvention requirement is at issue here. Under that exception, "reimbursement is not required if '[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation.' (Gov. Code, § 17556, subd. (c).)

"The Legislature has enacted comprehensive procedures for the resolution of reimbursement claims (Gov. Code, § 17500 et seq.) and created the Commission to adjudicate them (Gov. Code, §§ 17525, 17551). It also established 'a test-claim procedure to expeditiously resolve disputes affecting ***674** multiple agencies.' (*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 285 Cal.Rptr. 66, 814 P.2d 1308 (*Kinlaw*).)

"The first reimbursement claim filed with the Commission is called a test claim. (Gov. Code, § 17521.) The Commission must hold a public hearing, at which the Department of Finance (the Department), the claimant, and any other affected department or agency may present evidence. (Gov. Code, §§ 17551, 17553.) The Commission then determines 'whether a state mandate exists and, if so, the amount to be reimbursed.' (*Kinlaw, supra,* 54 Cal.3d at p. 332, 285 Cal.Rptr. 66, 814 P.2d 1308.) The Commission's decision is reviewable by writ of mandate. (Gov. Code, § 17559.)" (*Department of Finance, supra,* 1 Cal.5th at pp. 758-759, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

D. *The test claim and the writ petition*

In 2008, the permittees filed a test claim with the Commission. They contended the permit requirements mentioned above constituted new or modified requirements that were compensable state mandates under section 6. The State, the San Diego Regional Board and the Department of Finance (collectively the "State") claimed the requirements were not compensable because they were mandated by the federal CWA's NPDES permit requirements.

In 2010, the Commission ruled all of the targeted requirements were state mandates and not federal mandates. The Commission found the requirements were not federal mandates because they were not expressly specified in, or they exceeded the scope of, federal regulations. The Commission determined the permittees were entitled to subvention by the state for all of the requirements except two. The Commission ruled the requirements to develop a hydromodification plan and to include low impact development practices in the SUSMP's were not entitled to subvention because the permittees had authority to impose fees to recover the costs of those requirements.

The State petitioned the trial court for a writ of administrative mandate. It contended the Commission erred because the permit requirements are federal mandates ****856** and are not a new program or higher level of service. It also contended the Commission erred in concluding the County of San Diego did not have fee authority to pay for all of the permit conditions.

The County of San Diego filed a cross-petition for writ of mandate to challenge the Commission's decision that the conditions requiring a hydromodification plan and low impact development practices were not reimbursable.

The trial court granted the State's petition in part and issued a writ of mandate. It concluded the Commission applied an incorrect standard when it ***675** determined the permit conditions were not federal mandates. It held the Commission was required to determine whether any of the permit requirements exceeded the "maximum extent practicable" standard imposed by the CWA. "The Commission never undertook this inquiry," the court stated. "Instead, it simply asked whether the permit conditions are expressly specified in federal regulations or guidelines. This is not the test. The fact that a permit condition is not specified in a federal regulation or guideline does not determine whether the condition is 'practicable,' and thus required by federal law. The mere fact that a permit condition is not promulgated as a federal regulation does not mean it exceeds the federal standard."

The trial court remanded the matter to the Commission to reconsider its decision in light of the court's ruling. The court did not address the fee issues raised by the petition and cross-petition.

The permittees appeal from the trial court's judgment.[9,10]

DISCUSSION

I

Standard of Review

While this appeal was pending, the Supreme Court issued *Department of Finance*. There, the high court had to answer the same question we must answer: are certain requirements imposed by the San Diego Regional Board in an NPDES permit federal mandates and not reimbursable state mandates? Although the high court reviewed conditions different from those before us, it established the law we must apply to resolve this appeal.[11]

[1]As to the standard of review, "[t]he question whether a statute or executive order imposes a mandate is a question of law. [(***676** *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, 53 Cal.Rptr.2d 521.)] Thus, we review the entire record before the Commission, which includes references to federal and state statutes and regulations, as well as evidence of other permits and the parties' ****857** obligations under those permits, and independently determine whether it supports the Commission's conclusion that the conditions here were not federal mandates. (*Ibid.*)" (*Department of Finance, supra,* 1 Cal.5th at p. 762, 207 Cal.Rptr.3d 44, 378 P.3d 356.) To do this, we must determine "whether federal statutory, administrative, or case law imposed, or compelled the [San Diego] Regional Board to impose, the challenged requirements on the [permittees]." (*Id.* p. 767, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

II

Analysis

Under the test announced in *Department of Finance*, we conclude federal law did not compel imposition of the permit requirements, and they are subject to subvention under section 6. This is because the requirement to reduce pollutants to the "maximum extent practicable" was not a federal mandate for purposes of section 6. Rather, it vested the San Diego Regional Board with discretion to choose how the permittees must meet that standard, and the exercise of that discretion resulted in imposing a state mandate. We also find no federal law, regulation, or administrative case authority that, under the test provided by *Department of Finance*, expressly required the conditions the San Diego Regional Board imposed.

A. *The* Department of Finance *decision*

We first describe *Department of Finance*, its context, its holding, and its analysis. Prior to its *Department of Finance* decision, the California Supreme Court declared in *City of Sacramento, supra,* 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522 that "certain regulatory standards imposed by the federal government under 'cooperative federalism' schemes" are federal mandates and not

reimbursable under section 6. (*Id*. at pp. 73-74, 266 Cal.Rptr. 139, 785 P.2d 522.) In that case, the court held federal legislation requiring local governments to provide unemployment insurance protection to their employees was a federal mandate. It was a federal mandate because failing to extend the protection would have resulted in the state's businesses facing additional unemployment taxation and penalties by both state and federal governments. (*Id*. at p. 74, 266 Cal.Rptr. 139, 785 P.2d 522.) "[T]he state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses. The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (*Ibid*.)

***677** The *City of Sacramento* court refused to announce a "final test" for determining whether a requirement imposed under a cooperative federal-state program was a federal mandate. (*City of Sacramento, supra*, 50 Cal.3d at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522.) Instead, it required courts to determine whether a requirement was a federal mandate on a case-by-case basis. It stated: "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. Always, the courts and the Commission must respect the governing principle of article XIII B, section 9, subd. (b) [of the California Constitution]: neither ****858** state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary." (*City of Sacramento, supra*, at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522.)

In *Department of Finance*, the Supreme Court changed course and announced a test for determining whether a requirement imposed on a permit under a cooperative federal-state program is a federal mandate. To determine whether a requirement imposed under the CWA and state law on an NPDES permit is a federal mandate, a court applies the following test: "If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a 'true choice,' the requirement is not federally mandated." (*Department of Finance, supra*, 1 Cal.5th at p. 765, 207 Cal.Rptr.3d 44, 378 P.3d 356.) If the state in opposition to the petition contends its requirements are federal mandates, it has the burden to establish the requirements are in fact mandated by federal law. (*Id.* at p. 769, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

In *Department of Finance*, the high court held conditions imposed on an NPDES permit issued by the Regional Water Quality Control Board, Los Angeles Region (the Los Angeles Regional Board), to Los Angeles County and various cities were not federal mandates and were subject to subvention under section 6. The permit conditions required the permittees to install and maintain trash receptacles at transit stops, and to inspect certain commercial and industrial facilities and construction sites. (*Department of Finance, supra*, 1 Cal.5th at p. 755, 207 Cal.Rptr.3d 44, 378 P.3d 356.) The Commission determined each of the conditions was a compensable state mandate, and the Supreme Court, reversing the Court of Appeal, upheld the Commission's decision.

The high court ruled federal law did not compel the conditions to be imposed. The court stated: "It is clear federal law did not compel the [Los ***678** Angeles] Regional Board to impose these particular requirements. There was no evidence the state was compelled to administer its *own* permitting system rather than allowing the EPA do so under the CWA. (33 U.S.C. § 1342(a).) ... [T]he state chose to administer its own program, finding it was 'in the interest of the people of the state, *in order to avoid direct regulation by the federal government* of persons already subject to regulation' under state law. (Wat. Code, § 13370, subd. (c), italics added.) Moreover, the [Los Angeles] Regional Board was not required by federal law to impose any specific permit conditions. The federal CWA broadly directed the board to issue permits with conditions designed to reduce pollutant discharges to the maximum extent practicable. But the EPA's regulations gave the board discretion to determine which specific controls were necessary to meet that standard. (40 C.F.R. § 122.26(d)(2)(iv).) This case is distinguishable from *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, where the state risked the loss of subsidies and tax credits for all its resident businesses if it failed to comply with federal legislation. Here, the State was not compelled by federal law to impose any particular requirement. Instead, ... the [Los Angeles] Regional Board had discretion to fashion requirements which it determined would meet the CWA's maximum extent practicable standard." (*Department of Finance, supra*, 1 Cal.5th at pp. 767-768, 207 Cal.Rptr.3d 44, 378 P.3d 356, original italics.)

****859** The State contended the Commission decided the

existence of a federal mandate on grounds that were too rigid. It argued the Commission should have accounted for the flexibility in the CWA's regulatory scheme and the "maximum extent practicable" standard. It also should have deferred to the terms of the permit as the best expression of what federal law required in that instance since the terms were based on the agencies' scientific, technical, and experiential knowledge.

The Supreme Court rejected both arguments. The court stated: "We disagree that the Permit itself demonstrates what conditions would have been imposed had the EPA granted the Permit. In issuing the Permit, the [Los Angeles] Regional Board was implementing both state and federal law and was authorized to include conditions more exacting than federal law required. (*City of Burbank, supra*, 35 Cal.4th at pp. 627-628, 26 Cal.Rptr.3d 304, 108 P.3d 862.) It is simply not the case that, because a condition was in the Permit, it was, ipso facto, required by federal law.

"We also disagree that the Commission should have deferred to the [Los Angeles] Regional Board's conclusion that the challenged requirements were federally mandated. That determination is largely a question of law. Had the [Los Angeles] Regional Board found, when imposing the disputed permit conditions, that those conditions were the only means by which the maximum extent practicable standard could be implemented, deference to the board's ***679** expertise in reaching that finding would be appropriate. The board's legal authority to administer the CWA and its technical experience in water quality control would call on sister agencies as well as courts to defer to that finding. The State, however, provides no authority for the proposition that, absent such a finding, the Commission should defer to a state agency as to whether requirements were state or federally mandated. Certainly, in a trial court action challenging the *board's authority* to impose specific permit conditions, the board's findings regarding what conditions satisfied the federal standard would be entitled to deference. (See, e.g., *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1384, 38 Cal.Rptr.3d 450, citing *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817-818, 85 Cal.Rptr.2d 696, 977 P.2d 693.) Resolution of those questions would bring into play the particular technical expertise possessed by members of the regional board. In those circumstances, the party challenging the board's decision would have the burden of demonstrating its findings were not supported by substantial evidence or that the board otherwise abused its discretion. (*Rancho Cucamonga*, at p. 1387, 38 Cal.Rptr.3d 450; *Building Industry, supra*, 124 Cal.App.4th at pp. 888-889, 22 Cal.Rptr.3d 128.)

"Reimbursement proceedings before the Commission are different. The question here was not whether the [Los Angeles] Regional Board had authority to impose the challenged requirements. It did. The narrow question here was who will pay for them. In answering that legal question, the Commission applied California's constitutional, statutory, and common law to the single issue of reimbursement. In the context of these proceedings, the State has the burden to show the challenged conditions were mandated by federal law." (*Department of Finance, supra*, 1 Cal.5th at pp. 768-769, 207 Cal.Rptr.3d 44, 378 P.3d 356, fn. omitted, original italics.)

Addressing the permit's specific requirements, the Supreme Court determined they were not mandated by federal law but instead were imposed pursuant to the State's discretion. Regarding the site inspection ****860** requirements, the court found neither the CWA's "maximum extent practicable" standard, the CWA itself, nor the EPA regulations "expressly required" the inspection conditions. (*Department of Finance, supra*, 1 Cal.5th at p. 770, 207 Cal.Rptr.3d 44, 378 P.3d 356.) The court also determined that in this instance, state and federal law required the Los Angeles Regional Board to conduct the inspections. By exercising its discretion and shifting responsibility for the inspections onto the permittees as a condition of the permit, the Los Angeles Regional Board imposed a state mandate. (*Id.* at pp. 770-771, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

The State argued the inspection requirements were federal mandates because EPA regulations contemplated that some kind of operator inspections would be required. The court was not persuaded: "That the EPA regulations ***680** contemplated some form of inspections ... does not mean that federal law required the scope and detail of inspections required by the Permit conditions." (*Department of Finance, supra*, 1 Cal.5th at p. 771, 207 Cal.Rptr.3d 44, 378 P.3d 356, fn. omitted.)

As for the trash receptacle requirement, the Supreme Court agreed with the Commission that it was not a federal mandate because neither the CWA nor the federal regulation cited by the state "explicitly required" the installation and maintenance of trash receptacles. (*Department of Finance, supra*, 1 Cal.5th at p. 771, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

The State argued the condition was mandated by the EPA regulations that required the permittees to include in their application a description of practices for operating roads

and procedures for reducing the impact of discharges from MS4's. The Supreme Court rejected this argument: "While the Operators were required to include a description of practices and procedures in their permit application, the issuing agency has discretion whether to make those practices conditions of the permit. (40 C.F.R. § 122.26(d)(2)(iv).) No regulation cited by the State required trash receptacles at transit stops." (*Department of Finance*, *supra*, 1 Cal.5th at pp. 771-772, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

In addition, the court found evidence the EPA had issued NPDES permits in other cities that did not require trash receptacles at transit stops. "The fact the EPA itself had issued permits in other cities, but did not include the trash receptacle condition, undermines the argument that the requirement was federally mandated." (*Department of Finance*, *supra*, 1 Cal.5th at p. 772, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

B. *Applying* Department of Finance *to this appeal*

Having reviewed *Department of Finance*, we now turn to apply its ruling and analysis to the permit requirements before us. Again, our task is two-fold. We must determine first whether the CWA, its regulations and guidelines, and any other evidence of federal mandate such as similar permits issued by the EPA, required each condition. If they did, we conclude the requirement is a federal mandate and not entitled to subvention under section 6. Second, if the condition was not "expressly required" by federal law but was instead imposed pursuant to the State's discretion, we conclude the requirement is not federally mandated and subvention is required. The State has the burden to establish the requirements were imposed by federal law. It has not met its burden here.

1. *The "maximum extent practicable" standard*

[2]The State contends the permit requirements were federal mandates because it had no discretion but to impose conditions ****861** that satisfied the ***681** "maximum extent practicable" standard. We disagree with the state's interpretation of its discretion. The "maximum extent practicable" standard by its nature is discretionary and does not by itself impose a federal mandate for purposes of section 6. Before *Department of Finance* was issued, the State argued here that the Clean Water Act's "maximum extent practicable" standard was a federal mandate because it is flexible and contemplates that specific measures will be implemented to meet the unique requirements of any particular waterway and water quality. *Department of Finance* rejected this argument for purposes of subvention under section 6. "The federal CWA broadly directed the board to issue permits with conditions designed to reduce pollutant discharges to the maximum extent practicable. But the EPA's regulations gave the board discretion to determine which specific controls were necessary to meet that standard. (40 C.F.R. § 122.26(d)(2)(iv).)" (*Department of Finance*, *supra*, 1 Cal.5th at pp. 767-768, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

There is no dispute the CWA and its regulations grant the San Diego Regional Board discretion to meet the "maximum extent practicable" standard. The CWA requires NPDES permits for MS4's to "require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions *as the Administrator or the State determines appropriate* for the control of such pollutants." (33 U.S.C.S. § 1342(p)(3)(B)(iii), italics added.)

EPA regulations also describe the discretion the State will exercise to meet the "maximum extent practicable" standard. The regulations require a permit application by an MS4 to propose a management program. This program "shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. ... Proposed programs *will be considered by the Director when developing permit conditions* to reduce pollutants in discharges to the maximum extent practicable." (40 C.F.R. § 122.26 (d)(2)(iv), italics added.) This regulation implies the San Diego Regional Board has wide discretion to determine how best to condition the permit in order to meet the "maximum extent practicable" standard.

Yet the State argues the San Diego Regional Board really did not exercise discretion in imposing the challenged requirements. It contends the Supreme Court in *Department of Finance* did not look for differences between federal law and the terms of the permit. Rather, the court allegedly searched the record to see if the Los Angeles Regional Board exercised a true choice in ***682** imposing permit conditions or if it instead imposed requirements necessary to satisfy federal law. Applying that test here, the State asserts the San Diego Regional Board in this case did not exercise a true choice in

imposing any of the permit requirements because it was required to impose requirements that satisfied the "maximum extent practicable" standard. Indeed, the San Diego Regional Board here made a finding its requirements were "necessary" in order to reduce pollutant discharge to the maximum extent practicable, a finding the Los Angeles Regional Board in *Department of Finance* did not expressly make.

The State also contends the San Diego Regional Board did not make a true choice ****862** because the permittees in their permit application proposed methods of compliance, and the San Diego Regional Board made modifications "so those methods would achieve the federal standard." The State asserts the permit requirements were not state mandates because they were based on the proposals in the application, "not the [San Diego] Regional Board's preferences for how the copermittees should comply."

The State misconstrues *Department of Finance* in numerous respects. First, the Supreme Court did in fact look for differences between federal law and the terms of the permit to determine if the condition was a federal mandate. The high court stated that, to be a federal mandate for purposes of section 6, the federal law or regulation must "expressly" or "explicitly" require the specific condition imposed in the permit. (*Department of Finance, supra*, 1 Cal.5th at pp. 770-771, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

Second, the Supreme Court found the "maximum extent practicable" did not preclude the State from making a choice; rather, it gave the State discretion to make a choice. "The federal CWA broadly directed the board to issue permits with conditions designed to reduce pollutant discharges to the maximum extent practicable. But the EPA's regulations gave the board discretion to determine which specific controls were necessary to meet that standard. (40 C.F.R. § 122.26(d)(2)(iv).)" (*Department of Finance, supra*, 1 Cal.5th at pp. 767-768, 207 Cal.Rptr.3d 44, 378 P.3d 356.) As the high court stated, except where a regional board finds the conditions are the only means by which the "maximum extent practicable" standard can be met, the State exercises a true choice by determining what controls are necessary to meet the standard. (*Id.* at p. 768, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

That the San Diego Regional Board found the permit requirements were "necessary" to meet the standard establishes only that the San Diego Regional Board exercised its discretion. Nowhere did the San Diego Regional Board find its conditions were the only means by which the permittees could meet the standard. Its use of the word "necessary" did not equate to finding the permit requirement was the *only* means of meeting the standard. "It is simply ***683** not the case that, because a condition was in the Permit, it was, ipso facto, required by federal law." (*Department of Finance, supra*, 1 Cal.5th at p. 768, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

The use of the word "necessary" also does not distinguish this case from *Department of Finance*. By law, a regional board cannot issue an NPDES permit to MS4's without finding it has imposed conditions "necessary to carry out the provisions of [the Clean Water Act]." (33 U.S.C. § 1342(a)(1).) That requirement includes imposing conditions necessary to meet the "maximum extent practicable" standard, and the regional board in *Department of Finance* found the conditions it imposed had done so. The Los Angeles Regional Board stated: "This permit is intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the U.S. subject to the Permittees' jurisdiction." It further stated: "[T]his Order requires that the [Storm Water Quality Management Plan] specify BMPs [best management practices] that will be implemented to reduce the discharge of pollutants in storm water to the maximum extent practicable."

Third, the Supreme Court in *Department of Finance* rejected the State's argument ****863** that the permit application somehow limited a board's discretion or denied it a true choice. "While the Operators were required to include a description of practices and procedures in their permit application, the issuing agency has discretion whether to make those practices conditions of the permit. (40 C.F.R. § 122.26(d)(2)(iv).)" (*Department of Finance, supra*, 1 Cal.5th at pp. 771-772, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

The State had a true choice and exercised its discretion in determining and imposing the conditions it concluded were necessary to reduce storm water pollutants to the maximum extent practicable. Because the State exercised this discretion, the permit requirements it imposed were not federal mandates.

2. *No express demand by federal law*

[3]The State contends federal law nonetheless required the conditions it imposed. It relies on regulations broadly describing what must be included in an NPDES permit

application by an MS4 instead of express mandates directing the San Diego Regional Board to impose the requirements it imposed. To be a federal mandate for purposes of section 6, however, the federal law or regulation must "expressly" or "explicitly" require the condition imposed in the permit. (*Department of Finance, supra*, 1 Cal.5th at pp. 770-771, 207 Cal.Rptr.3d 44, 378 P.3d 356.) This is the standard the Commission applied and found the ***684** State's claims unwarranted. We do as well. The State cites to no law, regulation, or EPA case authority presented to the Commission or the trial court that expressly required any of the challenged permit requirements. We briefly review the requirements.

a. *Street sweeping and cleaning storm water conveyances*

[4]The State contends the requirements for street sweeping and cleaning of the storm sewer system are federal mandates because EPA regulations required the permittees to describe in their permit application their practices for operating and maintaining streets and procedures for reducing the impact of discharges from storm sewer systems. (40 C.F.R. § 122.26(d)(2)(iv)(A)(3).) This regulation does not expressly require the scope and detail of street sweeping and facility maintenance the permit imposes. Because the State imposed those specific requirements, they are not federal mandates and must be compensated under section 6.

The permit requires the permittees to sweep streets a certain number of times depending on how much trash and debris they generate. Streets that consistently generate the highest volume of trash must be swept at least twice per month. Streets that generate moderate volumes of trash must be swept at least monthly, and those that generate low volumes of trash must be swept at least annually. Permittees must annually report the total distance of curb miles swept and the tons of material collected.

The permit also requires the permittees to implement a schedule of maintenance activities for their storm sewer systems and facilities, such as catch basins, storm drain inlets, open channels, and the like. At a minimum, the permittees must inspect all facilities at least annually and must inspect facilities that receive high volumes of trash at least once a year between May 1 and September 30. The permit requires any catch basin or storm drain inlet that has accumulated trash greater than 33 percent of its design capacity to be cleaned in a timely manner. Any facility designed to be self-cleaning must be cleaned immediately of any accumulated trash. The permittees must keep ****864** records of their maintenance and cleaning activities.

We see nothing in the regulation requiring permittees to describe in their application their street and facility maintenance practices a mandate to impose the specific requirements actually imposed in the permit.

b. *Hydromodification plan*

[5]The State claims the requirement to develop a hydromodification plan (HMP) arises from EPA regulations requiring the permit applicant to ***685** include in its application a description of planning procedures to develop and enforce controls "to reduce the discharge of pollutants from [MS4's] which receive discharges from areas of new development and significant redevelopment." (40 C.F.R. § 122.26(d)(2)(iv)(A)(2).) The permit requires the HMP to establish standards of runoff flow for channel segments that receive runoff from new development. It must require development projects to implement control measures so that the flows from the completed project generally do not exceed the flows before the project was built. The HMP must include other performance criteria as well as a description of how the permittees will incorporate the HMP requirements into their local approval process.

The regulation cited by the State does not require an HMP. Nor does it restrict the San Diego Regional Board from exercising its discretion to require a specific type of plan to address the impacts from new development. The San Diego Regional Board admittedly exercised its discretion on this condition. It determined the permittees' application was insufficient and it required them to collaborate to develop an HMP. The requirement is thus a state mandate subject to subvention.

c. *Low impact development practices in the SUSMP*

[6]The State relies upon the same regulation to support the low impact development requirements as it did for the HMP. (40 C.F.R. § 122.26(d)(2)(iv)(A)(2).) The permit requires the permittees to implement specified low impact development best management practices at most new development and redevelopment projects. These practices include designing the projects to drain runoff into previous areas on site and using permeable surfaces for

low traffic areas. The practices also require projects to conserve natural areas and minimize the project's impervious footprint where feasible.

The permit also requires the permittees to develop a model SUSMP to establish low impact development best management practices that meet or exceed the requirements just mentioned. The model must include siting, design, and maintenance criteria for each low impact development best management practice listed in the model SUSMP. Again, nothing in the application regulation required the San Diego Regional Board to impose these specific requirements. As a result, they are state mandates subject to section 6.

d. *Jurisdictional and regional education programs*

[7]The State claims regulations requiring the permittees to describe in their permit application the educational programs they will conduct to ***686** increase the public's knowledge of storm water pollution imposed a federal mandate. (40 C.F.R. § 122.26(d)(2)(iv)(A)(6), (B)(6), (D)(4).) The regulations require the application to include descriptions of proposed educational activities to reduce pollutants associated with the application of pesticides, herbicides and fertilizer (40 C.F.R. § 122.26(d)(2)(iv)(A)(6)), to facilitate the ****865** proper management and disposal of used oil and toxic materials (40 C.F.R. § 122.26(d)(2)(iv)(B)(6)), and to reduce pollutants in storm runoff from construction sites. (40 C.F.R. § 122.26(d)(2)(iv)(D)(4).)

The permit requires each permittee to do much more. Each must implement an education program using all media as appropriate to "measurably increase" the knowledge of MS4's, impacts of urban runoff, and potential best management practices, and to "measurably change" people's behaviors. The program must address at a minimum five target communities: municipal departments and personnel; construction site owners and developers; industrial owners and operators; commercial owners and operators; and the residential community, the general public, and school children. The program must educate each target community where appropriate on a number of specified topics. It must educate them on federal, state, and local water quality laws and regulations, including the storm water discharge permitting system. It must address general runoff concepts, such as the impacts of urban runoff on receiving waters, the distinctions between MS4's and sanitary sewers, types of best management practices, water quality impacts associated with urbanization, and non-storm water discharge prohibitions. It must discuss specific best management practices for such activities as good housekeeping, proper waste disposal, methods to reduce the impacts from residential and charity car washing, non-storm water disposal alternatives, preventive maintenance, and equipment and vehicle maintenance and repair. The program must also address public reporting mechanisms, illicit discharge detection, dechlorination techniques, integrated pest management, the benefits of native vegetation, water conservation, alternative materials and designs to maintain peak runoff values, traffic reduction, and alternative fuel use. The permit also requires additional specific topics to be addressed that are relevant to each particular target community.

The San Diego Regional Board imposed an educational program and a list of topics that surpasses what the regulations required the permittees to propose in their application. Nothing in the regulations required the San Diego Regional Board to impose the educational requirements in the scope and detail it did. As a result, they are state mandates subject to section 6.

***687** e. *Regional and watershed urban runoff management programs*

[8]To claim the requirements to develop regional and watershed urban runoff management programs are federal mandates, the State relies on the regulation requiring permit applications to propose a management program as part of their application. The regulation authorizes the applicants to propose a program that imposes controls beyond a single jurisdiction: "Proposed programs *may* impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls." (40 C.F.R. § 122.26(d)(2)(iv), italics added.)

The permit *requires* the permittees to collaborate, develop, and implement watershed and regional urban runoff management programs. As part of the watershed management program, the permittees must, among other things, annually assess the water quality of receiving waters and identify the water quality problems attributable to MS4 discharges. They must develop and implement a list of water quality activities and education activities and submit the list for approval by the San Diego Regional Board. The permit describes what information must be included on the list for each activity, and it requires the permittees to implement each of them.

****866** The permit requires the permittees, as part of developing a regional management program, to

implement a residential education program as described above, develop standardized fiscal analysis of the programs in their jurisdictions, and facilitate the assessment of the jurisdictional, watershed, and regional programs' effectiveness.

The regulation relied upon by the State does not mandate any of these watershed and regional management requirements. It clearly leaves to the San Diego Regional Board the discretion to require controls on a systemwide, watershed, or jurisdictional basis. The State exercised that discretion in imposing the controls it imposed. They thus are state mandates subject to section 6.

f. *Program effectiveness assessments*

Federal regulations require a permit application to include, as part of assessing the effectiveness of controls, "[e]stimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water." (40 C.F.R. § 122.26(d)(2)(v).)

***688** The regulations also require the operator of an MS4 to submit a status report annually. The report must include: "(1) The status of implementing the components of the storm water management program that are established as permit conditions; [¶] (2) Proposed changes to the storm water management programs that are established as permit conditions[;] [¶] (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application[;] [¶] (4) A summary of data, including monitoring data, that is accumulated throughout the reporting year; [¶] (5) Annual expenditures and budget for year following each annual report; [¶] (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs; [and] [¶] (7) Identification of water quality improvements or degradation[.]" (40 C.F.R. § 122.42(c).)

The State contends these regulations mandated the San Diego Regional Board to impose the assessment requirements the permit contains, but the permit imposes additional obligations. The permit requires the permittees to assess, among other things, the effectiveness of each significant jurisdictional activity or best management practice and each watershed water quality activity and the implementation of the jurisdictional and watershed runoff management plans. They must identify and utilize "measureable targeted outcomes, assessment measures, and assessment methods" for each of these items. They must utilize certain predefined "outcome levels" to assess the effectiveness of each of the items. They must also collaborate to develop a long-term effectiveness assessment based on the same outcome levels.

While the regulations required estimated reductions in the amount of pollutants and a report on the status of implementing controls and their effectiveness, the San Diego Regional Board exercised its discretion to mandate how and to what degree of specificity those assessments would occur. The regulations did not require the San Diego Regional Board to impose the assessment systems and procedures it actually imposed. Accordingly, those systems and procedures are state mandates subject to section 6.

g. *Permittee collaboration*

[9]EPA regulations require the permittees, as part of their application, to ****867** show they have legal authority, either by statute, ordinance, or contract, to control through interagency agreements among themselves the contribution of pollutants from a portion of the municipal system to another portion in a different jurisdiction. (40 C.F.R. § 122.26(d)(2)(i)(D).) The State claims this regulation mandated the San Diego Regional Board to require the permittees to collaborate and, in particular, execute an agreement that establishes a management structure. Under the terms of the permit, the management structure must, among other things, define the permittees' responsibilities; promote consistency, development, and implementation of regional ***689** activities; establish standards for conducting meetings, making decisions and sharing costs; and establish a process for addressing noncompliance with the agreement.

The EPA regulation did not impose on the San Diego Regional Board a mandate to define the terms and organization of a management structure that would allow the permittees to control pollutants that cross borders. The regulation required the San Diego Regional Board to assure itself the permittees had the authority to address runoff pollution regionally, but it did not require the San Diego Regional Board to define how the permittees would organize themselves to do so. The conditions of the San Diego Regional Board went beyond what was federally required, and are thus state mandates subject to section 6.

In short, there is no federal law, regulation, or

administrative case authority that expressly mandated the San Diego Regional Board to impose any of the challenged requirements discussed above. As a result, their imposition are state mandates, and section 6 requires the State to provide subvention to reimburse the permittees for the costs of complying with the requirements.

DISPOSITION

The judgment is reversed. The matter is remanded to the trial court for further proceedings consistent with this opinion. Costs on appeal are awarded to real parties in interest and appellants. (Cal. Rules of Court, rule 8.278(a).)

We concur:

BLEASE, Acting P. J.

BUTZ, J.

All Citations

18 Cal.App.5th 661, 226 Cal.Rptr.3d 846, 17 Cal. Daily Op. Serv. 12,021, 2017 Daily Journal D.A.R. 11,993

Footnotes

1 "The systems at issue here are 'municipal separate storm sewer systems,' sometimes referred to by the acronym 'MS4.' (40 C.F.R. § 122.26(b)(19) (2001) [ ].) A '[m]unicipal separate storm sewer' is a system owned or operated by a public agency with jurisdiction over disposal of waste and designed or used for collecting or conveying storm water. (40 C.F.R. § 122.26(b)(8) (2001) [ ].) Unless otherwise indicated, all further citations to the Code of Federal Regulations are to the 2001 version."

2 "For a state to acquire permitting authority, the governor must give the EPA a 'description of the program [the state] proposes to establish,' and the attorney general must affirm that the laws of the state 'provide adequate authority to carry out the described program.' (33 U.S.C. § 1342(b).)"

3 "The EPA may withdraw approval of a state's program (33 U.S.C. § 1342(c)(3)), and also retains some supervisory authority: States must inform the EPA of all permit applications received and of any action related to the consideration of a submitted application (33 U.S.C. § 1342(d)(1))."

4 The federal CWA does not prevent states from imposing any permit requirements that are more stringent than the CWA requires. (33 U.S.C. § 1370.)

5 Using the Porter-Cologne Act's name for a permit application, the NPDES permit application in California is referred to as a Report of Waste Discharge.

6 Real parties in interest and appellants are the County of San Diego and the Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, and Vista.

7 Hydromodification is the "change in the natural watershed hydrologic processes and runoff characteristics ... caused by urbanization or other land use changes that result in increased stream flows and sediment transport."

8 " ' "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur ... as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.' (Gov. Code, § 17514.)"

9 The permittees request we take judicial notice of the NPDES permit the San Diego Regional Board issued to them in 2013 that allegedly contains less specific conditions. The State requests we take judicial notice of an NPDES permit issued by the EPA in 2011 to the District of Columbia that includes a condition similar to one above. We deny both of these requests. Neither document was before the Commission or the trial court at the time those bodies ruled in this matter, and no exceptional circumstances justify deviating from that rule. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3, 58 Cal.Rptr.2d 899, 926 P.2d 1085.) The State has also requested we take judicial

notice of the NPDES permit at issue in *Department of Finance* pursuant to subdivisions (c) and (d) of Evidence Code section 452. We grant that request.

10 Building Industry Legal Defense Foundation and the California Stormwater Quality Association, et al., filed amicus curiae briefs in support of the permittees.

11 At our request, the parties briefed the effect of *Department of Finance* on this appeal.

End of Document

98 Cal.App.4th 1351, 121 Cal.Rptr.2d 228, 02 Cal. Daily Op. Serv. 4853, 2002 Daily Journal D.A.R. 6161

HOWARD JARVIS TAXPAYERS ASSOCIATION et al., Plaintiffs and Appellants,
v.
CITY OF SALINAS et al., Defendants and Respondents.

No. H022665.
Court of Appeal, Sixth District, California.
June 3, 2002.

SUMMARY

A taxpayers association filed an action against a city alleging that a storm drainage fee, which was imposed by the city for the management of storm water runoff from the impervious areas of each parcel in the city, was a property-related fee that required voter approval under Prop. 218 (Cal. Const., art. XIII D, § 6, subd. (c)). The trial court entered judgment for the city, finding that the fee was not property related and that it was exempt from the voter-approval requirement because it was related to sewer and water services. (Superior Court of Monterey County, No. M45873, Richard M. Silver, Judge.)

The Court of Appeal reversed. The court held that the fee was property related and subject to the voter approval requirement. The resolution made the fee applicable to each and every developed parcel of land within the city. It was not a charge directly based on or measured by use so as to be exempt from the voter requirement. A proportional reduction clause did not alter the nature of the fee as property-related. (Opinion by Elia, J., with Premo, Acting P. J., and Mihara, J., concurring.)

HEADNOTES

([1a], [1b])
Drains and Sewers § 3--Fees and Assessments--Storm Drain Fee-- Application of Voter Approval Requirement for Property-related Fees:Property Taxes § 7.8--Special Taxes.
A storm water management fee resolution established a property-related fee for a property-related service, the management of storm water runoff from the impervious areas of each parcel in the city, and thus required voter approval under Prop. 218 (Cal. Const., art. XIII D, § 6, subd. (c)). The resolution made the fee applicable to each and every developed parcel of land within the city. It was not a charge directly based on or measured by use, comparable to the metered use of water or the operation of a business, so as to be exempt from the voter requirement. A proportional reduction clause did not alter the nature of the fee as property related. The fee did not come within the exception related to sewer and water services. Giving the constitutional provision the required liberal construction, and applying the principle that exceptions to a general rule of an enactment must be strictly construed, "sewer services" must be given its narrower, more common meaning applicable to sanitary sewerage, thus excluding storm drainage. Also, the average voter would envision "water service" as the supply of water for personal, household, and commercial use, not a system or program that monitors storm water for pollutants and discharges it.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 109C; West's Key Number Digest, Municipal Corporations
956(4).]

([2])
Constitutional Law § 12--Construction--Ordinary Language--Amendments.
Courts are obligated to construe constitutional amendments in accordance with the natural and ordinary meaning of the language used by the framers in a manner that effectuates their purpose in adopting the law.

COUNSEL
Timothy J. Morgan; Jonathan M. Coupal and Timothy A. Bittle for Plaintiffs and Appellants.
James C. Sanchez, City Attorney; Richards, Watson & Gershon, Mitchell E. Abbott and Patrick K. Bobko for Defendants and Respondents.

ELIA, J.

In this "reverse validation" action, plaintiff taxpayers challenged a storm drainage fee imposed by the City of Salinas. Plaintiffs contended that the fee was a "property-related" fee requiring voter approval, pursuant to California Constitution, article XIII D, section 6,

subdivision (c), which was added by the passage of Proposition 218. The trial court ruled that the fee did not violate this provision because (1) it was not a property-related fee ***1353** and (2) it met the exemption for fees for sewer and water services. We disagree with the trial court's conclusion and therefore reverse the order.

Background

In an effort to comply with the 1987 amendments to the federal Clean Water Act (33 U.S.C. § 1251 et seq.; 40 C.F.R. § 122.26(a) et seq. (2001)), the Salinas City Council took measures to reduce or eliminate pollutants contained in storm water, which was channeled in a drainage system separate from the sanitary and industrial waste systems. On June 1, 1999, the city council enacted two ordinances to fund and maintain the compliance program. These measures, ordinance Nos. 2350 and 2351, added former chapters 29 and 29A, respectively, to the Salinas City Code. Former section 29A-3 allowed the city council to adopt a resolution imposing a "Storm Water Management Utility fee" to finance the improvement of storm and surface water management facilities. The fee would be imposed on "users of the storm water drainage system."

On July 20, 1999, the city council adopted resolution No. 17019, which established rates for the storm and surface water management system. The resolution specifically states: "There is hereby imposed on each and every developed parcel of land within the City, and the owners and occupiers thereof, jointly and severally, a storm drainage fee." The fee was to be paid annually to the City "by the owner or occupier of each and every developed parcel in the City who shall be presumed to be the primary utility rate payer ...." The amount of the fee was to be calculated according to the degree to which the property contributed runoff to the City's drainage facilities. That contribution, in turn, would be measured by the amount of "impervious area"[1] on that parcel.

Undeveloped parcels-those that had not been altered from their natural state-were not subject to the storm drainage fee. In addition, developed parcels that maintained their own storm water management facilities or only partially contributed storm or surface water to the City's storm drainage facilities were required to pay in proportion to the amount they did contribute runoff or used the City's treatment services. ***1354**

On September 15, 1999, plaintiffs filed a complaint under Code of Civil Procedure section 863 to determine the validity of the fee.[2] Plaintiffs alleged that this was a property-related fee that violated article XIII D, section 6, subdivision (c), of the California Constitution because it had not been approved by a majority vote of the affected property owners or a two-thirds vote of the residents in the affected area. The trial court, however, found this provision to be inapplicable on two grounds: (1) the fee was not "property related" and (2) it was exempt from the voter-approval requirement because it was "related to" sewer and water services.

Discussion

Article XIII D was added to the California Constitution in the November 1996 election with the passage of Proposition 218, the Right to Vote on Taxes Act. Section 6 of article XIII D[3] requires notice of a proposed property-related fee or charge and a public hearing. If a majority of the affected owners submit written protests, the fee may not be imposed. (§ 6, subd. (a)(2).) The provision at issue is section 6, subdivision (c) (hereafter section 6(c)), which states, in relevant part: "Except for fees or charges for sewer, water, and refuse collection services, no property-related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area."

Section 2 defines a "fee" under this article as a levy imposed "upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." (§ 2, subd. (e).) A "property-related service" is "a public service having a direct relationship to property ownership." (§ 2, subd. (h).) ([1a]) The City maintains that the storm drainage fee is not a property-related fee, but a "user fee" which the property owner can avoid simply by maintaining a storm water management facility on the property. Because it is possible to own property without being subject to the fee, the City argues this is not a fee imposed "as an incident of property ownership" or "for a property-related service" within the meaning of section 2.

We cannot agree with the City's position. Resolution No. 17019 plainly established a property-related fee for a property-related service, the management of storm water runoff from the "impervious" areas of each parcel in the ***1355** City. The resolution expressly stated that "each owner and occupier of a developed lot or parcel of real property within the City, is served by the City's storm drainage facilities" and burdens the system to a greater extent than if the property were undeveloped. Those owners and occupiers of developed property "should

therefore pay for the improvement, operation and maintenance of such facilities." Accordingly, the resolution makes the fee applicable to "*each and every developed parcel* of land within the City." (Italics added.) This is not a charge directly based on or measured by use, comparable to the metered use of water or the operation of a business, as the City suggests. (See *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 838 [102 Cal.Rptr.2d 719, 14 P.3d 930] [art. XIII D inapplicable to inspection fee imposed on private landlords; *Howard Jarvis Taxpayers Assn. v. City of Los Angeles* (2000) 85 Cal.App.4th 79 [101 Cal.Rptr.2d 905] [water usage rates are not within the scope of art. XIII D].)

The "Proportional Reduction" clause on which the City relies does not alter the nature of the fee as property related.[4] A property owner's operation of a private storm drain system reduces the amount owed to the City to the extent that runoff into the City's system is reduced. The fee nonetheless is a fee for a public service having a direct relationship to the ownership of developed property. The City's characterization of the proportional reduction as a simple "opt-out" arrangement is misleading, as it suggests the property owner can avoid the fee altogether by declining the service. Furthermore, the reduction is not proportional to the amount of services requested or used by the occupant, but on the physical properties of the parcel. Thus, a parcel with a large "impervious area" (driveway, patio, roof) would be charged more than one consisting of mostly rain-absorbing soil. Single-family residences are assumed to contain, on average, a certain amount of impervious area and are charged $18.66 based on that assumption.

Proposition 218 specifically stated that "[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Prop. 218, § 5; reprinted at Historical Notes, 2A West's Ann. Cal.Const. (2002 supp.) foll. art. XIII C, p. 38 [hereafter Historical Notes].) ([2]) We are obligated to construe constitutional amendments in accordance with the natural and ordinary meaning of the language used by the framers-in this case, the voters of California-in a manner that effectuates their purpose in adopting the law. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 244-245 [149 Cal.Rptr. 239, 583 P.2d 1281]; *Arden Carmichael, Inc. v. County of Sacramento* (2000) 93 Cal.App.4th 507, 514-515 [113 Cal.Rptr.2d 248]; *Board of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 863 ***1356** [167 Cal.Rptr. 820, 616 P.2d 802].) ([1b]) To interpret the storm drainage fee as a use-based charge would contravene one of the stated objectives of Proposition 218 by "frustrat[ing] the purposes of voter approval for tax increases." (Prop. 218, § 2.) We must conclude, therefore, that the storm drainage fee "burden[s] landowners *as landowners*," and is therefore subject to the voter-approval requirements of article XIII D unless an exception applies. (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles, supra,* 24 Cal.4th at p. 842.)

Exception for "Sewer" or "Water" Service

As an alternative ground for its decision, the trial court found that the storm drainage fee was "clearly a fee related to 'sewer' and 'water' services." The exception in section 6(c) applies to fees "for sewer, water, and refuse collection services." Thus, the question we must next address is whether the storm drainage fee was a charge *for* sewer service or water service.

The parties diverge in their views as to whether the reach of California Constitution, article XIII D, section 6(c) extends to a storm drainage system as well as a sanitary or industrial waste sewer system. The City urges that we rely on the "commonly accepted" meaning of "sewer," noting the broad dictionary definition of this word.[5] The City also points to Public Utilities Code section 230.5 and the Salinas City Code, which describe storm drains as a type of sewer.[6]

Plaintiffs "do not disagree that storm water is carried off in storm sewers," but they argue that we must look beyond mere definitions of "sewer" to examine the legal meaning in context. Plaintiffs note that the storm water management system here is distinct from the sanitary sewer system and the industrial waste management system. Plaintiffs' position echoes that of the ***1357** Attorney General, who observed that several California statutes differentiate between management of storm drainage and sewerage systems.[7] (81 Ops.Cal.Atty.Gen. 104, 106 (1998).) Relying extensively on the Attorney General's opinion, plaintiffs urge application of a different rule of construction than the plain-meaning rule; they invoke the maxim that "if a statute on a particular subject omits a particular provision, inclusion of that provision in another related statute indicates an intent [that] the provision is not applicable to the statute from which it was omitted." (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1827 [46 Cal.Rptr.2d 198].) Thus, while section 5, which addresses assessment procedures, refers to exceptions specifically for "*sewers*, water, flood control, [and] *drainage systems*" (italics added), the exceptions listed in section 6(c) pertain only to "sewer, water, and refuse collection services." Consequently, in plaintiffs' view, the voters must have intended to exclude

drainage systems from the list of exceptions to the voter-approval requirement.

The statutory construction principles invoked by both parties do not assist us. The maxim proffered by plaintiffs, "although useful at times, is no more than a rule of reasonable inference" and cannot control over the lawmakers' intent. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 350 [45 Cal.Rptr.2d 279, 902 P.2d 297]; *Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 991 [73 Cal.Rptr.2d 682, 953 P.2d 858].) On the other hand, invoking the plain-meaning rule only begs the question of whether the term "sewer services" was intended to encompass the more specific sewerage with which most voters would be expected to be familiar, or all types of systems that use sewers, including storm drainage and industrial waste. The popular, nontechnical sense of sewer service, particularly when placed next to "water" and "refuse collection" services, suggests the service familiar to most households and businesses, the sanitary sewerage system.

We conclude that the term "sewer services" is ambiguous in the context of both section 6(c) and Proposition 218 as a whole. We must keep in mind, however, the voters' intent that the constitutional provision be construed liberally to curb the rise in "excessive" taxes, assessments, and fees exacted ***1358** by local governments without taxpayer consent. (Prop. 218, §§ 2, 5; reprinted at Historical Notes, *supra*, p. 38.) Accordingly, we are compelled to resort to the principle that exceptions to a general rule of an enactment must be strictly construed, thereby giving "sewer services" its narrower, more common meaning applicable to sanitary sewerage.[8] (Cf. *Estate of Banerjee* (1978) 21 Cal.3d 527, 540 [147 Cal.Rptr. 157, 580 P.2d 657]; *City of Lafayette v. East Bay Mun. Utility Dist.* (1993) 16 Cal.App.4th 1005 [20 Cal.Rptr.2d 658].)

The City itself treats storm drainage differently from its other sewer systems. The stated purpose of ordinance No. 2350 was to comply with federal law by reducing the amount of pollutants discharged into the storm water, and by preventing the discharge of "non-storm water" into the storm drainage system, which channels storm water into state waterways. According to John Fair, the public works director, the City's storm drainage fee was to be used not just to provide drainage service to property owners, but to monitor and control pollutants that might enter the storm water before it is discharged into natural bodies of water.[9] The Salinas City Code contains requirements addressed specifically to the management of storm water runoff.[10] (See, e.g., Salinas City Code, §§ 31-802.2, 29-15.)

For similar reasons we cannot subscribe to the City's suggestion that the storm drainage fee is "for ... water services." Government Code section 53750, enacted to explain some of the terms used in articles XIII C and XIII D, defines " '[w]ater' " as "any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water." (Gov. Code, § 53750, subd. (m).) The average voter would envision "water service" as the supply of water for personal, household, and commercial use, not a system or program that monitors storm water for pollutants, carries it away, and discharges it into the nearby creeks, river, and ocean.

We conclude that article XIII D required the City to subject the proposed storm drainage fee to a vote by the property owners or the voting residents of ***1359** the affected area. The trial court therefore erred in ruling that ordinance Nos. 2350 and 2351 and Resolution No. 17019 were valid exercises of authority by the city council.

Disposition

The judgment is reversed. Costs on appeal are awarded to plaintiffs.

Premo, Acting P. J., and Mihara, J., concurred.

A petition for a rehearing was denied July 2, 2002, and respondents' petition for review by the Supreme Court was denied August 28, 2002. ***1360**

Footnotes

1 "Impervious Area," according to resolution No. 17019, is "any part of any developed parcel of land that has been modified by the action of persons to reduce the land's natural ability to absorb and hold rainfall. This includes any hard surface area which either prevents or retards the entry of water into the soil mantle as it entered under natural conditions pre-existent to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions pre-existent to development."

2 Plaintiffs are the Howard Jarvis Taxpayers Association, the Monterey Peninsula Taxpayers Association, and two resident property owners.

3 All further unspecified section references are to article XIII D of the California Constitution.

4 According to the public works director, proportional reductions were not anticipated to apply to a large number of people.

5 Webster's Third New International Dictionary, for example, defines "sewer" as "1: a ditch or surface drain 2: an artificial usu. subterranean conduit to carry off water and waste matter (as surface water from rainfall, household waste from sinks or baths, or waste water from industrial works)." (Webster's 3d New Internat. Dict. (1993) p. 2081.) The American Heritage Dictionary also denotes the function of "carrying off sewage or rainwater." (American Heritage College Dict. (3d ed. 1997) p. 1248.) On the other hand, the Random House Dictionary of the English Language (2d ed. 1987) page 1754, does not mention storm or rainwater in defining "sewer" as "an artificial conduit, usually underground, for carrying off waste water and refuse, as in a town or city."

6 Public Utilities Code section 230.5 defines "Sewer system" to encompass all property connected with "sewage collection, treatment, or disposition for sanitary or drainage purposes, including ... all drains, conduits, and outlets for surface or storm waters, and any and all other works, property or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters." Salinas City Code section 36-2, subdivision (31) defines "storm drain" as "a sewer which carries storm and surface waters and drainage, but which excludes sewage and industrial wastes other than runoff water."

7 For example, Government Code section 63010 specifies "storm sewers" in delimiting the scope of " '[d]rainage,' " while separately identifying the facilities and equipment used for " '[s]ewage collection and treatment.' " (Gov. Code, § 63010, subd. (q)(3), (10).) Government Code section 53750, part of the Proposition 218 Omnibus Implementation Act, explains that for purposes of articles XIII C and article XIII D " '[d]rainage system' " means "any system of public improvements that is intended to provide for erosion control, landslide abatement, or for other types of water drainage." Health and Safety Code section 5471 sets forth government power to collect fees for "services and facilities ... in connection with its water, sanitation, storm drainage, or sewerage system."

8 Sanitary sewerage carries "putrescible waste" from residences and businesses and discharges it into the sanitary sewer line for treatment by the Monterey Regional Water Pollution Control Agency. (Salinas City Code, § 36-2, subd. (26).)

9 Resolution No. 17019 defined "Storm Drainage Facilities" as "the storm and surface water sewer drainage systems comprised [*sic*] of storm water control facilities and any other natural features [that] store, control, treat and/or convey surface and storm water. The Storm Drainage Facilities shall include all natural and man-made elements used to convey storm water from the first point of impact with the surface of the earth to a suitable receiving body of water or location internal or external to the boundaries of the City... ." The "storm drainage system" was defined to include pipes, culverts, streets and gutters, "storm water sewers," ditches, streams, and ponds. (See also Salinas City Code, former § 29-3, subd. (l) [defining "storm drainage system"].)

10 Storm water under ordinance No. 2350 includes "stormwater runoff, snowmelt runoff, and surface runoff and drainage." (Salinas City Code, former § 29-3, subd. (dd).)

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54 Cal.3d 326, 814 P.2d 1308, 285 Cal.Rptr. 66

FRANCES KINLAW et al., Plaintiffs and Appellants,
v.
THE STATE OF CALIFORNIA et al., Defendants and Respondents.

No. S014349.
Supreme Court of California
Aug 30, 1991.

SUMMARY

Medically indigent adults and taxpayers brought an action pursuant to Code Civ. Proc., § 526a, against the state, alleging that it had violated Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated new programs), by shifting its financial responsibility for the funding of health care for the poor onto the county without providing the necessary funding, and that as a result the state had evaded its constitutionally mandated spending limits. The trial court granted summary judgment for the State after concluding plaintiffs lacked standing to prosecute the action. (Superior Court of Alameda County, No. 632120-4, Henry Ramsey, Jr., and Demetrios P. Agretelis, Judges.) The Court of Appeal, First Dist., Div. Two, Nos. A041426 and A043500, reversed.

The Supreme Court reversed the judgment of the Court of Appeal, holding the administrative procedures established by the Legislature (Gov. Code, § 17500 et seq.), which are available only to local agencies and school districts directly affected by a state mandate, were the exclusive means by which the state's obligations under Cal. Const., art. XIII B, § 6, were to be determined and enforced. Accordingly, the court held plaintiffs lacked standing to prosecute the action. (Opinion by Baxter, J., with Lucas, C. J., Panelli, Kennard, and Arabian, JJ., concurring. Separate dissenting opinion by Broussard, J., with Mosk, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

([1])
State of California § 7--Actions--State-mandated Costs--Reimbursement-- Exclusive Statutory Remedy.
Gov. Code, § 17500 et seq., creates an administrative forum for resolution of state mandate claims arising under Cal. Const., art. XIII B, § 6, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid. It also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (Gov. Code, § 17612). In view of the comprehensive nature of the legislative scheme, and from the expressed intent, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce Cal. Const., art. XIII B, § 6.

([2])
State of California § 7--Actions--State-mandated Costs--Reimbursement-- Private Action to Enforce--Standing.
In an action by medically indigent adults and taxpayers seeking to enforce Cal. Const., art. XIII B, § 6, for declaratory and injunctive relief requiring the state to reimburse the county for the cost of providing health care services to medically indigent adults who, prior to 1983, had been included in the state Medi-Cal program, the Court of Appeal erred in holding that the existence of an administrative remedy (Gov. Code, § 17500 et seq.) by which affected local agencies could enforce their constitutional right under art. XIII B, § 6 to reimbursement for the cost of state mandates di not bar the action. Because the right involved was given by the Constitution to local agencies and school districts, not individuals either as taxpayers or recipients of government benefits and services, the administrative remedy was adequate fully to implement the constitutional provision. The Legislature has the authority to establish procedures for the implementation of local agency rights under art. XIII B, § 6; unless the exercise of a constitutional right is unduly restricted, a court must limit enforcement to the procedures established by the Legislature. Plaintiffs' interest, although pressing, was indirect and did not differ from the interest of the public at large in the financial plight of local government. Relief

by way of reinstatement to Medi-Cal pending further action by the state was not a remedy available under the statute, and thus was not one which a court may award.

[See **Cal.Jur.3d,** State of California, § 78; 7 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 112.]

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BAXTER, J.

Plaintiffs, medically indigent adults and taxpayers, seek to enforce section 6 of article XIII B (hereafter, section 6) of the California Constitution through an action for declaratory and injunctive relief. They invoked the jurisdiction of the superior court as taxpayers pursuant to Code of Civil Procedure section 526a and as persons affected by the alleged failure of the state to comply with section 6. The superior court granted summary judgment for defendants State of California and Director of the Department of Health Services, after concluding that plaintiffs lacked standing to prosecute the action. On appeal, the Court of Appeal held that plaintiffs have standing and that the action is not barred by the availability of administrative remedies.

We reverse. The administrative procedures established by the Legislature, which are available only to local agencies and school districts directly affected by a state mandate, are the exclusive means by which the state's obligations under section 6 are to be determined and enforced. Plaintiffs therefore lack standing.

I State Mandates

Section 6, adopted on November 6, 1979, as part of an initiative measure imposing spending limits on state and local government, also imposes on the state an obligation to reimburse local agencies for the cost of most programs and services which they must provide pursuant to a state mandate if the local agencies were not under a preexisting duty to fund the activity. It provides: ***329**

"Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

"(a) Legislative mandates requested by the local agency affected;

"(b) Legislation defining a new crime or changing an existing definition of a crime; or

"(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

A complementary provision, section 3 of article XIII B, provides for a shift from the state to the local agency of a portion of the spending or "appropriation" limit of the state when responsibility for funding an activity is shifted to a local agency:

"The appropriations limit for any fiscal year ... shall be adjusted as follows: [¶] (a) In the event that the financial responsibility of providing services is transferred, in whole or in part, ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount."

II Plaintiffs' Action

The underlying issue in this action is whether the state is obligated to reimburse the County of Alameda, and shift to Alameda County a concomitant portion of the state's spending limit, for the cost of providing health care services to medically indigent adults who prior to 1983 had been included in the state Medi-Cal program. Assembly Bill No. 799 (1981-1982 Reg. Sess.) (AB 799) (Stats. 1982, ch. 328, p. 1568) removed medically indigent adults from Medi-Cal effective January 1, 1983. At the time section 6 was adopted, the state was funding

Medi-Cal coverage for these persons without requiring any county financial contribution.

Plaintiffs initiated this action in the Alameda County Superior Court. They sought relief on their own behalf and on behalf of a class of similarly ***330** situated medically indigent adult residents of Alameda County. The only named defendants were the State of California, the Director of the Department of Health Services, and the County of Alameda.

In the complaint for declaratory and injunctive relief, plaintiffs sought an injunction compelling the state to restore Medi-Cal eligibility to medically indigent adults or to reimburse the County of Alameda for the cost of providing health care to those persons. They also prayed for a declaration that the transfer of responsibility from the state-financed Medi- Cal program to the counties without adequate reimbursement violated the California Constitution.[1]

At the time plaintiffs initiated their action neither Alameda County, nor any other county or local agency, had filed a reimbursement claim with the Commission on State Mandates (Commission).[2]

Whether viewed as an action seeking restoration of Medi-Cal benefits, one to compel state reimbursement of county costs, or one for declaratory relief, therefore, the action required a determination that the enactment of AB 799 created a state mandate within the contemplation of section 6. Only upon resolution of that issue favorably to plaintiffs would the state have an obligation to reimburse the county for its increased expense and shift a portion of its appropriation limit, or to reinstate Medi-Cal benefits for plaintiffs and the class they seek to represent.

The gravamen of the action is, therefore, enforcement of section 6.[3] ***331**

III Enforcement of Article XIII B, Section 6

In 1984, almost five years after the adoption of article XIII B, the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6. (§ 17500.) The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. The necessity for the legislation was explained in section 17500:

"The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state- mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, *it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.*" (Italics added.)

In part 7 of division 4 of title 2 of the Government Code, "State-Mandated Costs," which commences with section 17500, the Legislature created the Commission (§ 17525), to adjudicate disputes over the existence of a state-mandated program (§§ 17551, 17557) and to adopt procedures for submission and adjudication of reimbursement claims (§ 17553). The five-member Commission includes the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member experienced in public finance. (§ 17525.)

The legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies (§ 17554),[4] establishes the method of ***332** payment of claims (§§ 17558, 17561), and creates reporting procedures which enable the Legislature to budget adequate funds to meet the expense of state mandates (§§ 17562, 17600, 17612, subd. (a).)

Pursuant to procedures which the Commission was authorized to establish (§ 17553), local agencies[5] and school districts[6] are to file claims for reimbursement of state-mandated costs with the Commission (§§ 17551, 17560), and reimbursement is to be provided only through this statutory procedure. (§§ 17550, 17552.)

The first reimbursement claim filed which alleges that a state mandate has been created under a statute or executive order is treated as a "test claim." (§ 17521.) A public hearing must be held promptly on any test claim. At the hearing on a test claim or on any other reimbursement claim, evidence may be presented not only by the claimant, but also by the Department of Finance and any other department or agency potentially affected by the claim. (§ 17553.) Any interested organization or

individual may participate in the hearing. (§ 17555.)

A local agency filing a test claim need not first expend sums to comply with the alleged state mandate, but may base its claim on estimated costs. (§ 17555.) The Commission must determine both whether a state mandate exists and, if so, the amount to be reimbursed to local agencies and school districts, adopting "parameters and guidelines" for reimbursement of any claims relating to that statute or executive order. (§ 17557.) Procedures for determining whether local agencies have achieved statutorily authorized cost savings and for offsetting these savings against reimbursements are also provided. (§ 17620 et seq.) Finally, judicial review of the Commission decision is available through petition for writ of mandate filed pursuant to Code of Civil Procedure section 1094.5. (§ 17559.)

The legislative scheme is not limited to establishing the claims procedure, however. It also contemplates reporting to the Legislature and to departments and agencies of the state which have responsibilities related to funding state mandates, budget planning, and payment. The parameters and guidelines adopted by the Commission must be submitted to the Controller, who is to pay subsequent claims arising out of the mandate. (§ 17558.) Executive orders mandating costs are to be accompanied by an appropriations ***333** bill to cover the costs if the costs are not included in the budget bill, and in subsequent years the costs must be included in the budget bill. (§ 17561, subds. (a) & (b).) Regular review of the costs is to be made by the Legislative Analyst, who must report to the Legislature and recommend whether the mandate should be continued. (§ 17562.) The Commission is also required to make semiannual reports to the Legislature of the number of mandates found and the estimated reimbursement cost to the state. (§ 17600.) The Legislature must then adopt a "local government claims bill." If that bill does not include funding for a state mandate, an affected local agency or school district may seek a declaration from the superior court for the County of Sacramento that the mandate is unenforceable, and an injunction against enforcement. (§ 17612.)

Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. (§ 17615 et seq.)

([1]) It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of section 6 lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (§ 17612).

The legislative intent is clearly stated in section 17500: "It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIII B of the California Constitution and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. ..." And section 17550 states: "Reimbursement of local agencies and school districts for costs mandated by the state shall be provided pursuant to this chapter."

Finally, section 17552 provides: "This chapter shall provide *the sole and exclusive procedure* by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." (Italics added.)

In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce section 6. ***334**

IV Exclusivity

([2]) Plaintiffs argued, and the Court of Appeal agreed, that the existence of an administrative remedy by which affected local agencies could enforce their right under section 6 to reimbursement for the cost of state mandates did not bar this action because the administrative remedy is available only to local agencies and school districts.

The Court of Appeal recognized that the decision of the County of Alameda, which had not filed a claim for reimbursement at the time the complaint was filed, was a discretionary decision which plaintiffs could not challenge. (*Dunn v. Long Beach L. & W. Co.* (1896) 114 Cal. 605, 609, 610-611 [46 P. 607]; *Silver v. Watson* (1972) 26 Cal.App.3d 905, 909 [103 Cal.Rptr. 576]; *Whitson v. City of Long Beach* (1962) 200 Cal.App.2d 486, 506 [19 Cal.Rptr. 668]; *Elliott v. Superior Court* (1960) 180 Cal.App.2d 894, 897 [5 Cal.Rptr. 116].) The court concluded, however, that public policy and practical necessity required that plaintiffs have a remedy for enforcement of section 6 independent of the statutory procedure.

The right involved, however, is a right given by the

Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services. Section 6 provides that the "state shall provide a subvention of funds *to reimburse ... local governments* ...." (Italics added.) The administrative remedy created by the Legislature is adequate to fully implement section 6. That Alameda County did not file a reimbursement claim does not establish that the enforcement remedy is inadequate. Any of the 58 counties was free to file a claim, and other counties did so. The test claim is now before the Court of Appeal. The administrative procedure has operated as intended.

The Legislature has the authority to establish procedures for the implementation of local agency rights under section 6. Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the Legislature. (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637 [268 P.2d 723]; *Chesney v. Byram* (1940) 15 Cal.2d 460, 463 [101 P.2d 1106]; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].)

Plaintiffs' argument that they must be permitted to enforce section 6 as individuals because their right to adequate health care services has been compromised by the failure of the state to reimburse the county for the cost ***335** of services to medically indigent adults is unpersuasive. Plaintiffs' interest, although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government. Although the basis for the claim that the state must reimburse the county for its costs of providing the care that was formerly available to plaintiffs under Medi-Cal is that AB 799 created a state mandate, plaintiffs have no right to have any reimbursement expended for health care services of any kind. Nothing in article XIII B or other provision of law controls the county's expenditure of the funds plaintiffs claim must be paid to the county. To the contrary, section 17563 gives the local agency complete discretion in the expenditure of funds received pursuant to section 6, providing: "Any funds received by a local agency or school district pursuant to the provisions of this chapter may be used for any public purpose."

The relief plaintiffs seek in their prayer for state reimbursement of county expenses is, in the end, a reallocation of general revenues between the state and the county. Neither public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues. The Legislature has established a procedure by which the county may claim any revenues to which it believes it is entitled under section 6. That test-claim statute expressly provides that not only the claimant, but also "any other interested organization or individual may participate" in the hearing before the Commission (§ 17555) at which the right to reimbursement of the costs of such mandate is to be determined. Procedures for receiving any claims must "provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, *and any other interested person.*" (§ 17553. Italics added.) Neither the county nor an interested individual is without an opportunity to be heard on these questions. These procedures are both adequate and exclusive.[7]

The alternative relief plaintiffs seek-reinstatement to Medi-Cal pending further action by the state-is not a remedy available under the statute, and thus is not one which this court may award. The remedy for the failure to fund a program is a declaration that the mandate is unenforceable. That relief is available only after the Commission has determined that a mandate exists ***336** and the Legislature has failed to include the cost in a local government claims bill, and only on petition by the county. (§ 17612.)[8]

Moreover, the judicial remedy approved by the Court of Appeal permits resolution of the issues raised in a state mandate claim without the participation of those officers and individuals the Legislature deems necessary to a full and fair exposition and resolution of the issues. Neither the Controller nor the Director of Finance was named a defendant in this action. The Treasurer and the Director of the Office of Planning and Research did not participate. All of these officers would have been involved in determining the question as members of the Commission, as would the public member of the Commission. The judicial procedures were not equivalent to the public hearing required on test claims before the Commission by section 17555. Therefore, other affected departments, organizations, and individuals had no opportunity to be heard.[9]

Finally, since a determination that a state mandate has been created in a judicial proceeding rather than one before the Commission does not trigger the procedures for creating parameters and guidelines for payment of claims, or for inclusion of estimated costs in the state budget, there is no source of funds available for compliance with the judicial decision other than the appropriations for the Department of Health Services. Payment from those funds can only be at the expense of another program which the department is obligated to fund. No public policy supports, let alone requires, this result.

The superior court acted properly in dismissing this action.

The judgment of the Court of Appeal is reversed.

Lucas, C. J., Panelli, J., Kennard, J., and Arabian, J., concurred.

BROUSSARD, J.

I dissent. For nine years the Legislature has defied the mandate of article XIII B of the California Constitution (hereafter article XIII B). Having transferred responsibility for the care of medically indigent adults (MIA's) to county governments, the Legislature has failed to provide the counties with sufficient money to meet this responsibility, yet the ***337** Legislature computes its own appropriations limit as if it fully funded the program. The majority, however, declines to remedy this violation because, it says, the persons most directly harmed by the violation-the medically indigent who are denied adequate health care-have no standing to raise the matter. I disagree, and will demonstrate that (1) plaintiffs have standing as citizens to seek a declaratory judgment to determine whether the state is complying with its constitutional duty under article XIII B; (2) the creation of an administrative remedy whereby counties and local districts can enforce article XIII B does not deprive the citizenry of its own independent right to enforce that provision; and (3) even if plaintiffs lacked standing, our recent decision in *Dix v. Superior Court* (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834, 807 P.2d 1063] permits us to reach and resolve any significant issue decided by the Court of Appeal and fully briefed and argued here. I conclude that we should reach the merits of the appeal.

On the merits, I conclude that the state has not complied with its constitutional obligation under article XIII B. To prevent the state from avoiding the spending limits imposed by article XIII B, section 6 of that article prohibits the state from transferring previously state-financed programs to local governments without providing sufficient funds to meet those burdens. In 1982, however, the state excluded the medically indigent from its Medi-Cal program, thus shifting the responsibility for such care to the counties. Subvention funds provided by the state were inadequate to reimburse the counties for this responsibility, and became less adequate every year. At the same time, the state continued to compute its spending limit as if it fully financed the entire program. The result is exactly what article XIII B was intended to prevent: the state enjoys a falsely inflated spending limit; the county is compelled to assume a burden it cannot afford; and the medically indigent receive inadequate health care.

I. Facts and Procedural History

Plaintiffs-citizens, taxpayers, and persons in need of medical care-allege that the state has shifted its financial responsibility for the funding of health care for MIA's to the counties without providing the necessary funding and without any agreement transferring appropriation limits, and that as a result the state is violating article XIII B. Plaintiffs further allege they and the class they claim to represent cannot, consequently, obtain adequate health care from the County of Alameda, which lacks the state funding to provide it. The county, although nominally a defendant, aligned ***338** itself with plaintiffs. It admits the inadequacy of its program to provide medical care for MIA's but blames the absence of state subvention funds.[1]

At hearings below, plaintiffs presented uncontradicted evidence regarding the enormous impact of these statutory changes upon the finances and population of Alameda County. That county now spends about $40 million annually on health care for MIA's, of which the state reimburses about half. Thus, since article XIII B became effective, Alameda County's obligation for the health care of MIA's has risen from zero to more than $20 million per year. The county has inadequate funds to discharge its new obligation for the health care of MIA's; as a result, according to the Court of Appeal, uncontested evidence from medical experts presented below shows that, "The delivery of health care to the indigent in Alameda County is in a state of shambles; the crisis cannot be overstated ...." "Because of inadequate state funding, some Alameda County residents are dying, and many others are suffering serious diseases and disabilities, because they cannot obtain adequate access to the medical care they need ...." "The system is clogged to the breaking point. ... All community clinics ... are turning away patients." "The funding received by the county from the state for MIAs does not approach the actual cost of providing health care to the MIAs. As a consequence, inadequate resources available to county health services jeopardize the lives and health of thousands of people ...."

The trial court acknowledged that plaintiffs had shown irreparable injury, but denied their request for a preliminary injunction on the ground that they could not prevail in the action. It then granted the state's motion for summary judgment. Plaintiffs appealed from both

decisions of the trial court.

The Court of Appeal consolidated the two appeals and reversed the rulings below. It concluded that plaintiffs had standing to bring this action to enforce the constitutional spending limit of article XIII B, and that the action is not barred by the existence of administrative remedies available to counties. It then held that the shift of a portion of the cost of medical indigent care by the state to Alameda County constituted a state-mandated new program under the provisions of article XIII B, which triggered that article's provisions requiring a subvention of funds by the state to reimburse Alameda ***339** County for the costs of such program it was required to assume. The judgments denying a preliminary injunction and granting summary judgment for defendants were reversed. We granted review.

II. Standing

A. *Plaintiffs have standing to bring an action for declaratory relief to determine whether the state is complying with article XIII B.*

Plaintiffs first claim standing as taxpayers under Code of Civil Procedure section 526a, which provides that: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county ..., may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. ..." As in *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439 [261 Cal.Rptr. 574, 777 P.2d 610], however, it is "unnecessary to reach the question whether plaintiffs have standing to seek an injunction under Code of Civil Procedure section 526a, because there is an independent basis for permitting them to proceed." Plaintiffs here seek a declaratory judgment that the transfer of responsibility for MIA's from the state to the counties without adequate reimbursement violates article XIII B. A declaratory judgment that the state has breached its duty is essentially equivalent to an action in mandate to compel the state to perform its duty. (See *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 9 [270 Cal.Rptr. 796, 793 P.2d 2], which said that a declaratory judgment establishing that the state has a duty to act provides relief equivalent to mandamus, and makes issuance of the writ unnecessary.) Plaintiffs further seek a mandatory injunction requiring that the state pay the health costs of MIA's under the Medi-Cal program until the state meets its obligations under article XIII B. The majority similarly characterize plaintiffs' action as one comparable to mandamus brought to enforce section 6 of article XIII B.

We should therefore look for guidance to cases that discuss the standing of a party seeking a writ of mandate to compel a public official to perform his or her duty.[2] Such an action may be brought by any person "beneficially interested" in the issuance of the writ. (Code Civ. Proc., § 1086.) In *Carsten* ***340** *v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796 [166 Cal.Rptr. 844, 614 P.2d 276], we explained that the "requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." We quoted from Professor Davis, who said, "One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable." (Pp. 796-797, quoting 3 Davis, Administrative Law Treatise (1958) p. 291.) Cases applying this standard include *Stocks v. City of Irvine* (1981) 114 Cal.App.3d 520 [170 Cal.Rptr. 724], which held that low- income residents of Los Angeles had standing to challenge exclusionary zoning laws of suburban communities which prevented the plaintiffs from moving there; *Taschner v. City Council, supra,* 31 Cal.App.3d 48, which held that a property owner has standing to challenge an ordinance which may limit development of the owner's property; and *Felt v. Waughop* (1924) 193 Cal. 498 [225 P. 862], which held that a city voter has standing to compel the city clerk to certify a correct list of candidates for municipal office. Other cases illustrate the limitation on standing: *Carsten v. Psychology Examining Com., supra,* 27 Cal.3d 793, held that a member of the committee who was neither seeking a license nor in danger of losing one had no standing to challenge a change in the method of computing the passing score on the licensing examination; *Parker v. Bowron* (1953) 40 Cal.2d 344 [254 P.2d 6] held that a union official who was neither a city employee nor a city resident had no standing to compel a city to follow a prevailing wage ordinance; and *Dunbar v. Governing Board* (1969) 275 Cal.App.2d 14 [79 Cal.Rptr. 662] held that a member of a student organization had standing to challenge a college district's rule barring a speaker from campus, but persons who merely planned to hear him speak did not.

No one questions that plaintiffs are affected by the lack of funds to provide care for MIA's. Plaintiffs, except for

plaintiff Rabinowitz, are not merely citizens and taxpayers; they are medically indigent persons living in Alameda County who have been and will be deprived of proper medical care if funding of MIA programs is inadequate. Like the other plaintiffs here, ***341** plaintiff Kinlaw, a 60-year-old woman with diabetes and hypertension, has no health insurance. Plaintiff Spier has a chronic back condition; inadequate funding has prevented him from obtaining necessary diagnostic procedures and physiotherapy. Plaintiff Tsosie requires medication for allergies and arthritis, and claims that because of inadequate funding she cannot obtain proper treatment. Plaintiff King, an epileptic, says she was unable to obtain medication from county clinics, suffered seizures, and had to go to a hospital. Plaintiff "Doe" asserts that when he tried to obtain treatment for AIDS-related symptoms, he had to wait four to five hours for an appointment and each time was seen by a different doctor. All of these are people personally dependent upon the quality of care of Alameda County's MIA program; most have experienced inadequate care because the program was underfunded, and all can anticipate future deficiencies in care if the state continues its refusal to fund the program fully.

The majority, however, argues that the county has no duty to use additional subvention funds for the care of MIA's because under Government Code section 17563 "[a]ny funds received by a local agency ... pursuant to the provisions of this chapter may be used for any public purpose." Since the county may use the funds for other purposes, it concludes that MIA's have no special interest in the subvention.[3]

This argument would be sound if the county were already meeting its obligations to MIA's under Welfare and Institutions Code section 17000. If that were the case, the county could use the subvention funds as it chose, and plaintiffs would have no more interest in the matter than any other county resident or taxpayer. But such is not the case at bar. Plaintiffs here allege that the county is not complying with its duty, mandated by Welfare and Institutions Code section 17000, to provide health care for the medically indigent; the county admits its failure but pleads lack of funds. Once the county receives adequate funds, it must perform its statutory duty under section 17000 of the Welfare and Institutions Code. If it refused, an action in mandamus would lie to compel performance. (See *Mooney v. Pickett* (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].) In fact, the county has made clear throughout this litigation that it would use the subvention funds to provide care for MIA's. The majority's conclusion that plaintiffs lack a special, beneficial interest in the state's compliance with article XIII B ignores the practical realities of health care funding.

Moreover, we have recognized an exception to the rule that a plaintiff must be beneficially interested. "Where the question is one of public right ***342** and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." (*Bd. of Soc. Welfare v. County of L. A.* (1945) 27 Cal.2d 98, 100-101 [162 P.2d 627].) We explained in *Green v. Obledo* (1981) 29 Cal.3d 126, 144 [172 Cal.Rptr. 206, 624 P.2d 256], that this "exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right. ... It has often been invoked by California courts. [Citations.]"

Green v. Obledo presents a close analogy to the present case. Plaintiffs there filed suit to challenge whether a state welfare regulation limiting deductibility of work-related expenses in determining eligibility for aid to families with dependent children (AFDC) assistance complied with federal requirements. Defendants claimed that plaintiffs were personally affected only by a portion of the regulation, and had no standing to challenge the balance of the regulation. We replied that "[t]here can be no question that the proper calculation of AFDC benefits is a matter of public right [citation], and plaintiffs herein are certainly citizens seeking to procure the enforcement of a public duty. [Citation.] It follows that plaintiffs have standing to seek a writ of mandate commanding defendants to cease enforcing [the regulation] in its entirety." (29 Cal.3d at p. 145.)

We again invoked the exception to the requirement for a beneficial interest in *Common Cause v. Board of Supervisors, supra,* 49 Cal.3d 432. Plaintiffs in that case sought to compel the county to deputize employees to register voters. We quoted *Green v. Obledo, supra,* 29 Cal.3d 126, 144, and concluded that "[t]he question in this case involves a public right to voter outreach programs, and plaintiffs have standing as citizens to seek its vindication." (49 Cal.3d at p. 439.) We should reach the same conclusion here.

B. *Government Code sections 17500-17630 do not create an exclusive remedy which bars citizen-plaintiffs from enforcing article XIII B.*

Four years after the enactment of article XIII B, the Legislature enacted Government Code sections 17500

through 17630 to implement article XIII B, section 6. These statutes create a quasi-judicial body called the Commission on State Mandates, consisting of the state Controller, state Treasurer, state Director of Finance, state Director of the Office of Planning and Research, and one public member. The commission has authority to "hear and decide upon [any] claim" by a local government that it "is entitled to be reimbursed by the state" for costs under article XIII B. (Gov. Code, § 17551, ***343** subd. (a).) Its decisions are subject to review by an action for administrative mandamus in the superior court. (See Gov. Code, § 17559.)

The majority maintains that a proceeding before the Commission on State Mandates is the exclusive means for enforcement of article XIII B, and since that remedy is expressly limited to claims by local agencies or school districts (Gov. Code, § 17552), plaintiffs lack standing to enforce the constitutional provision.[4] I disagree, for two reasons.

First, Government Code section 17552 expressly addressed the question of exclusivity of remedy, and provided that "[t]his chapter shall provide the sole and exclusive procedure by which *a local agency or school district* may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." (Italics added.) The Legislature was aware that local agencies and school districts were not the only parties concerned with state mandates, for in Government Code section 17555 it provided that "any other interested organization or individual may participate" in the commission hearing. Under these circumstances the Legislature's choice of words-"the sole and exclusive procedure by which a local agency or school district may claim reimbursement"-limits the procedural rights of those claimants only, and does not affect rights of other persons. *Expressio unius est exclusio alterius*-"the expression of certain things in a statute necessarily involves exclusion of other things not expressed." (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403 [135 Cal.Rptr. 266].)

The case is similar in this respect to *Common Cause v. Board of Supervisors, supra*, 49 Cal.3d 432. Here defendants contend that the counties' right of action under Government Code sections 17551-17552 impliedly excludes ***344** any citizen's remedy; in *Common Cause* defendants claimed the Attorney General's right of action under Elections Code section 304 impliedly excluded any citizen's remedy. We replied that "the plain language of section 304 contains no limitation on the right of private citizens to sue to enforce the section. To infer such a limitation would contradict our long-standing approval of citizen actions to require governmental officials to follow the law, expressed in our expansive interpretation of taxpayer standing [citations], and our recognition of a 'public interest' exception to the requirement that a petitioner for writ of mandate have a personal beneficial interest in the proceedings [citations]." (49 Cal.3d at p. 440, fn. omitted.) Likewise in this case the plain language of Government Code sections 17551-17552 contain no limitation on the right of private citizens, and to infer such a right would contradict our long-standing approval of citizen actions to enforce public duties.

The United States Supreme Court reached a similar conclusion in *Rosado v. Wyman* (1970) 397 U.S. 397 [25 L.Ed.2d 442, 90 S.Ct. 1207]. In that case New York welfare recipients sought a ruling that New York had violated federal law by failing to make cost-of-living adjustments to welfare grants. The state replied that the statute giving the Department of Health, Education and Welfare authority to cut off federal funds to noncomplying states constituted an exclusive remedy. The court rejected the contention, saying that "[w]e are most reluctant to assume Congress has closed the avenue of effective judicial review to those individuals most directly affected by the administration of its program." (P. 420 [25 L.Ed.2d at p. 460].) The principle is clear: the persons actually harmed by illegal state action, not only some administrator who has no personal stake in the matter, should have standing to challenge that action.

Second, article XIII B was enacted to protect taxpayers, not governments. Sections 1 and 2 of article XIII B establish strict limits on state and local expenditures, and require the refund of all taxes collected in excess of those limits. Section 6 of article XIII B prevents the state from evading those limits and burdening county taxpayers by transferring financial responsibility for a program to a county, yet counting the cost of that program toward the limit on state expenditures.

These provisions demonstrate a profound distrust of government and a disdain for excessive government spending. An exclusive remedy under which only governments can enforce article XIII B, and the taxpayer-citizen can appear only if a government has first instituted proceedings, is inconsistent with the ethos that led to article XIII B. The drafters of article XIII B and the voters who enacted it would not accept that the state Legislature-the principal body regulated by the article-could establish a procedure ***345** under which the only way the article can be enforced is for local governmental bodies to initiate proceedings before a commission composed largely of state financial officials.

One obvious reason is that in the never-ending attempts of state and local government to obtain a larger proportionate share of available tax revenues, the state has the power to coerce local governments into foregoing their rights to enforce article XIII B. An example is the Brown-Presley Trial Court Funding Act (Gov. Code, § 77000 et seq.), which provides that the county's acceptance of funds for court financing may, in the discretion of the Governor, be deemed a waiver of the counties' rights to proceed before the commission on all claims for reimbursement for state- mandated local programs which existed and were not filed prior to passage of the trial funding legislation.[5] The ability of state government by financial threat or inducement to persuade counties to waive their right of action before the commission renders the counties' right of action inadequate to protect the public interest in the enforcement of article XIII B.

The facts of the present litigation also demonstrate the inadequacy of the commission remedy. The state began transferring financial responsibility for MIA's to the counties in 1982. Six years later no county had brought a proceeding before the commission. After the present suit was filed, two counties filed claims for 70 percent reimbursement. Now, nine years after the 1982 legislation, the counties' claims are pending before the Court of Appeal. After that court acts, and we decide whether to review its decision, the matter may still have to go back to the commission for hearings to ***346** determine the amount of the mandate-which is itself an appealable order. When an issue involves the life and health of thousands, a procedure which permits this kind of delay is not an adequate remedy.

In sum, effective, efficient enforcement of article XIII B requires that standing to enforce that measure be given to those harmed by its violation-in this case, the medically indigent-and not be vested exclusively in local officials who have no personal interest at stake and are subject to financial and political pressure to overlook violations.

C. *Even if plaintiffs lack standing this court should nevertheless address and resolve the merits of the appeal.*

Although ordinarily a court will not decide the merits of a controversy if the plaintiffs lack standing (see *McKinny v. Board of Trustees* (1982) 31 Cal.3d 79, 90 [181 Cal.Rptr. 549, 642 P.2d 460]), we recognized an exception to this rule in our recent decision in *Dix v. Superior Court, supra,* 53 Cal.3d 442 (hereafter *Dix*). In *Dix,* the victim of a crime sought to challenge the trial court's decision to recall a sentence under Penal Code section 1170. We held that only the prosecutor, not the victim of the crime, had standing to raise that issue. We nevertheless went on to consider and decide questions raised by the victim concerning the trial court's authority to recall a sentence under Penal Code section 1170, subdivision (d). We explained that the sentencing issues "are significant. The case is fully briefed and all parties apparently seek a decision on the merits. Under such circumstances, we deem it appropriate to address [the victim's] sentencing arguments for the guidance of the lower courts. Our discretion to do so under analogous circumstances is well settled. [Citing cases explaining when an appellate court can decide an issue despite mootness.]" (53 Cal.3d at p. 454.) In footnote we added that "Under article VI, section 12, subdivision (b) of the California Constitution ..., we have jurisdiction to 'review the *decision of a Court of Appeal* in any cause.' (Italics added.) Here the Court of Appeal's decision addressed two issues-standing and merits. Nothing in article VI, section 12(b) suggests that, having rejected the Court of Appeal's conclusion on the preliminary issue of standing, we are foreclosed from 'review [ing]' the second subject addressed and resolved in its decision." (Pp. 454-455, fn. 8.)

I see no grounds on which to distinguish *Dix.* The present case is also one in which the Court of Appeal decision addressed both standing and merits. It is fully briefed. Plaintiffs and the county seek a decision on the merits. While the state does not seek a decision on the merits in this proceeding, its appeal of the superior court decision in the mandamus proceeding brought by the County of Los Angeles (see maj. opn., *ante,* p. 330, fn. 2) shows that it is not opposed to an appellate decision on the merits. ***347**

The majority, however, notes that various state officials-the Controller, the Director of Finance, the Treasurer, and the Director of the Office of Planning and Research-did not participate in this litigation. Then in a footnote, the majority suggests that this is the reason they do not follow the *Dix* decision. (Maj. opn., *ante,* p. 336, fn. 9.) In my view, this explanation is insufficient. The present action is one for declaratory relief against the state. It is not necessary that plaintiffs also sue particular state officials. (The state has never claimed that such officials were necessary parties.) I do not believe we should refuse to reach the merits of this appeal because of the nonparticipation of persons who, if they sought to participate, would be here merely as amici curiae.[6]

The case before us raises no issues of departmental policy. It presents solely an issue of law which this court is competent to decide on the briefs and arguments presented. That issue is one of great significance, far more

significant than any raised in *Dix*. Judges rarely recall sentencing under Penal Code section 1170, subdivision (d); when they do, it generally affects only the individual defendant. In contrast, the legal issue here involves immense sums of money and affect budgetary planning for both the state and counties. State and county governments need to know, as soon as possible, what their rights and obligations are; legislators considering proposals to deal with the current state and county budget crisis need to know how to frame legislation so it does not violate article XIII B. The practical impact of a decision on the people of this state is also of great importance. The failure of the state to provide full subvention funds and the difficulty of the county in filling the gap translate into inadequate staffing and facilities for treatment of thousands of persons. Until the constitutional issues are resolved the legal uncertainties may inhibit both levels of government from taking the steps needed to address this problem. A delay of several years until the Los Angeles case is resolved could result in pain, hardship, or even death for many people. I conclude that, whether or not plaintiffs have standing, this court should address and resolve the merits of the appeal.

D. *Conclusion as to standing.*

As I have just explained, it is not necessary for plaintiffs to have standing for us to be able to decide the merits of the appeal. Nevertheless, I conclude ***348** that plaintiffs have standing both as persons "beneficially interested" under Code of Civil Procedure section 1086 and under the doctrine of *Green v. Obledo, supra,* 29 Cal.3d 126, to bring an action to determine whether the state has violated its duties under article XIII B. The remedy given local agencies and school districts by Government Code sections 17500- 17630 is, as Government Code section 17552 states, the exclusive remedy by which those bodies can challenge the state's refusal to provide subvention funds, but the statute does not limit the remedies available to individual citizens.

III. Merits of the Appeal

A. *State funding of care for MIA's.*

Welfare and Institutions Code section 17000 requires every county to "relieve and support" all indigent or incapacitated residents, except to the extent that such persons are supported or relieved by other sources.[7] From 1971 until 1982, and thus at the time article XIII B became effective, counties were not required to pay for the provision of health services to MIA's, whose health needs were met through the state-funded Medi-Cal program. Since the medical needs of MIA's were fully met through other sources, the counties had no duty under Welfare and Institutions Code section 17000 to meet those needs. While the counties did make general contributions to the Medi-Cal program (which covered persons other than MIA's) from 1971 until 1978, at the time article XIII B became effective in 1980 the counties were not required to make any financial contributions to Medi-Cal. It is therefore undisputed that the counties were not required to provide financially for the health needs of MIA's when article XIII B became effective. The state funded all such needs of MIA's.

In 1982, the Legislature passed Assembly Bill No. 799 (1981-1982 Reg. Sess.; Stats. 1982, ch. 328, pp. 1568-1609) (hereafter AB No. 799), which removed MIA's from the state-funded Medi-Cal program as of January 1, 1983, and thereby transferred to the counties, through the County Medical Services Plan which AB No. 799 created, the financial responsibility to provide health services to approximately 270,000 MIA's. AB No. 799 required that the counties provide health care for MIA's, yet appropriated only 70 percent of what the state would have spent on MIA's had those persons remained a state responsibility under the Medi-Cal program.

Since 1983, the state has only partially defrayed the costs to the counties of providing health care to MIA's. Such state funding to counties was ***349** initially relatively constant, generally more than $400 million per year. By 1990, however, state funding had decreased to less than $250 million. The state, however, has always included the full amount of its former obligation to provide for MIA's under the Medi-Cal program in the year preceding July 1, 1980, as part of its article XIII B "appropriations limit," i.e., as part of the base amount of appropriations on which subsequent annual adjustments for cost-of-living and population changes would be calculated. About $1 billion has been added to the state's adjusted spending limit for population growth and inflation *solely* because of the state's inclusion of all MIA expenditures in the appropriation limit established for its base year, 1979-1980. The state has not made proportional increases in the sums provided to counties to pay for the MIA services funded by the counties since January 1, 1983.

B. *The function of article XIII B.*

Our recent decision in *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487 [280 Cal.Rptr. 92, 808 P.2d 235] (hereafter *County of Fresno*), explained the function of article XIII B and its relationship to article XIII A, enacted one year earlier:

"At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new 'special taxes.' (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)

"At the November 6, 1979, Special Statewide Election, article XIII B was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

" 'Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes.' (*City of Sacramento, supra,* 50 Cal.3d at p. 59, fn. 1.)

"Article XIII B of the Constitution was intended ... to provide 'permanent protection for taxpayers from excessive taxation' and 'a reasonable way to provide discipline in tax spending at state and local levels.' (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument ***350** in favor of Prop. 4, p. 18.) To this end, it establishes an 'appropriations limit' for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no 'appropriations subject to limitation' in excess thereof (*id.,* § 2).[8] (See *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 446.) It defines the relevant 'appropriations subject to limitation' as 'any authorization to expend during a fiscal year the proceeds of taxes ....' (Cal. Const., art. XIII B, § 8, subd. (b).)" (*County of Fresno, supra,* 53 Cal.3d at p. 486.)

Under section 3 of article XIII B the state may transfer financial responsibility for a program to a county if the state and county mutually agree that the appropriation limit of the state will be decreased and that of the county increased by the same amount.[9] Absent such an agreement, however, section 6 of article XIII B generally precludes the state from avoiding the spending limits it must observe by shifting to local governments programs and their attendant financial burdens which were a state responsibility prior to the effective date of article XIII B. It does so by requiring that "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the cost of such program or increased level of service ...."[10]

"Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles* [v. *State of California* (1987)] 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202].) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax ***351** revenues of local governments from state mandates that would require expenditure of such revenues." (*County of Fresno, supra,* 53 Cal.3d at p. 487.)

C. *Applicability of article XIII B to health care for MIA's.*

The state argues that care of the indigent, including medical care, has long been a county responsibility. It claims that although the state undertook to fund this responsibility from 1979 through 1982, it was merely temporarily (as it turned out) helping the counties meet their responsibilities, and that the subsequent reduction in state funding did not impose any "new program" or "higher level of service" on the counties within the meaning of section 6 of article XIII B. Plaintiffs respond that the critical question is not the traditional roles of the county and state, but who had the fiscal responsibility on November 6, 1979, when article XIII B took effect. The purpose of article XIII B supports the plaintiffs' position.

As we have noted, article XIII A of the Constitution (Proposition 13) and article XIII B are complementary measures. The former radically reduced county revenues, which led the state to assume responsibility for programs previously financed by the counties. Article XIII B, enacted one year later, froze both state and county appropriations at the level of the 1978-1979 budgets-a year when the budgets included state financing for the prior county programs, but not county financing for these programs. Article XIII B further limited the state's authority to transfer obligations to the counties. Reading the two together, it seems clear that article XIII B was intended to limit the power of the Legislature to retransfer to the counties those obligations which the state had assumed in the wake of Proposition 13.

Under article XIII B, both state and county appropriations limits are set on the basis of a calculation that begins with the budgets in effect when article XIII B was enacted. If the state could transfer to the county a program for which the state at that time had full financial responsibility, the county could be forced to assume additional financial obligations without the right to appropriate additional moneys. The state, at the same time, would get credit toward its appropriations limit for expenditures it did not pay. County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further; state taxpayers would discover that the state, by counting expenditures it did not pay, had acquired an actual revenue surplus while avoiding its obligation to refund revenues in excess of the appropriations limit. Such consequences are inconsistent with the purpose of article XIII B.

Our decisions interpreting article XIII B demonstrate that the state's subvention requirement under section 6 is not vitiated simply because the ***352** "program" existed before the effective date of article XIII B. The alternate phrase of section 6 of article XIII B, " 'higher level of service[,]' ... must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that *the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.' "* (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202], italics added.)

Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d 830, presents a close analogy to the present case. The state Department of Education operated schools for severely handicapped students, but prior to 1979 *school districts were required by statute to contribute* to education of those students from the district at the state schools. In 1979, in response to the restrictions on school district revenues imposed by Proposition 13, the statutes requiring such district contributions were repealed and the state assumed full responsibility for funding. The state funding responsibility continued until June 28, 1981, when Education Code section 59300 (hereafter section 59300), requiring school districts to share in these costs, became effective.

The plaintiff districts filed a test claim before the commission, contending they were entitled to state reimbursement under section 6 of article XIII B. The commission found the plaintiffs were not entitled to state reimbursement, on the rationale that the increase in costs to the districts compelled by section 59300 imposed no new program or higher level of services. The trial and intermediate appellate courts affirmed on the ground that section 59300 called for only an " 'adjustment of costs' " of educating the severely handicapped, and that "*a shift in the funding of an existing program is not a new program or a higher level of service*" within the meaning of article XIII B. (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at p. 834, italics added.)

We reversed, rejecting the state's theories that the funding shift to the county of the subject program's costs does not constitute a new program. "[There can be no] doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are concerned, since *at the time section 59300 became effective* they were not required to contribute to the education of students from their districts at such schools. [¶] ... To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIIIB. That article imposed spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIIIA, which severely limited the taxing ***353** power of local governments. ... [¶] The intent of the section would plainly be violated if the state could, while retaining administrative control[11] of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of article XIIIB because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIIIB, the result seems equally violative of the fundamental purpose underlying section 6 of that article.*" (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at pp. 835- 836, fn. omitted, italics added.)

The state seeks to distinguish *Lucia Mar* on the ground that the education of handicapped children in state schools had never been the responsibility of the local school district, but overlooks that the local district had previously been required to contribute to the cost. Indeed the similarities between *Lucia Mar* and the present case are striking. In *Lucia Mar,* prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-1979 the state and county shared the cost of caring for MIA's under the Medi-Cal program. In 1979, following enactment of Proposition 13, the state took full responsibility for both

programs. Then in 1981 (for handicapped children) and 1982 (for MIA's), the state sought to shift some of the burden back to the counties. To distinguish these cases on the ground that care for MIA's is a county program but education of handicapped children a state program is to rely on arbitrary labels in place of financial realities.

The state presents a similar argument when it points to the following emphasized language from *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830: "[B]ecause section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts-*an obligation the school districts did not have at the time article XIII B was adopted*-it calls for plaintiffs to support a 'new program' within the meaning of section 6." (P. 836, fn. omitted, italics added.) It urges *Lucia Mar* reached its result *only* because the "program" requiring school district funding in that case *was not required by statute* at the effective date of ***354** article XIII B. The state then argues that the case at bench is distinguishable because it contends Alameda County had a continuing obligation *required by statute* antedating that effective date, which had only been "temporarily"[12] suspended when article XIII B became effective. I fail to see the distinction between a case-*Lucia Mar*-in which no existing statute as of 1979 imposed an obligation on the local government and one-this case-in which the statute existing in 1979 imposed no obligation on local government.

The state's argument misses the salient point. As I have explained, the application of section 6 of article XIII B does not depend upon when the program was created, but upon who had the burden of funding it when article XIII B went into effect. Our conclusion in *Lucia Mar* that the educational program there in issue was a "new" program as to the school districts was not based on the presence or absence of any antecedent statutory obligation therefor. *Lucia Mar* determined that whether the program was new *as to the districts* depended on *when* they were compelled to assume the obligation to partially fund an existing program which they had not funded at the time article XIII B became effective.

The state further relies on two decisions, *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] and *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401 [261 Cal.Rptr. 706], which hold that the county has a statutory obligation to provide medical care for indigents, but that it need not provide precisely the same level of services as the state provided under Medi-Cal.[13] Both are correct, but irrelevant to this case.[14] The county's obligation to MIA's is defined by Welfare and Institutions Code section 17000, not by the former Medi-Cal program.[15] If the ***355** state, in transferring an obligation to the counties, permits them to provide less services than the state provided, the state need only pay for the lower level of services. But it cannot escape its responsibility entirely, leaving the counties with a state-mandated obligation and no money to pay for it.

The state's arguments are also undercut by the fact that it continues to use the approximately $1 billion in spending authority, generated by its previous total funding of the health care program in question, as a portion of its initial *base spending limit* calculated pursuant to sections 1 and 3 of article XIII B. In short, the state may maintain here that care for MIA's is a county obligation, but when it computes its appropriation limit it treats the entire cost of such care as a state program.

IV. Conclusion

This is a time when both state and county governments face great financial difficulties. The counties, however, labor under a disability not imposed on the state, for article XIII A of the Constitution severely restricts their ability to raise additional revenue. It is, therefore, particularly important to enforce the provisions of article XIII B which prevent the state from imposing additional obligations upon the counties without providing the means to comply with these obligations.

The present majority opinion disserves the public interest. It denies standing to enforce article XIII B both to those persons whom it was designed to protect-the citizens and taxpayers-and to those harmed by its violation-the medically indigent adults. And by its reliance on technical grounds to avoid coming to grips with the merits of plaintiffs' appeal, it permits the state to continue to violate article XIII B and postpones the day when the medically indigent will receive adequate health care.

Mosk, J., concurred. ***356**

Footnotes

1 The complaint also sought a declaration that the county was obliged to provide health care services to indigents that were equivalent to those available to nonindigents. This issue is not before us. The County of Alameda aligned itself with plaintiffs in the superior court and did not oppose plaintiffs' effort to enforce section 6.

2 On November 23, 1987, the County of Los Angeles filed a test claim with the Commission. San Bernardino County joined as a test claimant. The Commission ruled against the counties, concluding that no state mandate had been created. The Los Angeles County Superior Court subsequently granted the counties' petition for writ of mandate (Code Civ. Proc., § 1094.5), reversing the Commission, on April 27, 1989. (No. C-731033.) An appeal from that judgment is presently pending in the Court of Appeal. (*County of Los Angeles v. State of California,* No. B049625.)

3 Plaintiffs argue that they seek only a declaration that AB 799 created a state mandate and an injunction against the shift of costs until the state decides what action to take. This is inconsistent with the prayer of their complaint which sought an injunction requiring defendants to restore Medi-Cal eligibility to all medically indigent adults until the state paid the cost of full health services for them. It is also unavailing.
An injunction against enforcement of a state mandate is available only after the Legislature fails to include funding in a local government claims bill following a determination by the Commission that a state mandate exists. (Gov. Code, § 17612.) Whether plaintiffs seek declaratory relief and/or an injunction, therefore, they are seeking to enforce section 6.
All further statutory references are to the Government Code unless otherwise indicated.

4 The test claim by the County of Los Angeles was filed prior to that proposed by Alameda County. The Alameda County claim was rejected for that reason. (See § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the issues the majority elects to address instead in this proceeding. Los Angeles County declined a request from Alameda County that it be included in the test claim because the two counties' systems of documentation were so similar that joining Alameda County would not be of any benefit. Alameda County and these plaintiffs were, of course, free to participate in the Commission hearing on the test claim. (§ 17555.)

5 " 'Local agency' means any city, county, special district, authority, or other political subdivision of the state." (§ 17518.)

6 " 'School district' means any school district, community college district, or county superintendant of schools." (§ 17519.)

7 Plaintiffs' argument that the Legislature's failure to make provision for individual enforcement of section 6 before the Commission demonstrates an intent to permit legal actions, is not persuasive. The legislative statement of intent to relegate all mandate disputes to the Commission is clear. A more likely explanation of the failure to provide for test cases to be initiated by individuals lies in recognition that (1) because section 6 creates rights only in governmental entities, individuals lack sufficient beneficial interest in either the receipt or expenditure of reimbursement funds to accord them standing; and (2) the number of local agencies having a direct interest in obtaining reimbursement is large enough to ensure that citizen interests will be adequately represented.

8 Plaintiffs are not without a remedy if the county fails to provide adequate health care, however. They may enforce the obligation imposed on the county by Welfare and Institutions Code sections 17000 and 17001, and by judicial action. (See, e.g., *Mooney v. Pickett* (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].)

9 For this reason, it would be inappropriate to address the merits of plaintiff's claim in this proceeding. (Cf. *Dix v. Superior Court* (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834, 807 P.2d 1063].) Unlike the dissent, we do not assume that in representing the state in this proceeding, the Attorney General necessarily represented the interests and views of these officials.

1 The majority states that "Plaintiffs are not without a remedy if the county fails to provide adequate health care .... They may enforce the obligation imposed on the county by Welfare and Institutions Code sections 17000 and 17001, and by judicial action." (Maj. opn., *ante,* p. 336, fn. 8)
The majority fails to note that plaintiffs have already tried this remedy, and met with the response that, owing to the state's inadequate subvention funds, the county cannot afford to provide adequate health care.

2 It is of no importance that plaintiffs did not request issuance of a writ of mandate. In *Taschner v. City Council* (1973) 31 Cal.App.3d 48, 56 [107 Cal.Rptr. 214] (overruled on other grounds in *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 596 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038]), the court said that "[a]s against a general demurrer, a complaint for declaratory relief may be treated as a petition for mandate [citations], and where a complaint for declaratory relief alleges facts sufficient to entitle plaintiff to mandate, it is error to sustain a general demurrer without leave to amend."
In the present case, the trial court ruled on a motion for summary judgment, but based that ruling not on the evidentiary record (which supported plaintiffs' showing of irreparable injury) but on the issues as framed by the pleadings. This is essentially equivalent to a ruling on demurrer, and a judgment denying standing could not be sustained on the narrow

ground that plaintiffs asked for the wrong form of relief without giving them an opportunity to correct the defect. (See *Residents of Beverly Glen, Inc. v. City of Los Angeles* (1973) 34 Cal.App.3d 117, 127-128 [109 Cal.Rptr. 724].)

3 The majority's argument assumes that the state will comply with a judgment for plaintiffs by providing increased subvention funds. If the state were instead to comply by restoring Medi-Cal coverage for MIA's, or some other method of taking responsibility for their health needs, plaintiffs would benefit directly.

4 The majority emphasizes the statement of purpose of Government Code section 17500: "The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under section 6 of article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary, and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs."
The "existing system" to which Government Code section 17500 referred was the Property Tax Relief Act of 1972 (Rev. & Tax. Code, §§ 2201-2327), which authorized local agencies and school boards to request reimbursement from the state Controller. Apparently dissatisfied with this remedy, the agencies and boards were bypassing the Controller and bringing actions directly in the courts. (See, e.g., *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62 [222 Cal.Rptr. 750].) The legislative declaration refers to this phenomena. It does not discuss suits by individuals.

5 "(a) The initial decision by a county to opt into the system pursuant to Section 77300 *shall constitute a waiver of all claims for reimbursement for state-mandated local programs not theretofore approved by the State Board of Control, the Commission on State Mandates, or the courts to the extent the Governor, in his discretion, determines that waiver to be appropriate*; provided, that a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988-89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added this chapter is chaptered, which is filed in acceptable form on or before the date the act which added this chapter is chaptered. A county may petition the Governor to exempt any such claim from this waiver requirement; and the Governor, in his discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing after initial notification. Renewal, renegotiation, or subsequent notification to continue in the program shall not constitute a waiver. [¶] (b) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987." (Gov. Code, § 77203.5, italics added.)
"As used in this chapter, 'state-mandated local program' *means any and all reimbursements owed or owing by operation of either Section 6 of Article XIII B of the California Constitution,* or Section 17561 of the Government Code, or both." (Gov. Code, § 77005, italics added.)

6 It is true that these officials would participate in a proceeding before the Commission on State Mandates, but they would do so as members of an administrative tribunal. On appellate review of a commission decision, its members, like the members of the Public Utilities Commission or the Workers' Compensation Appeals Board, are not respondents and do not appear to present their individual views and positions. For example, in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318], in which we reviewed a commission ruling relating to subvention payments for education of handicapped children, the named respondents were the state Superintendent of Public Instruction, the Department of Education, and the Commission on State Mandates. The individual members of the commission were not respondents and did not participate.

7 Welfare and Institutions Code section 17000 provides that "[e]very county ... shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions."

8 Article XIII B, section 1 provides: "The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in this Article."

9 Section 3 of article XIII B reads in relevant part: "The appropriations limit for any fiscal year ... shall be adjusted as follows:
"(a) In the event that the financial responsibility of providing services is transferred, in whole or in part ... from one entity

of government to another, then for the year in which such transfer becomes effective the appropriation limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount. ..."

10 Section 6 of article XIII B further provides that the "Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." None of these exceptions apply in the present case.

11 The state notes that, in contrast to the program at issue in *Lucia Mar,* it has not retained administrative control over aid to MIA's. But the quoted language from *Lucia Mar,* while appropriate to the facts of that case, was not intended to establish a rule limiting article XIII B, section 6, to instances in which the state retains administrative control over the program that it requires the counties to fund. The constitutional language admits of no such limitation, and its recognition would permit the Legislature to evade the constitutional requirement.

12 The state's repeated emphasis on the "temporary" nature of its funding is a form of post hoc reasoning. At the time article XIII B was enacted, the voters did not know which programs would be temporary and which permanent.

13 It must, however, provide a *comparable* level of services. (See *Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 564 [254 Cal.Rptr. 905].)

14 Certain language in *Madera Community Hospital v. County of Madera, supra,* 155 Cal.App.3d 136, however, is questionable. That opinion states that the "Legislature intended that County bear an obligation to its poor and indigent residents, *to be satisfied from county funds,* notwithstanding federal or state programs which exist concurrently with County's obligation and alleviate, to a greater or lesser extent, County's burden." (P. 151.) Welfare and Institutions Code section 17000 by its terms, however, requires the county to provide support to residents only "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Consequently, to the extent that the state or federal governments provide care for MIA's, the county's obligation to do so is reduced pro tanto.

15 The county's right to subvention funds under article XIII B arises because its duty to care for MIA's is a state-mandated responsibility; if the county had no duty, it would have no right to funds. No claim is made here that the funding of medical services for the indigent shifted to Alameda County is not a program " 'mandated' " by the state; i.e., that Alameda County has any option other than to pay these costs. (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at pp. 836-837.)

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55 Cal.App.4th 976, 64 Cal.Rptr.2d 270, 97 Cal. Daily Op. Serv. 4510, 97 Daily Journal D.A.R. 7464

REDEVELOPMENT AGENCY OF THE CITY OF SAN MARCOS, Plaintiff and Appellant,
v.
CALIFORNIA COMMISSION ON STATE MANDATES, Defendant and Respondent;
CALIFORNIA DEPARTMENT OF FINANCE, Intervener and Respondent.

No. D026195.
Court of Appeal, Fourth District, Division 1, California.
May 30, 1997.

SUMMARY

The trial court denied a petition for a writ of administrative mandate brought by a city's redevelopment agency that challenged the California Commission on State Mandates' denial of the agency's test claim under Gov. Code, § 17550 et seq. (reimbursement of costs mandated by the state). In its claim, the agency sought a determination that the State of California should reimburse the agency for moneys transferred into its lowand moderate-income housing fund pursuant to Health & Saf. Code, §§ 33334.2 and 33334.3, of the Community Redevelopment Law. Those statutes require a 20 percent deposit of the particular form of financing received by the agency (tax increment financing generated from its project areas) for purposes of improving the supply of affordable housing. The agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under Cal. Const., art. XIII B, § 6. The trial court found that the source of funds used by the agency was exempt, under Health & Saf. Code, § 33678, from the scope of Cal. Const., art. XIII B, § 6. (Superior Court of San Diego County, No. 686818, Sheridan E. Reed and Herbert B. Hoffman, Judges.)

The Court of Appeal affirmed. It held that under Health & Saf. Code, § 33678, which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of Cal. Const., art. XIII B, § 6. Although Cal. Const., art. XIII B, § 6, does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of Health & Saf. Code, §§ 33334.2 and 33334.3. (Opinion by Huffman, J., with Work, Acting P. J., and McIntyre, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

([1])
State of California § 11--Fiscal Matters--Subvention:Words, Phrases, and Maxims--Subvention.
"Subvention" generally means a grant of financial aid or assistance, or a subsidy.

([2])
State of California § 11--Fiscal Matters--Subvention--Judicial Rules.
Under Gov. Code, § 17559, review by administrative mandamus is the exclusive method of challenging a decision of the California Commission on State Mandates to deny a subvention claim. The determination whether the statutes at issue established a mandate under Cal. Const., art. XIII B, § 6, is a question of law. On appellate review, the following standards apply: Gov. Code, § 17559, governs the proceeding below and requires that the trial court review the decision of the commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, the appellate court is generally confined to inquiring whether substantial evidence supports the trial court's findings and judgment. However, the appellate court independently reviews the trial court's legal conclusions about the

meaning and effect of constitutional and statutory provisions.

([3a], [3b])
State of California § 11--Fiscal Matters--Subvention--State-mandated Costs--Statutory Set-aside Requirement for Local Redevelopment Agency's Tax Increment Financing.
The California Commission on State Mandates properly denied a test claim brought by a city's redevelopment agency seeking a determination that the state should reimburse the agency for moneys transferred into its lowand moderate-income housing fund pursuant to Health & Saf. Code, §§ 33334.2 and 33334.3, which require a 20 percent deposit of the particular form of financing received by the agency, i.e., tax increment financing generated from its project areas. Under Health & Saf. Code, § 33678, which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of Cal. Const., art. XIII B, § 6 (subvention). Although Cal. Const., art. XIII B, § 6, does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of Health & Saf. Code, §§ 33334.2 and 33334.3.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

([4])
Constitutional Law § 10--Construction of Constitutional Provisions-- Limitations on Legislative Powers.
The rules of constitutional interpretation require a strict construction of a constitutional provision that contains limitations and restrictions on legislative powers, because such limitations and restrictions are not to be extended to include matters not covered by the language used.

([5])
State of California § 11--Fiscal Matters--Subvention--Purpose of Constitutional Provisions.
The goal of Cal. Const., arts. XIII A and XIII B, is to protect California residents from excessive taxation and government spending. A central purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government of state-mandated costs), is to prevent the state's transfer of the cost of government from itself to the local level.

COUNSEL
Higgs, Fletcher & Mack and John Morris for Plaintiff and Appellant.
Gary D. Hori for Defendant and Respondent. ***979**
Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Assistant Attorney General, Linda A. Cabatic and Daniel G. Stone, Deputy Attorneys General, for Intervener and Respondent.

HUFFMAN, J.

The California Commission on State Mandates (the Commission) denied a test claim by the Redevelopment Agency of the City of San Marcos (the Agency) (Gov. Code, § 17550 et seq.), which sought a determination that the State of California should reimburse the Agency for moneys transferred into its Low and Moderate Income Housing Fund (the Housing Fund) pursuant to Health and Safety Code[1] sections 33334.2 and 33334.3. Those sections require a 20 percent deposit of the particular form of financing received by the Agency, tax increment financing generated from its project areas, for purposes of improving the supply of affordable housing. ([1])**(See fn. 2)**The Agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under article XIII B of the California Constitution, section 6 (hereafter section 6; all further references to articles are to the California Constitution).[2] (Cal. Const., art. XVI, § 16; § 33670.)

The Agency brought a petition for writ of administrative mandamus to challenge the decision of the Commission. (Code Civ. Proc., § 1094.5; Gov. Code, § 17559.) The superior court denied the petition, ruling that the source of funds used by the Agency for redevelopment, tax increment financing, was exempt pursuant to section 33678 from the scope of section 6, as not constituting "proceeds of taxes" which are governed by that section. The superior court did not rule upon the alternative grounds of decision stated by the Commission, i.e., the 20 percent set-aside requirement for lowand

moderate-income housing did not impose a new program or higher level of service in an existing program within the meaning of section 6, and, further, there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency.

The Agency appeals the judgment denying its petition for writ of mandate. For the reasons set forth below, we affirm. ***980**

I. Procedural Context

This test claim was litigated before the Commission pursuant to statutory procedures for determining whether a statute imposes state-mandated costs upon a local agency which must be reimbursed, through a subvention of funds, under section 6. (Gov. Code, § 17500 et seq.)[3] The Commission hearing consisted of oral argument on the points and authorities presented.

([2]) Under Government Code section 17559, review by administrative mandamus is the exclusive method of challenging a Commission decision denying a subvention claim. "The determination whether the statutes here at issue established a mandate under section 6 is a question of law. [Citation.]" (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109 [61 Cal.Rptr.2d 134, 931 P.2d 312].) On appellate review, we apply these standards: "Government Code section 17559 governs the proceeding below and requires that the trial court review the decision of the Commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. [Citation.] However, we independently review the superior court's legal conclusions about the meaning and effect of constitutional and statutory provisions. [Citation.]" (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810 [53 Cal.Rptr.2d 521].)

II. Statutory Schemes

Before we outline the statutory provisions setting up tax increment financing for redevelopment agencies, we first set forth the Supreme Court's recent summary of the history and substance of the law applicable to state mandates, such as the Agency claims exist here: "Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which 'imposes a limit on the power of state and local governments to ***981** adopt and levy taxes. [Citation.]' [Citation.] The next year, the voters added article XIII B to the Constitution, which 'impose[s] a complementary limit on the rate of growth in governmental spending.' [Citation.] These two constitutional articles 'work in tandem, together restricting California governments' power both to levy and to spend for public purposes.' [Citation.] Their goals are 'to protect residents from excessive taxation and government spending. [Citation.]' [Citation.]" (*County of San Diego v. State of California, supra*, 15 Cal.4th at pp. 80-81.)

Section 6, part of article XIII B and the provision here at issue, requires that whenever the Legislature or any state agency mandates a "new program or higher level of service" on any local government, " 'the state shall provide a subvention of funds to reimburse such local government for *the costs of such program* or increased level of service ....' " (*County of San Diego v. State of California, supra*, 15 Cal.4th at p. 81, italics added.) Certain exceptions are then stated, none of which is relevant here.[4]

In *County of San Diego v. State of California, supra*, 15 Cal.4th at page 81, the Supreme Court explained that section 6 represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local agencies. The purpose of the section is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities because they are subject to taxing and spending limitations under articles XIII A and XIII B. (*County of San Diego v. State of California, supra*, at p. 81.)

To evaluate the Agency's argument that the provisions of sections 33334.2 and 33334.3, requiring a deposit into the housing fund of 20 percent of the tax increment financing received by the Agency, impose this type of reimbursable governmental program or a higher level of service under an existing program, we first review the provisions establishing financing for redevelopment agencies. Such agencies have no independent powers of taxation (***982** *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 106 [211 Cal.Rptr. 133, 695 P.2d 220]), but receive a portion of tax revenues collected by other local agencies from property within a redevelopment project area, which may result from the following scheme: "Redevelopment agencies finance real property improvements in blighted areas. Pursuant to article XVI, section 16 of the Constitution, these agencies are authorized to use tax increment revenues for redevelopment projects. The constitutional mandate has been implemented through the Community

Redevelopment Law (Health & Saf. Code, § 33000 et seq.). [¶] The Community Redevelopment Law authorizes several methods of financing; one is the issuance of tax allocation bonds. Tax increment revenue, the increase in annual property taxes attributable to redevelopment improvements, provides the security for tax allocation bonds. Tax increment revenues are computed as follows: The real property within a redevelopment project area is assessed in the year the redevelopment plan is adopted. Typically, after redevelopment, property values in the project area increase. The taxing agencies (e.g., city, county, school or special district) keep the tax revenues attributable to the original assessed value and pass the portion of the assessed property value which exceeds the original assessment on to the redevelopment agency. (Health & Saf. Code, §§ 33640, 33641, 33670, 33675). In short, tax increment financing permits a redevelopment agency to take advantage of increased property tax revenues in the project areas without an increase in the tax rate. This scheme for redevelopment financing has been a part of the California Constitution since 1952. (Cal. Const., art. XVI, § 16.)" (*Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014, 1016-1017 [214 Cal.Rptr. 626].)[5]

In *Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pages 1016-1018, the court determined that by enacting section 33678, the Legislature interpreted article XIII B of the Constitution as not broad enough in reach to cover the raising or spending of tax increment revenues by redevelopment agencies. Specifically, the court decided the funds a redevelopment agency receives from tax increment financing do not constitute "proceeds of taxes" subject to article XIII B appropriations limits. (*Brown v. Community Redevelopment Agency*, *supra*, at p. 1019).[6] This ruling was based on section 33678, providing in pertinent part: "This section implements and fulfills the intent ... of Article XIII B and ***983** Section 16 of Article XVI of the California Constitution. *The allocation and payment to an agency of the portion of taxes specified in subdivision (b) of Section 33670 for the purpose of paying principal of, or interest on ... indebtedness incurred for redevelopment activity ... shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning of or for the purposes of Article XIII B ... nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B ...* or any statutory provision enacted in implementation of Article XIII B. *The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIII B of the California Constitution.*" (Italics added.)

In *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451 [170 Cal.Rptr. 232], the court defined "proceeds of taxes" in this way: "Under article XIII B, with the exception of state subventions, the items that make up the scope of ' "proceeds of taxes" ' concern charges levied to raise *general revenues* for the local entity. ' "Proceeds of taxes," ' in addition to 'all tax revenues' includes 'proceeds ... from ... regulatory licenses, user charges, and user fees [*only*] *to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service....*' (§ 8, subd. (c).) (Italics added.) Such 'excess' regulatory or user fees are but *taxes* for the raising of general revenue for the entity. [Citations.] Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. [Citation.] *We conclude 'proceeds of taxes' generally contemplates only those impositions which raise general tax revenues for the entity.*" (Italics added.)[7]

([3a]) In light of these interrelated sections and concepts, our task is to determine whether the 20 percent Housing Fund set-aside requirement of a redevelopment agency's tax increment financing qualifies under section 6 as a "cost" of a program. As will be explained, we agree with the trial court that the resolution of this issue is sufficient to dispose of the entire matter, and ***984** accordingly we need not discuss the alternate grounds of decision stated by the Commission.[8]

III. Housing Fund Allocations: Reimbursable Costs?

1. *Arguments*

The Agency takes the position that the language of section 33678 is simply inapplicable to its claim for subvention of funds required to be deposited into the Housing Fund. It points out that section 6 expressly lists three exceptions to the requirement for subvention of funds to cover the costs of state-mandated programs: (a) Legislative mandates requested by the local agency affected; (b) legislation defining or changing a definition of a crime; or (c) pre-1975 legislative mandates or implementing regulations or orders. (See fn. 4, *ante*.) None of these exceptions refers to the source of the funding originally used by the agency to pay the costs incurred for which reimbursement is now being sought. Thus, the agency argues it is immaterial that under section 33678, *for purposes of appropriations limitations*, tax increment financing is not deemed to be the "proceeds of

taxes." (*Brown v. Community Redevelopment Agency, supra*, 168 Cal.App.3d at pp. 1017-1020.) The Agency would apply a "plain meaning" rule to section 6 (see, e.g., *Davis v. City of* Berkeley (1990) 51 Cal.3d 227, 234 [272 Cal.Rptr. 139, 794 P.2d 897]) and conclude that the source of the funds used to pay the program costs up front, before any subvention, is not stated in the section and thus is not relevant.

As an illustration of its argument that the source of its funds is irrelevant under section 6, the Agency cites to Government Code section 17556. That section is a legislative interpretation of section 6, creating several classes of state-mandated programs for which no state reimbursement of local agencies for costs incurred is required. In *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [280 Cal.Rptr. 92, 808 P.2d 235], the Supreme Court upheld the facial constitutionality of Government Code section 17556, subdivision (d), which disallows state subvention of funds where the local government is authorized to collect service charges or fees in connection with a mandated program. The court explained that section 6 "was designed to protect the tax revenues of local governments from state mandates that ***985** would require expenditure of such revenues." (*County of Fresno v. State of California*, *supra*, at p. 487.) Based on the language and history of the measure, the court stated, "Article XIII B of the Constitution, however, was not intended to reach beyond taxation." (*Ibid.*) The court therefore concluded that in view of its textual and historical context, section 6 "requires subvention only when the costs in question can be recovered *solely from tax revenues*." (*Ibid.*, original italics.) Interpreting section 6, the court stated: "Considered within its context, the section effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes." (*Ibid.*) No subvention was required where the local authority could recover its expenses through fees or assessments, not taxes.

2. *Interpretation of Section 6*

Here, the Agency contends the authority of *County of Fresno v. State of California*, *supra*, *53* Cal.3d 482, should be narrowly read to cover only self-financing programs, and the Supreme Court's broad statements defining "costs" in this context read as mere dicta. It also continues to argue for a "plain meaning" reading of section 6, which it reiterates does not expressly discuss the source of funds used by an agency to pay the costs of a program before any reimbursement is sought. We disagree with both of these arguments. The correct approach is to read section 6 in light of its historical and textual context. ([4]) The rules of constitutional interpretation require a strict construction of section 6, because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used. (*City of San Jose v. State of California*, *supra*, 45 Cal.App.4th at pp. 1816-1817.)

([5]) The goals of articles XIII A and XIII B are to protect California residents from excessive taxation and government spending. (*County of Los Angeles v. State of California*, *supra*, 15 Cal.4th at p. 81.) A central purpose of section 6 is to prevent the state's transfer of the cost of government from itself to the local level. (*City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 68.) ([3b]) The related goals of these enactments require us to read the term "costs" in section 6 in light of the enactment as a whole. The "costs" for which the Agency is seeking reimbursement are its deposits of tax increment financing proceeds into the Housing Fund. Those tax increment financing proceeds are normally received pursuant to the Community Redevelopment Law (§ 33000 et seq.) when, after redevelopment, the taxing agencies collect and keep the tax revenues attributable to the original assessed value and pass on to the redevelopment agency the portion of the ***986** assessed property value which exceeds the original assessment. (*Brown v. Community Redevelopment Agency, supra,* 168 Cal.App.3d at pp. 1016-1017.) Is this the type of expenditure of tax revenues of local governments, upon state mandates which require use of such revenues, against which section 6 was designed to protect? (*County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.)

3. *Relationship of Appropriations Limitations and Subvention*

We may find assistance in answering this question by looking to the type of appropriations limitations imposed by article XIII B. In *County of Placer v. Corin*, *supra*, 113 Cal.App.3d at page 447, the court described the discipline imposed by article XIII B in this way: "[A]rticle XIIIB does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on 'appropriations subject to limitation,' which consists primarily of the authorization to expend during a fiscal year the 'proceeds of taxes.' (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute 'proceeds of taxes.' "[9]

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any "proceeds of taxes." Nor do they raise, through tax increment financing, "*general revenues* for the local entity." (*County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 451, original italics.) The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of sections 33334.2 and 33334.3. (See *City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 68.) The state is not transferring to the Agency the operation and administration of a program for which it was formerly legally and financially ***987** responsible. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817 [38 Cal.Rptr.2d 304].)[10]

For all these reasons, we conclude the same policies which support exempting tax increment revenues from article XIII B appropriations limits also support denying reimbursement under section 6 for this particular allocation of those revenues to the Housing Fund. Tax increment financing is not within the scope of article XIII B. (*Brown v. Community Redevelopment Agency, supra,* 168 Cal.App.3d at pp. 1016-1020.) Section 6 "requires subvention only when the costs in question can be recovered *solely from tax revenues*." (*County of Fresno v. State of California, supra,* 53 Cal.3d at p. 487, original italics.) No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes. Here, these costs of depositing tax increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment financing scheme, which is one step removed from other local agencies' collection of tax revenues. (§ 33000 et seq.) Therefore, in light of the above authorities, this use of tax increment financing is not a reimbursable "cost" under section 6. We therefore need not interpret any remaining portions of section 6.

Disposition

The judgment is affirmed.

Work, Acting P. J., and McIntyre, J., concurred.

Appellant's petition for review by the Supreme Court was denied September 3, 1997.

Footnotes

1 All further statutory references are to the Health and Safety Code unless otherwise noted.

2 " 'Subvention' generally means a grant of financial aid or assistance, or a subsidy. [Citation.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [15 Cal.Rptr.2d 547].)

3 In our prior opinion issued in this case, we determined the trial court erred when it denied the California Department of Finance (DOF) leave to intervene as an indispensable party and a real party in interest in the mandamus proceeding. (*Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1194-1199 [51 Cal.Rptr.2d 100].) Thus, DOF is now a respondent on this appeal, as is the Commission (sometimes collectively referred to as respondents). However, our decision in that case was a collateral matter and does not assist us on the merits of this proceeding.

4 Section 6 lists the following exclusions to the requirement for subvention of funds: "(a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." In *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 69 [266 Cal.Rptr. 139, 785 P.2d 522], the Supreme Court identified these items as exclusions of otherwise reimbursable programs from the scope of section 6. (See also Gov. Code, § 17514, definition of "costs mandated by the state," using the same "new program or higher level of service" language of section 6.)

5 Section 33071 in the Community Redevelopment Law provides that a fundamental purpose of redevelopment is to expand the supply of lowand moderate-income housing, as well as expanding employment opportunities and improving the social environment.

6 The term of art, "proceeds of taxes," is defined in article XIII B, section 8, as follows: (c) " *'Proceeds of taxes' shall include, but not be restricted to, all tax revenues* and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include subventions received from the state, other than pursuant to Section 6, and, with respect to the state, proceeds of taxes shall exclude such subventions." (Italics added.)

7 The issues before the court in *County of Placer v. Corin*, *supra*, 113 Cal.App.3d 443 were whether special assessments and federal grants should be considered proceeds of taxes; the court held they should not. Section 6 is not discussed; the court's analysis of other concepts found in article XIII B is nevertheless instructive.

8 The alternate grounds of the Commission's decision were that there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency, and that the set-aside requirement did not constitute a mandated "new program or higher level of service" under this section.

9 The term of art, "appropriations subject to limitation," is defined in article XIII B, section 8, as follows: [¶] (b) " 'Appropriations subject to limitation' of an entity of local government means any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity* and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes." (Italics added.)

10 We disagree with respondents that the legislative history of sections 33334.2 and 33334.3 is of assistance here, specifically, that section 23 of the bill creating these sections provided that no appropriations were made by the act, nor was any obligation for reimbursements of local agencies created for any costs incurred in carrying out the programs created by the act. (Stats. 1976, ch. 1337, § 23, pp. 6070-6071.) As stated in *City of San Jose v. State of California*, *supra*, 45 Cal.App.4th at pages 1817-1818, legislative findings regarding mandate are irrelevant to the issue to be decided by the Commission, whether a state mandate exists.

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15 Cal.4th 866, 937 P.2d 1350, 64 Cal.Rptr.2d 447, 97 Cal. Daily Op. Serv. 5059, 97 Daily Journal D.A.R. 8242

SINCLAIR PAINT COMPANY, Plaintiff and Respondent,
v.
STATE BOARD OF EQUALIZATION, Defendant and Appellant; DEPARTMENT OF HEALTH SERVICES et al., Interveners and Appellants.

No. S054115.
Supreme Court of California
June 26, 1997.

SUMMARY

The trial court granted a paint company summary judgment in the company's action against the Board of Equalization for a refund of fees paid pursuant to an assessment under the Childhood Lead Poisoning Prevention Act of 1991 (Health & Saf. Code, § 105275 et seq.). The trial court found that the fees were taxes, and thus they were invalid since the Legislature passed the act by a simple majority, rather than by the two-thirds majority required by Cal. Const., art. XIII A, § 3 (Prop. 13). (Superior Court of Sacramento County, No. CV541310, Joe S. Gray, Judge.) The Court of Appeal, Third Dist., No. C021559, affirmed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that the Court of Appeal erred in ruling that "fees" assessed on manufacturers or other persons contributing to environmental lead contamination, pursuant to the Childhood Lead Poisoning Prevention Act of 1991, were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature under Prop. 13. Rather, the fees imposed were bona fide regulatory fees. The act requires manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community. The shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is a reasonable police power decision. The fact that the fees were charged after, rather than before, the product's adverse effects were realized was immaterial to the question whether the measure imposed valid regulatory fees rather than taxes. Also, if regulation is the primary purpose of a fee, the mere fact that revenue is also obtained does not make the imposition a tax. (Opinion by Chin, J., with George, C. J., Mosk, Kennard, Baxter, Werdegar, JJ., and Armstrong, J.,* concurring.)

HEADNOTES

Classified to California Digest of Official Reports

([1])
Property Taxes § 7.2--Constitutional Provisions--Proposition 13.
The purpose of Prop. 13 was to assure effective real property tax relief by means of an interlocking package consisting of a real property tax rate limitation (Cal. Const., art. XIII A, § 1), a real property assessment limitation (Cal. Const., art. XIII A, § 2), a restriction on state taxes (Cal. Const., art. XIII A, § 3), and a restriction on local taxes (Cal. Const., art. XIII A, § 4). Since any tax savings resulting from the operation of Cal. Const., art. XIII A, §§ 1 and 2, could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, Cal. Const., art. XIII A, §§ 3 and 4, combine to place restrictions upon the imposition of such taxes.

([2a], [2b], [2c])
Taxation § 2--Validity of Taxation Legislation--Proposition 13--Fees Assessed Under Childhood Lead Poisoning Prevention Act-- Applicability of Supermajority Requirement:Property Taxes § 7.8--Proposition 13.
The Court of Appeal erred in ruling that "fees" assessed on manufacturers or other persons contributing to environmental lead contamination, pursuant to the Childhood Lead Poisoning Prevention Act of 1991 (Health & Saf. Code, § 105275 et seq.), which the Legislature had enacted by a simple majority, were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature under Prop. 13 (Cal. Const., art. XIII A, § 3). Rather, the fees imposed were bona fide regulatory fees. The act requires manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating

the adverse health effects their products created in the community. The shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is a reasonable police power decision. The fact that the fees were charged after, rather than before, the product's adverse effects were realized was immaterial to the question whether the measure imposed valid regulatory fees rather than taxes. Also, if regulation is the primary purpose of a fee, the mere fact that revenue is also obtained does not make the imposition a tax.

[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 784.]

([3])
Property Taxes § 7.6--Constitutional Provisions--Proposition 13-- Assessments as Fees or Taxes:Taxation § 3--Construction.
In determining under Prop. 13 (Cal. Const., art. XIII A, § 3), whether impositions are "taxes" or "fees" is a question of law for the appellate courts to decide on independent review of the facts. The term "tax" has no fixed meaning, and the distinction between taxes and fees is frequently blurred, taking on different meanings in different contexts. In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges. But compulsory fees may be deemed legitimate fees rather than taxes.

([4a], [4b])
Property Taxes § 7.8--Constitutional Provisions--Proposition 13--Special Taxes:Taxation § 3--Construction.
There are three general categories of fees or assessments involved in disputes concerning whether they are in legal effect "special taxes" required to be enacted by a two-thirds vote of the Legislature under Prop. 13 (Cal. Const., art. XIII A, §§ 3 and 4). They are (1) special assessments, based on the value of benefits conferred on property, (2) development fees, exacted in return for permits or other government privileges, and (3) regulatory fees, imposed under the police power. Special assessments on property or similar business charges, in amounts reasonably reflecting the value of the benefits conferred by improvements, are not "special taxes." Similarly, development fees exacted in return for building permits or other governmental privileges are not special taxes if the amount of the fees bears a reasonable relation to the development's probable costs to the community and benefits to the developer. Also, fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes, are not special taxes.

([5])
Property Taxes § 7.8--Constitutional Provisions--Proposition 13-- Assessments as Regulatory Fee:Taxation § 3--Construction.
In order to show that an imposition is a regulatory fee and not a special tax under Prop. 13 (Cal. Const., art. XIII A, § 3), the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity.

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CHIN, J.

In 1991, by simple majority vote, the Legislature enacted the Childhood Lead Poisoning Prevention Act of 1991 (the Act) (Stats. 1991, ch. 799, § 3, amended Stats. 1995, ch. 415, § 5; see ***870** Health & Saf. Code, § 105275 et seq.).[1] The Act provided evaluation, screening, and medically necessary follow-up services for children who were deemed potential victims of lead poisoning. The Act's program was entirely supported by "fees" assessed on manufacturers or other persons contributing to environmental lead contamination. (See §§ 105305, 105310.) The question arises whether these fees were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature. (See Cal. Const., art. XIII A, § 3.)

Contrary to the trial court and Court of Appeal, we conclude that the Act imposed bona fide regulatory fees, not taxes, because the Legislature imposed the fees to mitigate the actual or anticipated adverse effects of the fee payers' operations, and under the Act the amount of the fees must bear a reasonable relationship to those adverse effects. Accordingly, the trial court erred in granting summary judgment to award plaintiff Sinclair Paint Company (Sinclair) a refund of the fees it paid under the Act.

We take the following statement of uncontradicted facts largely from the Court of Appeal opinion in this case. Sinclair paid $97,825.26 in fees for 1991. After the Board of Equalization (the Board) denied Sinclair's administrative claim for refund, Sinclair filed a complaint for refund, alleging the fees assessed under section 105310 were "actually taxes imposed by the California [L]egislature in violation of Proposition 13, Article XIIIA, Section 3 of the California Constitution." The court granted the request of the Department of Health Services (the Department) for leave to intervene. It also granted a similar request to intervene by Ray Cochenour and Cardaryl Commodore, representatives of a class of children suffering from lead poisoning, and People United for a Better Oakland, an unincorporated association whose members include the Act's intended beneficiaries (collectively Cochenour).

Sinclair moved for summary judgment, claiming the Act was invalid on its face because it was not passed by the requisite two-thirds majority vote of the Legislature. The court agreed the Act imposed an unconstitutional tax and granted Sinclair's motion.

The Board, the Department, and Cochenour appealed, contending the Act involves a regulatory fee, not a tax. Appellants also argued the court erred in granting Sinclair summary judgment without compelling it to produce discovery and improperly relied on legislative history in determining the Act's constitutionality. The Court of Appeal affirmed the judgment, concluding that the Act was unconstitutional on its face and rejecting appellants' other claims. We reverse the Court of Appeal's judgment. ***871**

Discussion

I. *The Childhood Lead Poisoning Prevention Act of 1991*

When the Legislature enacted the Act in 1991, it explained the Act's background and purpose in findings that described the numerous health hazards children face when exposed to lead toxicity and declared four state "goals," namely, (1) evaluating, screening, and providing case management for children at risk of lead poisoning, (2) identifying sources of lead contamination responsible for this poisoning, (3) identifying and utilizing programs providing adequate case management for children found to have lead poisoning, and (4) providing education on lead-poisoning detection and case management to state health care providers. (Stats. 1991, ch. 799, § 1.)

The Act directs the Department to adopt regulations establishing a standard of care for evaluation, screening (i.e., measuring lead concentration in blood), and medically necessary follow-up services for children determined to be at risk of lead poisoning. (§ 105285; see § 105280, subd. (e).) If a child is identified as being at risk of lead poisoning, the Department must ensure "appropriate case management," i.e., "health care referrals, environmental assessments, and educational activities" needed to reduce the child's exposure to lead and its consequences. (§§ 105280, subd. (a), 105290.) Additionally, the Act requires the Department to collect data and report on the effectiveness of case management efforts. (§ 105295.)

The Department has "broad regulatory authority to fully implement and effectuate the purposes" of the Act. (§ 105300.) This authority "include[s], but is not limited to," the development of protocols for screening and for appropriate case management; the designation of laboratories qualified to analyze blood specimens for lead concentrations, and the monitoring of those laboratories for accuracy; the development of reporting procedures by laboratories; reimbursement for state-sponsored services related to screening and case management; establishment of lower lead concentrations in whole blood than those specified by the United States Centers for Disease Control for lead poisoning; notification to parents or guardians of the results of blood-lead testing and environmental

assessment; and establishment of a periodicity schedule for evaluating childhood lead poisoning. (§ 105300.)

The Act states that its program of evaluation, screening, and follow-up is supported *entirely* by fees collected under the Act: "Notwithstanding the scope of activity mandated by this chapter, in no event shall this chapter be interpreted to require services necessitating expenditures in any fiscal year in excess of the fees, and earnings therefrom, collected pursuant to Section ***872** 105310. This chapter shall be implemented only to the extent fee revenues pursuant to Section 105310 are available for expenditure for purposes of this chapter." (§ 105305.)

Section 105310 imposes the fees at issue here. In pertinent part, that section imposes fees on manufacturers and other persons formerly and/or presently engaged in the stream of commerce of lead or products containing lead, or who are otherwise responsible for identifiable sources of lead, which have significantly contributed and/or currently contribute to environmental lead contamination. (§ 105310, subd. (a).) The Department must determine fees based on the manufacturer's or other person's past and present responsibility for environmental lead contamination, or its "market share" responsibility for this contamination. (§ 105310, subd. (b).)

Those persons able to show that their industry did not contribute to environmental lead contamination, or that their lead-containing product does not and did not "result in quantifiably persistent environmental lead contamination," are exempt from paying the fees. (§ 105310, subd. (d).)

The Legislature has authorized the Department to adopt regulations establishing the specific fees to be assessed the parties identified in section 105310, subdivision (a). (§ 105310, subd. (b).) The formula for calculating fees attributable to leaded architectural coatings, including ordinary house paint, is set forth in California Code of Regulations, title 17, section 33020.

II. *Proposition 13*

([1]) In June 1978, California voters added article XIII A, commonly known as the Jarvis-Gann Property Tax Initiative or Proposition 13 (article XIII A), to the state Constitution. The initiative's purpose was to assure effective real property tax relief by means of an "interlocking 'package' " consisting of a real property tax rate limitation (art. XIII A, § 1), a real property assessment limitation (art. XIII A, § 2), a restriction on state taxes (art. XIII A, § 3), and a restriction on local taxes (art. XIII A, § 4). (*Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equalization* (1978) 22 Cal.3d 208, 231 [149 Cal.Rptr. 239, 583 P.2d 1281] (*Amador Valley*); see also *County of Los Angeles* v. *Sasaki* (1994) 23 Cal.App.4th 1442, 1451 [29 Cal.Rptr.2d 103].)

Section 3 of article XIII A restricts the enactment of changes in state taxes, as follows: "From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods ***873** of computation must be imposed by an Act passed by not less than two-thirds of all members ... of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed."

Section 4 of article XIII A imposes similar restrictions on local entities: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose *special taxes* on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." (Italics added.)

As we explained in *Amador Valley*, "... since any tax savings resulting from the operation of sections 1 and 2 [of article XIII A] could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, sections 3 and 4 combine to place restrictions upon the imposition of such taxes." (*Amador Valley*, *supra*, 22 Cal.3d at p. 231.)

III. *Taxes or Fees?*

([2a]) Are the "fees" section 105310 imposes in legal effect "taxes enacted for the purpose of increasing revenues" under article XIII A, section 3, and therefore subject to a two-thirds majority vote? Although we have found no cases that interpret the language of section 3, several California appellate decisions have considered whether various fees are really "special taxes" under article XIII A, section 4. (See also *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 57 [184 Cal.Rptr. 713, 648 P.2d 935] ["special taxes" are taxes levied for a specific purpose rather than for general governmental purposes]; Gov. Code, § 50076 [excluding from the term "special tax" in article XIII A, section 4, "any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes"].) Because of the close, "interlocking" relationship between the various sections of article XIII A (see *Amador Valley*, *supra*, 22 Cal.3d at p. 231), we believe these "special tax" cases may be helpful, though not conclusive, in deciding the

case before us. The reasons why particular fees are, or are not, "special taxes" under article XIII A, section 4, may apply equally to section 3 cases.[2]

We first consider certain general guidelines used in determining whether "taxes" are involved in particular situations. ([3]) The cases agree that ***874** whether impositions are "taxes" or "fees" is a question of law for the appellate courts to decide on independent review of the facts. (*Bixel Associates v. City of Los Angeles* (1989) 216 Cal.App.3d 1208, 1216 [265 Cal.Rptr. 347]; *California Bldg. Industry Assn. v. Governing Bd.* (1988) 206 Cal.App.3d 212, 234 [253 Cal.Rptr. 497]; *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1504 [246 Cal.Rptr. 21].)

The cases recognize that "tax" has no fixed meaning, and that the distinction between taxes and fees is frequently "blurred," taking on different meanings in different contexts. (*Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at p. 1504; *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 905 [223 Cal.Rptr. 379]; *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 660 [166 Cal.Rptr. 674]; *County of Fresno* v. *Malmstrom* (1979) 94 Cal.App.3d 974, 983-984 [156 Cal.Rptr. 777].) In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 240 [1 Cal.Rptr.2d 818]; *County of Fresno* v. *Malmstrom*, *supra*, 94 Cal.App.3d at p. 983 ["Taxes are raised for the general revenue of the governmental entity to pay for a variety of public services."].) Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges. (*Shapell Industries, Inc. v. Governing Board*, *supra*, 1 Cal.App.4th at p. 240; *Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at pp. 1505-1506; see *Terminal Plaza Corp. v. City and County of San Francisco*, *supra*, 177 Cal.App.3d at p. 907.) But compulsory fees may be deemed legitimate fees rather than taxes. (See *Kern County Farm Bureau v. County of Kern* (1993) 19 Cal.App.4th 1416, 1424 [23 Cal.Rptr.2d 910].)

([4a]) The "special tax" cases have involved three general categories of fees or assessments: (1) special assessments, based on the value of benefits conferred on property; (2) development fees, exacted in return for permits or other government privileges; and (3) regulatory fees, imposed under the police power. Although these three categories may overlap in a particular case, we consider them separately.

The cases uniformly hold that *special assessments* on property or similar business charges, in amounts reasonably reflecting the value of the benefits conferred by improvements, are not "special taxes" under article XIII A, section 4. (*Evans v. City of San Jose* (1992) 3 Cal.App.4th 728, 735-739 [4 Cal.Rptr.2d 601] [assessments on businesses for downtown promotion]; ***875** *J. W. Jones Companies v. City of San Diego* (1984) 157 Cal.App.3d 745, 750-758 [203 Cal.Rptr. 580] [facilities benefit assessments]; *City Council v. South* (1983) 146 Cal.App.3d 320, 332 [194 Cal.Rptr. 110] [special assessments on real property]; *County of Fresno v. Malmstrom*, *supra*, 94 Cal.App.3d at pp. 984-985 [special assessments for construction of streets].)

Similarly, *development fees* exacted in return for building permits or other governmental privileges are not special taxes if the amount of the fees bears a reasonable relation to the development's probable costs to the community and benefits to the developer. (*Shapell Industries, Inc. v. Governing Board*, *supra*, 1 Cal.App.4th at p. 240 [school facilities fees]; *Bixel Associates v. City of Los Angeles*, *supra*, 216 Cal.App.3d at pp. 1211, 1218-1219 [fire hydrant fees]; *California Bldg. Industry Assn. v. Governing Bd.*, *supra*, 206 Cal.App.3d at pp. 235-237 [school facilities development fees]; *Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at pp. 1504-1506 [transit impact fees]; *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 235-238 [211 Cal.Rptr. 567] [new facilities water hookup fees]; *Trent Meredith, Inc.* v. *City of Oxnard* (1981) 114 Cal.App.3d 317, 325-328 [170 Cal.Rptr. 685] [fees as precondition for building permits]; *Mills v. County of Trinity*, *supra*, 108 Cal.App.3d at pp. 661-663 [fees for processing subdivision, zoning, and land use applications]; see *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 898 [50 Cal.Rptr.2d 242, 911 P.2d 429] (conc. opn. of Mosk, J.).)

According to Sinclair, because the present fees have been imposed solely to defray the cost of the state's program of evaluation, screening, and follow-up services for children determined to be at risk for lead poisoning, they are not analogous to either special assessments or development fees, for they neither reimburse the state for special benefits conferred on manufacturers of lead-based products nor compensate the state for governmental privileges granted to those manufacturers. As the Court of Appeal observed, the fees challenged here "do not constitute payment for a government benefit or service. The program described in the Act bears no resemblance to regulatory schemes involving special assessments,

developer fees, or efforts to recoup the cost of processing land use applications where the benefit analysis is typically applied. [Citations.] The face of the Act makes clear the funds collected pursuant to section 105310 are used to benefit children exposed to lead, not Sinclair or other manufacturers in the stream of commerce for products containing lead."

([2b]) Appellants argue, however, that the challenged fees fall squarely within a third recognized category not dependent on government-conferred benefits or privileges, namely, *regulatory fees* imposed under the police power, rather than the taxing power. We agree. ***876**

([4b]) We have acknowledged that the term "special taxes" in article XIII A, section 4, " 'does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes.' [Citations.]" (*Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, 721 P.2d 1111] (*Pennell*), affd. on other grounds *sub nom. Pennell v. San Jose* (1988) 485 U.S. 1 [108 S.Ct. 849, 99 L.Ed.2d 1], quoting from *Mills v. County of Trinity*, *supra*, 108 Cal.App.3d at pp. 659-660; see *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740, 760-762 [53 Cal.Rptr.2d 120] [upholding regulatory fees charged to alcoholic beverage sale licensees to support pilot project to address public nuisances associated with those sales]; *Kern County Farm Bureau v. County of Kern*, *supra*, 19 Cal.App.4th at pp. 1422-1425 [upholding landfill assessment based on land use to reduce illegal waste disposal]; *City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 280-285 [17 Cal.Rptr.2d 845] [upholding waste disposal surcharge imposed on waste haulers]; *Evans v. City of San Jose*, *supra*, 3 Cal.App.4th at p. 737; *San Diego Gas & Electric Co.* v. *San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1145-1149 [250 Cal.Rptr. 420] (*SDG&E*) [upholding emissions-based formula for recovering direct and indirect costs of pollution emission permit programs]; *United Business Com.* v . *City of San Diego* (1979) 91 Cal.App.3d 156, 166-168 [154 Cal.Rptr. 263] (*United Business*) [upholding fees for inspecting and inventorying on-premises advertising signs].)

Pennell upheld rental unit fees that a city imposed under its rent control ordinance to assure it recovered the actual costs of providing and administering a rental dispute hearing process. (*Pennell*, *supra*, 42 Cal.3d at p. 375.) We explained in *Pennell* that regulatory fees in amounts necessary to carry out the regulation's purpose are valid despite the absence of any perceived "benefit" accruing to the fee payers. (*Id.* at p. 375, fn. 11; see also *SDG&E*, *supra*, 203 Cal.App.3d at p. 1146, fn. 18; *Mills* v. *County of Trinity*, *supra*, 108 Cal.App.3d at p. 661.)

We observe that Sinclair, in moving for summary judgment, did not contend that the fees exceed in amount the reasonable cost of providing the protective services for which the fees are charged, or that the fees were levied for any *unrelated* revenue purposes. (See *Pennell*, *supra*, 42 Cal.3d at p. 375.) Moreover, Sinclair has not yet sought to establish that the amount of the fees bears no reasonable relationship to the social or economic "burdens" that Sinclair's operations generated. (See *SDG&E*, *supra*, 203 Cal.App.3d at p. 1146; see also § 105310, subds. (b), (d); *Sea & Sage Audubon Society, Inc.* v. *Planning Com.* (1983) 34 Cal.3d 412, 421 [***877** 194 Cal.Rptr. 357, 668 P.2d 664] [persons challenging fees have burden of establishing invalidity].) Sinclair does contend, however, that the Act is not *regulatory* in nature, being primarily aimed at producing revenue.

According to Sinclair, the challenged fees were in effect "taxes" because the compulsory revenue measure that imposed them was not part of a *regulatory* effort. The Court of Appeal agreed, relying on prior cases indicating that where payments are exacted solely for *revenue* purposes and give the right to carry on the business with no further conditions, they are taxes. (E.g., *United Business*, *supra*, 91 Cal.App.3d at p. 165.) The Court of Appeal held that "Placing the factors distinguishing taxes and fees along a continuum, we conclude the monies paid by Sinclair pursuant to the Act are more like taxes than fees. [¶] *There is nothing on the face of the Act to show the fees collected are used to regulate Sinclair.* Apart from mere calculation of the payment, the Department's regulatory authority involves implementation of the program to evaluate, screen, and provide followup services to children at risk for lead poisoning. The Act does not require Sinclair to comply with any other conditions; it merely requires Sinclair to pay what the Department determines to be its share of the program cost."

Contrary to the Court of Appeal, we believe that section 105310 imposes bona fide regulatory fees. It requires manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community. Viewed as a "mitigating effects" measure, it is comparable in character to similar police power measures imposing fees to defray the actual or anticipated adverse effects of various business operations.

From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less "regulatory" in nature than the initial permit or licensing programs that allowed them to operate. Moreover, imposition of "mitigating effects" fees in a substantial amount (Sinclair allegedly paid $97,825.26 in 1991) also "regulates" future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products. (Cf. *SDG&E*, *supra*, 203 Cal.App.3d at p. 1147, fn. 20 [emissions-based fees provide incentive to use nonpollutant fuels].)

Sinclair disputes the state's authority to impose industry-wide "remediation fees" to compensate for the adverse societal effects generated by an industry's products. To the contrary, the case law previously cited or discussed clearly indicates that the police power is broad enough to include ***878** mandatory remedial measures to mitigate the *past, present, or future* adverse impact of the fee payer's operations, at least where, as here, the measure requires a causal connection or nexus between the product and its adverse effects. (See *City of Oakland v. Superior Court*, *supra*, 45 Cal.App.4th at pp. 760-762; *Kern County Farm Bureau v. County of Kern*, *supra*, 19 Cal.App.4th at pp. 1422-1425; *City of Dublin v. County of Alameda*, *supra*, 14 Cal.App.4th at pp. 284-285; *SDG&E*, *supra*, 203 Cal.App.3d at pp. 1146-1149; *United Business*, *supra*, 91 Cal.App.3d at p. 168; *Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at pp. 1504-1506 [fees to pay for increased transit costs]; *J. W. Jones Companies v. City of San Diego*, *supra*, 157 Cal.App.3d at pp. 755, 758 [fees to defray costs of additional public facilities]; *Trent Meredith, Inc.* v. *City of Oxnard*, *supra*, 114 Cal.App.3d at p. 325 [fees to reduce growth impact of new subdivision]; see also *Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686, 694 [151 P. 398] [police power authorizes legislation necessary or proper for protection of legitimate public interest]; *County of Plumas* v . *Wheeler* (1906) 149 Cal. 758, 761-764 [87 P. 909] [broad legislative discretion to regulate business, including license fees or charges]; 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 784, p. 311 ["police power is simply the power of sovereignty or power to govern-the inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare"]; see generally, 6A McQuillan, The Law of Municipal Corporations (3d rev. ed. 1997) Municipal Police Power and Ordinances, § 24.01 et seq., p. 7 et seq.)

SDG&E involved regulatory fees comparable in some respects to the fees challenged here. (*SDG&E*, *supra*, 203 Cal.App.3d 1132.) There, 1982 legislation (see § 42311) empowered local air pollution control districts to apportion the costs of their permit programs among all monitored polluters according to a formula based on the amount of emissions they discharged. (See *SDG&E*, *supra*, 203 Cal.App.3d at p. 1135.) ([5]) The *SDG&E* court observed that "to show a fee is a regulatory fee and not a special tax, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity." (*Id.* at p. 1146, fn. omitted; see *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.*, *supra*, 165 Cal.App.3d at pp. 234-235.)

In *SDG&E*, the amount of the regulatory fees was limited to the reasonable costs of each district's program, and the allocation of costs based on emissions "fairly relates to the permit holder's burden on the district's programs." (*SDG&E*, *supra*, 203 Cal.App.3d at p. 1146.) Accordingly, the ***879** court concluded that the fees were not "special taxes" under article XIII A, section 4. (*SDG&E*, *supra*, 203 Cal.App.3d at p. 1148.)

As the court observed in *SDG&E*, "Proposition 13's goal of providing effective property tax relief is not subverted by the increase in fees or the emissions-based apportionment formula. A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves ...." (*SDG&E*, *supra*, 203 Cal.App.3d at p. 1148.) ([2c]) In our view, the shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is likewise a reasonable police power decision. (See also *Mills* v. *County of Trinity*, *supra*, 108 Cal.App.3d at p. 663; *County of Fresno v. Malmstrom*, *supra*, 94 Cal.App.3d at p. 985 [special assessments have no impact on government spending].)

The fact that the challenged fees were charged after, rather than before, the product's adverse effects were realized is immaterial to the question whether the measure imposes valid regulatory fees rather than taxes. *City of Oakland v. Superior Court* seems close on point. There, the court upheld city fees imposed on retailers of alcoholic beverages to defray the cost of providing and administering hearings into nuisance problems associated

with the prior sale of those beverages. The court first observed that "If a business imposes an unusual burden on city services, a municipality may properly impose fees pursuant to its police powers" to assure that the persons responsible "pay their fair share of the cost of government." (*City of Oakland v. Superior Court, supra,* 45 Cal.App.4th at p. 761.) The court concluded that "The ordinance's primary purpose is regulatory-to create an environment in which nuisance and criminal activities associated with alcoholic beverage retail establishments may be reduced or eliminated. Thus, the fee imposed ... is not a tax imposed to pay general revenue to the local governmental entity, but is a regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance. [Citation.]" (*Id.* at p. 762.)

The court in *United Business* applied the "regulation/revenue" distinction to conclude that sign inventory fees adopted to recover the city's cost of inventorying signs and bringing them into conformance with law were regulatory fees, not revenue-raising taxes. The court observed that, under the police power, municipalities may impose fees for the purpose of legitimate regulation, and not mere revenue-raising, if the fees do not exceed the reasonably necessary expense of the regulatory effort. (***880** *United Business, supra,* 91 Cal.App.3d at p. 165, and authorities cited.) Quoting with approval from an earlier decision, the court noted that, if revenue is the primary purpose, and regulation is merely incidental, the imposition is a tax, but if regulation is the primary purpose, the mere fact that revenue is also obtained does not make the imposition a tax. (*Ibid.*) Moreover, according to *United Business,* if a fee is exacted for revenue purposes, and its payment gives the right to carry on business without any further conditions, it is a tax. (*Ibid.*; see also *City of Oakland v. Superior Court, supra,* 45 Cal.App.4th at p. 761; *County of Plumas v. Wheeler, supra,* 149 Cal. at p. 763 [fee in amount greater than reasonably needed to regulate business "cannot stand as an exercise of the police power"]; *Mills v. County of Trinity, supra,* 108 Cal.App.3d at pp. 659-660; *City & County of San Francisco v. Boss* (1948) 83 Cal.App.2d 445, 450-451 [189 P.2d 32].)

The Court of Appeal, citing *United Business,* stressed that the challenged fees were exacted solely for revenue purposes, and their payment gave Sinclair and others the right to carry on the business without any further conditions. We see two flaws in that analysis. First, *all* regulatory fees are necessarily aimed at raising "revenue" to defray the cost of the regulatory program in question, but that fact does not automatically render those fees "taxes." As stated in *United Business,* if regulation is the primary purpose of the fee measure, the mere fact that the measure also generates revenue does not make the imposition a tax. (*United Business, supra,* 91 Cal.App.3d at p. 165; see also *Mills* v. *County of Trinity, supra,* 108 Cal.App.3d at p. 660 [rejecting broad definition of "tax" as including all fees and charges that exact money for public purposes].)

Second, we find inconclusive the fact that the Act permits Sinclair and other producers to carry on their operations without any further conditions *specified in the Act itself.* As we have indicated, fees can "regulate" business entities without directly licensing them by mitigating their operations' adverse effects. Moreover, as appellants observe, the Act is part of a broader regulatory scheme by which, under various state and federal statutes, the state regulates Sinclair and other manufacturers in the stream of commerce for products containing lead. That being so, Sinclair's payment of the challenged fees did not confer the right to carry on business without any further conditions or regulation.

The Court of Appeal rejected appellants' argument invoking other state and federal regulations: "First, there is nothing on the face of the Act or the accompanying statement of legislative purpose which links the Act's programs for children at risk for lead poisoning with the cited state or federal statutes regulating lead. Second, none of the fees collected pursuant to ***881** section 105310 are used to fund those regulatory efforts." However, it is undisputed that Sinclair and other manufacturers of lead-based products remain subject to government regulation, that payment of the challenged fees therefore does not entitle those manufacturers to operate free of regulation, and that the state must use the funds it collects under section 105310 *exclusively* for mitigating the adverse effects of lead poisoning of children, and not for general revenue purposes. (§ 105310, subd. (f).)

Under existing case law, we can reasonably characterize the challenged fees as *regulatory fees* rather than as taxes. Accordingly, we conclude the trial court erred in granting Sinclair summary judgment on the constitutional issues. Of course, Sinclair should be permitted to attempt to prove at trial that the amount of fees assessed and paid exceeded the reasonable cost of providing the protective services for which the fees were charged, or that the fees were levied for unrelated revenue purposes. (See *Pennell, supra,* 42 Cal.3d at p. 375.) Additionally, Sinclair will have the opportunity to try to show that no clear nexus exists between its products and childhood lead poisoning, or that the amount of the fees bore no reasonable relationship to the social or economic "burdens" its

operations generated. (*SDG&E*, *supra*, 203 Cal.App.3d. at p. 1146; see also § 105310, subds. (b), (d).)

Disposition

The judgment of the Court of Appeal, affirming the trial court's grant of summary judgment in Sinclair's favor, is reversed.

George, C. J., Mosk, J., Kennard, J., Baxter, J., Werdegar, J., and Armstrong, J.,* concurred.

Footnotes

* Associate Justice of the Court of Appeal, Second District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

1 All further statutory references are to the Health and Safety Code unless otherwise noted.

2 We are not here concerned with issues arising under constitutional amendments effected by a recent initiative measure (Proposition 218) adopted at the November 5, 1996, General Election. That measure contains new restrictions on local agencies' power to impose fees and assessments.

* Associate Justice of the Court of Appeal, Second District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Rehearing Denied and Opinion Modified June 28, 1989
210 Cal.App.3d 1421, 259 Cal.Rptr. 132

TAHOE-SIERRA PRESERVATION COUNCIL et al., Plaintiffs and Appellants,
v.
STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Respondents

No. C000386.
Court of Appeal, Third District, California.
May 30, 1989.

SUMMARY

Landowners, who were precluded from constructing new residences on their lots due to a State Water Resources Control Board's Lake Tahoe water quality control plan, challenged the validity of that plan on the basis of its conflict with state and federal law, and on the basis that it was a taking of land without just compensation in violation of U.S. Const., 5th and 14th Amends. The plan had been adopted to prevent increased surface runoff of water carrying soil products into Lake Tahoe, caused by the increased land coverage of new development, and the plan effectively limited new development by requiring permits. The trial court granted the state board's motion for judgment on the pleadings. (Superior Court of Placer County, No. 58789, Richard A. Sims and George Yonehiro, Judges.)

The Court of Appeal affirmed with modifications. It held that federal law regarding water pollution acted as a minimum standard that states are required to follow, but does not preclude states from enacting more restrictive measures. It also held that the unjust taking of property claim was not ripe since the landowners had not alleged that a waste discharge requirement under the plan had been sought, and had not sought compensation from the state. (Opinion by Blease, J., with Puglia, P. J., and Evans, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

([1])
Pollution and Conservation Laws § 5--Water Pollution--Definition-- Nonpoint Source of Pollution.
For purposes of water pollution statutes, "nonpoint sources of pollution" are defined by inference from the definition of "point sources of water pollution," which are sources of pollution directly attributable to a specific property or project or action. A "point source" is defined under the Federal Water Pollution Control Act as a discernible, confined, and discrete conveyance from which pollutants are or may be discharged (33 U.S.C. § 1362(14)).

([2])
Pollution and Conservation Laws § 5--Water Pollution--State Permit System--Compliance With Federal Law.
Measures adopted by the State Water Resources Control Board which utilized a state waste discharge permit system to regulate nonpoint source pollution into Lake Tahoe were not beyond the authority granted the board under Wat. Code, § 13170, to enact a water quality control plan required by the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.). Although federal permits are not used for regulation of nonpoint sources of pollution under the federal act, a state is not precluded from resorting to this method of regulation under its own authority. The Water Code is designed to insure a limited conformity of state law with federal law, not to oust the state of its own powers to control nonpoint sources of water pollution. Wat. Code, § 13374 requires equivalency with federal law only for purposes of state compliance with the minimum requirements of the federal mandate, and federal law does not preclude the state from utilizing its broader authority to regulate nonpoint sources of pollution.

[See **Cal.Jur.3d,** Pollution and Conservation Laws, § 84 et seq.; **Am.Jur.2d,** Pollution Control, § 129 et seq.]

([3])
Pollution and Conservation Laws § 5--Water Pollution--Water Control Plan--Conflict With Statute Regarding Compliance With Water Discharge Requirements in Specific Manner.
Wat. Code, § 13360 (circumstances justifying order to comply with water quality requirements in specific manner), is a shield against unwarranted interference with the ingenuity of a party subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. Thus, the State Water Resources

Control Board's plan that set a discharge prohibition of pollutants into Lake Tahoe did not conflict with § 13360, and the trial court properly granted the board's motion for judgment on the pleadings of a complaint brought by landowners who were precluded from constructing residences on their lots due to the Lake Tahoe water quality control plan promulgated by the board, notwithstanding that the only concurrently feasible method of preventing discharge was compliance with the plan's standards. Where the lack of available alternatives is a constraint imposed by present technology and the laws of nature, rather than the law of the board specifying design, location, type of construction, or particular manner of compliance, there is no violation of § 13360.

([4a], [4b])
Pollution and Conservation Laws § 5--Water Pollution--Water Quality Plan--Due Process--Validity.
A water quality plan designed to prevent increased surface runoff of water carrying soil products into Lake Tahoe waters did not deny landowners, who were precluded from building residences on their property due to the plan, from procedural due process of law, notwithstanding the landowners' argument that the plan failed to specify discharge in terms of quantities of materials. The classification system incorporated in the plan and the provisions of the plan itself afforded the landowners sufficient information concerning the causes and nature of the discharge of soil products into Lake Tahoe attributable to excess coverage of land by new development to address the discharge prohibition. Also, the landowners were afforded an opportunity to show their development was in compliance with the prohibition. The landowners presented no substantive due process claim, notwithstanding there was no feasible technology that would enable them to develop in excess of the coverage restrictions and not cause incremental detrimental runoff, since avoidance of this consequences was a legitimate state interest. Also, the discharge standard in the plan did not operate as a conclusive presumption since the prohibition did not preclude the landowners from showing that, despite excess coverage, there was no prohibited discharge for a proposed development.

([5])
Administrative Law § 29--Effect and Validity of Rules and Regulations.
An administrative rule, legislative in character is subject to the same test of validity as an act of the Legislature. One who attacks such a rule has the burden of showing its unreasonableness. A standard that has no content is no standard at all and is unreasonable.

([6a], [6b], [6c])
Constitutional Law § 48--Police Power--Property and Its Uses--Taking--Ripeness.
A claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulation has reached a final decision regarding the application of the regulation to the property at issue. Also, a taking claim is not ripe until the claimant has sought and been denied just compensation through available adequate procedures for obtaining compensation. Thus, the trial court properly granted the State Water Resources Control Board's motion for judgment on the pleadings of a complaint brought by landowners who were precluded from constructing residences on their lots due to a Lake Tahoe water quality control plan promulgated by the board. The landowners had not alleged that water discharge requirements under the plan had been sought, had not taken the proper steps so that the plan could be challenged on its face, and had not sought compensation for their property.

([7])
Constitutional Law § 49--Police Power--Court Review of Exercise-- Constitutionality of Regulation's Application.
The question whether an alleged unconstitutional application of a governmental regulation may be avoided is not governed by the conclusional allegations of the complaint. Rather, it turns upon the court's appraisal of the legal effect of the regulation.

([8])
Constitutional Law § 23--Constitutionality of Legislation--Raising Question of Constitutionality--Burden of Proof.
Landowners could not challenge the facial constitutionality of a Lake Tahoe water quality control plan promulgated by the State Water Resources Control Board, where they had not carried their burden of pleading compliance with available administrative means by which they might escape the strictures of the plan. Carrying that burden is a condition for obtaining an adjudication of the plan's constitutionality. The landowners' allegation that a specific application of the plan's land classification scheme to their property was a foregone conclusion did not meet their burden, since the allegation was not supported by a persuasive showing. Thus, the landowners were limited to an attack on the plan as applied to themselves.

COUNSEL
Ronald A. Zumbrun, Robin L. Rivett and Fred A. Slimp II for Plaintiffs and Appellants.

John K. Van de Kamp, Attorney General, Robert H. Connett, Assistant Attorney General, and Edna Walz, Deputy Attorney General, for Defendants and Respondents. ***1425**

BLEASE, J.

This appeal concerns the lawfulness of measures adopted by the State Water Resources Control Board (Water Board) to prevent increased surface runoff of water carrying soil products into Lake Tahoe, caused by the increased land coverage of new development, from turning the lake from clear blue to turbid brown. The Lake Tahoe Basin Water Quality Plan (Plan) establishes standards which have the effect of limiting the amounts of land coverage by roads, buildings and the like, in designated areas within the basin. New development which exceeds land coverage standards in the Plan requires a permit from a regional board charged with the responsibility of enforcing the Plan.

Tahoe-Sierra Preservation Council, a nonprofit corporation, and eight owners of lots in the Lake Tahoe basin (plaintiffs) seek to invalidate the Plan as exceeding the statutory and constitutional authority of the Water Board. Plaintiffs contend that the trial court erred in granting judgment on the pleadings in their action for declaratory and injunctive relief. We hold that the Plan does not exceed the Water Board's statutory and constitutional authority to employ a permit system to enforce the Plan and conclude that the claims of unconstitutional taking are not ripe.

We will affirm the judgment with modifications.

Introduction

The plaintiffs first challenge the validity of the enforcement mechanism employed in the Plan, a permit system adopted pursuant to the waste discharge requirements provisions of the Water Code. (Wat. Code, §§ 13260-13273.)[1] We hereafter refer to this enforcement mechanism as the state permit system or waste discharge permit system. ([1])**(See fn. 2.)** Plaintiffs claim that the Water Board lacks statutory authority to adopt a water quality control plan which enforces limits on "nonpoint" sources of pollution, as here,[2] by means of such a state permit system. ***1426**

The challenge to the permit system implicates the scope of the Water Board's authority, under section 13170, to "adopt water quality control plans ... for waters for which water quality standards are required by the Federal Water Pollution Control Act ...." (FWPCA.) Plaintiffs argue that this authority is limited by the constraint they derive from federal law that a federal permit may not be used to regulate the nonpoint sources of pollution of waters subject to the FWPCA. As we show, the argument fails because the restrictions of the federal system do not limit the state's enforcement authority and hence are not applicable to the Plan.

Alternatively, plaintiffs claim that the Plan violates section 13360, which prohibits the Water Board from specifying the particular manner of compliance with the state permit system. The Plan precludes water runoff above that which could occur under the permitted limitations on land coverage. As we shall explain, the Plan does not preclude any means of compliance with this runoff limitation and hence does not improperly specify the particular manner of compliance.

Plaintiffs also claim the Plan is unconstitutional. They first claim that the Plan's coverage standards deny them procedural due process of law. They argue that the waste discharge standards must be stated in terms of quantities of identified materials that may be discharged from their property; that since the Plan regulates the sources of pollution by restricting land coverages they are deprived of a fair opportunity to prove that they can develop their lands in excess of the permitted coverage without adversely affecting the water quality of the lake. The challenge fails for the reason that plaintiffs are afforded an adequate opportunity under the Plan to show compliance with the substantive runoff standard and that is all the process which they are due. Plaintiffs' alternative casting of the perceived defect, as a prohibited conclusive presumption - that the land classification conclusively determines the permitted amount of discharge - fails for the same reason. The Plan does not rule out any mode of evidence that plaintiffs might adduce to establish compliance by their proposed development with the substantive rule of discharge.

Plaintiffs then claim that the Plan amounts to an unconstitutional regulatory taking of their property without just compensation. We shall conclude that the claim is not ripe.

Facts and Procedural Background

The appeal arises from a judgment on the pleadings. For that reason, the factual assertions material to the resolution of the appeal are derived from ***1427** the pleadings and matters which were judicially noticed by the trial court or are so noticeable by this court. The following claims of fact are derived from plaintiffs'

complaint, the Plan as amended which is incorporated therein, and a Plan amendment adopted in January 1983 which was put before the trial court by the Water Board's motion for judicial notice.

Lake Tahoe is extraordinarily clear and pure. It is possible to see to depths of over 120 feet. Extremely low rates of growth of algae in the lake impart a deep blue color, unsurpassed by any lake in the world. Geology, soils, vegetation, and human activities profoundly influence the rate of nutrient input to the waters of the Lake Tahoe basin and thus determine the quality of the lake and its tributaries. Rapid development in the basin over the past two decades is causing a deterioration of the water quality of the lake. Over the past 20 years, the rate of algal growth in the lake has doubled. The algal growth rate is increasing at an accelerating rate. Evidence indicates that the lake's exceptional water clarity has diminished within the last decade. If the trend continues, the lake's translucent blue color will be altered.

The surface runoff of water carrying soil products into the lake is the principal source of pollutants which induce the growth of algae in the lake. Water runoff breaks down basin soils and transports erosion products to the lake. These erosion products include soil particles, which cause turbidity and sedimentation, and nutrients, which stimulate algal growth. Under natural conditions, surface runoff of water entering Lake Tahoe contains extremely low concentrations of suspended sediment and nutrients. The natural balance, however, is easily upset.

Development in the basin has greatly upset the natural balance by the increased generation of sediment and nutrients. This occurs because development removes the vegetative cover decreasing the infiltration of water into the soil by precipitation, thereby increasing the runoff of water and the accompanying soils. Erosion rates dramatically increase and the uptake of nutrients by vegetative cover decreases when the cover is removed. Development increases impervious surface area, i.e. area impervious to the penetration and infiltration of water. The construction of structures, paved areas, and other impervious surfaces decreases infiltration of water and greatly increases surface runoff of water. Natural channels downstream of paved areas experience increased runoff rates and erosion. Finally, development creates unstable conditions. Areas stripped of vegetative cover are left bare. Cut and fill slopes often are steeper than the natural angle of repose and have no surface protection. Stream environment zones are overloaded by ***1428** increased runoff and sediment loads. Construction and filling within stream environment zones convert slow sheet flow into channelized flow.

The need for water quality standards and water quality planning to protect Lake Tahoe has long been recognized. In 1966, the Federal Water Pollution Control Administration (now the Environmental Protection Agency) convened the Conference of the Matter of Pollution of the Interstate Waters of Lake Tahoe and Its Tributaries. The conference found that sewage disposal and erosion caused by development within the basin threatened the water quality of the lake. The conference recommended adoption of more stringent water quality standards, export of all wastewater and solid waste from the basin, and enforcement of tighter controls over development. Shortly after the conference the California Regional Water Quality Control Board, Lahontan Region, adopted a water quality control policy. Nevada adopted standards in 1967.

The primary objective of the policy adopted by the Lahontan Regional Board was "to maintain the waters of Lake Tahoe in their present natural state of crystal clarity and pristine purity." The policy prohibited the discharge of sewage or solid waste to surface waters in the Lake Tahoe basin. It also called for control of erosion and urban runoff. Various measures were undertaken to abate problems attributable to sewage and solid waste. These efforts have been successful in large part.

The principal remaining threat to Lake Tahoe is erosion. In 1970 the Lahontan Regional Board adopted the addendum to the Lake Tahoe water quality control policy regarding control of siltation. The addendum prohibits the discharge of earthen materials to surface waters. Any activity causing erosion which adds silt to Lake Tahoe or its tributaries violates the prohibition. The addendum also prohibits the deposit of any earthen material below the high water mark of the lake or within the 100-year flood plain of any stream. Nevada adopted similar standards in 1973.

A system developed by the forest service in 1971, in cooperation with the Tahoe Regional Planning Agency (TRPA), provides a relative quantification of tolerance of land in the basin to human disturbance. The classification system provides allowable percentages of impervious cover and is set out in Bailey, Land Capability Classification of the Lake Tahoe Basin, California-Nevada (1974). (Hereafter Bailey system.) Factors evaluated under the Bailey system in determining an area's land capability include the hazards from floods, high water tables, poorly drained soils, landslides, fragile flora and fauna, soil erodibility, and slope steepness. All of these factors affect sediment generation from an area following disturbance. ***1429** Lands in the basin are

grouped into three general risk categories, high, moderate, and low, representing the hazard of disturbance from development. The Bailey system was made the basis of coverage standards adopted by the TRPA and the California TRPA.

In July 1978 the Water Board, dissatisfied with efforts of the TRPA to establish controls and enforcement mechanisms that would abate the persistent water quality problems caused by erosion resolved to prepare its own plan. The Plan was released in draft form in January 1980. It was adopted by the Water Board on October 29, 1980. The Plan incorporates the Bailey system. It prohibits discharge of waste attributable to new development in stream environmental zones or new development which is not in accordance with the classification system. The Plan was drafted to satisfy California's obligations for an areawide waste treatment plan under the FWPCA. However, the Plan was also independently grounded in the Water Board's authority under state law.

Soon after the Water Board adopted the Plan plaintiffs filed this action challenging its validity. The Water Board moved for judgment on the pleadings, which the trial court, in August 1982, granted in part and denied in part with leave to amend. The plaintiffs then filed their second amended complaint, which provides the grist for this appeal. In it plaintiffs allege, in material part, as follows:

The plaintiffs who are landowners purchased six lots in single family residence subdivisions, in areas subject to the Plan restrictions, respectively in 1960, 1975, 1975, 1978, 1978, and 1979. Two of them are in areas designated as stream environment zones, three are in areas designated as class 1 zones, and one is in an area designated as a class 3 zone. As a result of the restrictions in the Plan plaintiffs with lots in stream environment zones are precluded from constructing residences upon these lots. As a result of restrictions in the Plan combined with limitations of minimum coverage requirements imposed by *other* governmental regulations the other landowner plaintiffs are precluded from constructing residences.

The Water Board answered the second amended complaint and again moved for judgment on the pleadings. The trial court granted the motion as to all but two counts of the second amended complaint. The Water Board responded to the partial denial by promulgating an amendment to the Plan in January 1983 to explicitly state that landowners would be afforded an opportunity to prove that a proposed development exceeding the coverage limitations would *not* result in a discharge of sediment and nutrients greater than that which would occur if the coverage standard was met. The Water ***1430** Board then moved for judgment on the pleadings (with judicial notice of the Plan amendment) as to the outstanding counts. The motion was granted.

Discussion

I

The Plan seeks to control the water quality of Lake Tahoe by limiting the introduction of sediment, nutrients and other soil products into the lake through water runoff by regulation of the amount of impervious surface coverage of land within the Lake Tahoe basin. It expressly provides for enforcement of the land coverage limitations by a permit system under the waste discharge requirements provisions of the Water Code (§§ 13260-13273).

([2]) Plaintiffs seek invalidation of the use of the state permit system and with it the entire Plan.[3] They argue that this means of enforcement may not be employed to regulate a nonpoint source of pollution affecting the waters of Lake Tahoe, in which category they place impervious surfaces.[4] They claim that the Water Board's authority under section 13170 to enact a water quality control plan "required by" the FWPCA (33 U.S.C. § 1251) precludes the use of the state permit system to regulate nonpoint sources of pollution. They reason that since under the federal act federal permits are not used for regulation of nonpoint sources of pollution the state may *not* do so by resort to its own authority.

Plaintiffs principally rely upon section 13374 as the interpretive springboard for this view. It provides that "The term 'waste discharge requirements' ***1431** as referred to in this division is the equivalent of the term 'permits' as used in the Federal Water Pollution Control Act, as amended." Plaintiffs argue that this equation of the state with the federal permit system restricts the employment of the state permit system to the regulation of the point sources of pollution to which the federal permit system is limited. They reason that, because the state is carrying out a federal mandate, its authority must be limited in precisely the same way that the federal regulatory authority is limited. Plaintiffs do not comment on the inconsistent fact that the federal act *mandates* state regulation of nonpoint sources by means of the state's choosing.

The Water Board replies that the equivalency contemplated by section 13374 "shall apply only to *actions required* [of the states] under the [FWPCA]" (§ 13372, italics added) and that the use of the state permit system to enforce limitations in the Plan on nonpoint

sources of pollution is not such an action. Simply put, the Water Board says that the state is free to regulate nonpoint sources as it chooses, and it has chosen to do so by employment of the state's waste discharge permit system.

We agree with the Water Board. The flaw in plaintiffs' argument is that it requires that we read provisions of the Water Code, designed to ensure a limited conformity of state law with federal law, to *oust* the state of its *own* powers to control nonpoint sources of water pollution. Such an implied repeal of existing regulatory authority is impermissible where unaccompanied, as here, by an express intention to accomplish that result. (See, e.g., *Fuentes v. Workers' Compensation Appeals Bd.* (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449]; *American Friends Service Committee v. Procunier* (1973) 33 Cal.App.3d 252, 260 [109 Cal.Rptr. 22].) We read section 13374 as requiring equivalency *only* for purposes of state compliance with the *minimum* requirements of the federal mandate. The federal law does not preclude the state from utilizing its broader authority to regulate nonpoint sources of pollution by means of its waste discharge permit system. In fact it mandates that some means of regulation under state law be applied to those sources. The proof of these conclusions requires an analysis of the history and structure of the material portions of the California water control law.

A.

The Water Board's regulatory authority over the waters of Lake Tahoe derives from section 13170. It provides that the Water Board "may adopt water quality control plans ... for waters for which water quality standards are required by the Federal Water Pollution Control Act ...." The section was enacted in 1971, the year before the enactment of section 13374, ***1432** the provision relied on by plaintiffs. (Stats. 1971, ch. 1288, § 6, p. 2524.) The provisions, of which section 13374 is a part, were enacted by the Legislature in 1972 as chapter 5.5 of division 7 of the Water Code. The announced purpose of this enactment was to ensure "consistency" of California's water quality control law with the FWPCA, as amended in 1972. (§ 13372; Stats. 1972, ch. 1256, eff. Dec. 19, 1972.)

Nothing in the enactment suggests that the Legislature meant thereby to oust the state of its regulatory authority, contained in division 7 of the Water Code, providing that it is consistent with federal law. On the contrary, section 13372 declares that "[t]o the extent other provisions of this division are consistent" with the new provisions those "provisions shall be applicable to actions and procedures provided for in this chapter." The consistency contemplated by this provision is measured by the purpose of the federal law to control water pollution in navigable waters. There is nothing in the federal act to suggest that a state may not provide for more stringent regulation. Indeed, as we will show, both federal and state law contemplate the opposite, *state* regulation of nonpoint sources of pollution pursuant to *state* law. This brings us to the state law and its relation to the FWPCA.

B.

The Plan contemplates enforcement of its standards under sections of the Water Code which provide for issuance of waste discharge permits which prescribe the nature of proposed discharges, existing discharges, or material changes therein. (§ 13263.) A discharge or threat of discharge of waste in violation of requirements subjects the violator to civil penalties. (See § 13301 et seq.) Plaintiffs argue that this means of enforcement can only be used to regulate water pollution from activities that are "point sources" within the meaning of the FWPCA. As related, they principally rely upon section 13374.

Section 13374 must be viewed against the backdrop of the provisions of the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), division 7 of the Water Code was enacted in 1969. (§ 13020.) The act assigns the governance of water quality to the Water Board and nine regional boards. (§§ 13050, 13200 et seq.) At the outset the Water Board was assigned authority to adopt water quality control plans for interstate or coastal waters or other waters of interregional or statewide interest. (Former § 13142, subd. (c); Stats. 1969, ch. 482, § 18, p. 1055.) The authority to adopt water quality control plans carries with it the authority to employ the waste discharge permit system as a means of enforcement set forth in division 7 of the Water Code. That is so because a water quality control ***1433** plan consists of a statement of: "(1) beneficial uses to be protected, (2) water quality objectives, and (3) a program of implementation needed for achieving water quality objectives." (§ 13050, subd. (j).) The program of implementation contemplates employment of the various remedial devices set forth in division 7 of the Water Code.

In 1971 the Porter-Cologne Act was amended and the provision assigning the Water Board responsibility for interstate, coastal, interregional, and statewide interest waters was deleted. (Stats. 1971, ch. 1288, § 2, p. 2523.) In its place section 13170 was enacted which says the Water Board may adopt water quality control plans "for waters for which water quality standards are required by the Federal Water Pollution Control Act and acts

amendatory thereof or supplementary thereto." (Stats. 1971, ch. 1288, § 6, p. 2524, fn. omitted.) Upon adoption such plans supersede regional plans to the extent of any conflict. (*Ibid.*)

The Water Board asserts that the Plan is a water quality control plan adopted under section 13170.[5] Under the Porter-Cologne Act a water quality control plan may specify certain conditions or areas where the discharge of waste, or certain types of waste will not be permitted. (§ 13243; also see § 13170.) Anyone who discharges or proposes to discharge waste must file a report with the appropriate regional board. (§ 13260.) The regional board may waive this requirement where waiver is not against the public interest. (§ 13269.) The regional board implements the water quality control plans by prescribing requirements for particular discharges. (§ 13263.)

C.

In October 1972 Congress enacted Public Law number 92-500, an extensive amendment, reorganization, and expansion of the FWPCA. (A succinct discussion of the purposes and effect of the enactment is provided in *EPA v. State Water Resources Control Board, supra,* 426 U.S. 200 [48 L.Ed.2d 578], hereafter *EPA* v. *Water Board*.) Under the prior law, states had only been required to develop standards for interstate navigable waters. *The means of enforcement were left to the states*. (See Sen.Rep. No. 92-414 [hereafter Senate Report], as reprinted in 1972 U.S. Code Cong. & Admin. News, at pp. 3668-3669.) Under the 1972 amendments states are required to ***1434** develop standards for all navigable waters including intrastate navigable waters. (See 33 U.S.C. § 1313(a).) Additionally, states are required to prepare and establish an inventory of publicly owned freshwater lakes and adopt procedures to control sources of pollution in such lakes. (33 U.S.C. § 1324.)

The 1972 enactment made other significant changes in the FWPCA system. Congress was apparently dissatisfied with the pace of correction under the prior regime in which the means of enforcement of water quality standards was unspecified and left to the states to develop without a structured federal procedure. (See Stewart & Krier, Environmental Law and Policy (1978) pp. 505-510.) To remedy this defect the 1972 enactment provides for direct restrictions on discharges of pollution by establishment of "effluent limitations" (restrictions on constituents which are discharged to navigable waters from any point source, 33 U.S.C. § 1362(11)) for "point sources." (33 U.S.C. § 1342.) Effluent limitations on point sources of pollution are enforced by a permit system, the National Pollution Discharge Elimination System (NPDES). (*Ibid.*)

The FWPCA provides that states with appropriate regulatory systems may administer the NPDES. (See Sen.Rep., U.S. Code Cong. & Admin. News, *supra*, p. 3675; 33 U.S.C. § 1342.) It also retains the earlier federal law which requires that nonpoint sources of water pollution *must* be identified in areawide waste treatment management plans developed by state or regional entities and controlled to the extent feasible by (unspecified) means available to state and local authorities. (33 U.S.C. § 1288.) States thus are not only free to adopt but are *mandated* to adopt and enforce standards with enforcement mechanisms derived from state law. (33 U.S.C. § 1370.)

D.

In response to the FWPCA California replaced former section 13142, subdivision (c), with section 131270. In response to the 1972 amendment of the FWPCA California added chapter 5.5 to division 7 of the Water Code. The purpose of this amendment is set out in the urgency clause: "The Federal Water Pollution Control Act as amended in 1972 requires the state to have certain powers in order to continue to regulate waste discharges to navigable waters of the United States. The powers contained in this act will allow the State Water Resources Control Board and the regional water quality control boards to comply with federal requirements and continue to regulate waste discharges." (Stats. 1972, ch. 1256, § 3, p. 2490.) Section 13374, upon which plaintiffs' argument hinges, was enacted as part of this amendment. As related, it says that "waste discharge requirements" as ***1435** referred to in division 7 is the "equivalent" of "permits" as used in the FWPCA.

The federal permit system, NPDES, applies only to point sources of pollution. (33 U.S.C. §§ 1311(a), 1362(12); see *National Wildlife Federation v. Gorsuch* (D.C. Cir. 1982) 693 F.2d 156, 164-165 [693 F.2d 156].) As the Water Board notes, the waste discharge permit system long predates the NPDES and has been employed to regulate water pollution regardless of its origin in a point or nonpoint source under the authority of state law. (See, e.g., 63 Ops.Cal.Atty.Gen. 51 (1980).) This usage was expressly endorsed by the Legislature in the enactment of the Porter-Cologne Act. (See Stats. 1969, ch. 482, § 36; 63 Ops.Cal.Atty.Gen. at pp. 56-57.) It is reflected in the organization of regulations of the Water Board which contain separate articles addressed to procedures for waste discharge requirements pertaining to discharges from point sources to navigable waters and to discharges other than from point sources to navigable waters. (23

Cal. Code Regs., subchapter 9, arts. 2 and 3.)

E.

That brings us back to the provisions of section 13374. It provides: "The term 'waste discharge requirements' as referred to in this division is the equivalent of the term 'permits' as used in the Federal Water Pollution Control Act, as amended."

Plaintiffs concede that prior to enactment of section 13374 the Water Board was free to enforce water pollution standards implicated by discharges from nonpoint sources by means of waste discharge requirements under section 13263. Moreover, they assert that this means may be used to enforce water pollution standards implicated by nonpoint sources if the water being polluted is *not* a body for which standards are mandated by the FWPCA. However, they read section 13374 as a voluntary relinquishment of state power to use the waste discharge permit system with respect to nonpoint sources of pollution implicating water quality standards in waters subject to the FWPCA. Plaintiffs suggest no persuasive reason for such a selective relinquishment of authority to achieve water quality standards. There is nothing in the history or provisions of the statutory system of water pollution control to suggest such an intention. It is not to be drawn from the provisions of section 13374, to which we will turn for detailed analysis.

In section 13000 the Legislature set out various findings at the time of enactment of the Porter-Cologne Act. One of these findings is "that the state must be prepared to exercise its full power and jurisdiction to protect ***1436** the quality of waters in the state from degradation originating inside or outside the boundaries of the state ...." (*Ibid.*) It is unnatural to read a relinquishment of state power and jurisdiction into this act absent an unambiguous legislative direction.

The obvious purpose of the declaration of equivalence in section 13374 between waste discharge requirements under the act and the term permits under the FWPCA is to qualify California to self-administer the NPDES. (See § 13370.) This is evident in the urgency clause of the enactment in which chapter 5.5 was contained. As related, "The [FWPCA] as amended in 1972 requires the state to have certain powers in order to continue to regulate waste discharges to navigable waters of the United States. The powers contained in this act will allow the [Water Board] and the regional water quality control boards to comply with federal requirements and continue to regulate waste discharges." (Stats. 1972, ch. 1256, § 3, p. 2490.) In order to qualify to administer the NPDES a state must meet various criteria concerning the kind of permits issuable under state law. (33 U.S.C. § 1344(h).) However, use of an identical permit system, under state law, to regulate nonpoint sources of pollution would not *disqualify* the state to self-administer the NPDES.

The function of section 13374 is to incorporate the federal criteria into the definition of waste discharge requirements. This purpose fully accounts for the meaning of "equivalent" in section 13374. To accomplish this purpose it is not necessary that section 13374 be read as a limitation on the ends to which state permits (waste discharge requirements) may be employed when *not* required under the NPDES. That is especially true since the FWPCA recognizes the problem of nonpoint sources of pollution but leaves it to the states to fashion suitable remedial devices. There is no federal constraint which requires a different system for state permits issued under NPDES and permits issued under state authority to regulate activities not subject to the NPDES. When we say A is the equivalent of B with respect to an end in view that does not entail the conclusion that A and B are identical with respect to other ends. Hence, the first answer to plaintiffs' interpretive claim is that equivalent does not mean identical with respect to restrictions not required by federal law.

F.

There are additional answers. As the Water Board notes, section 13372 qualifies the application of section 13374. Section 13372, as it now reads, says: "This chapter shall be construed to assure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto. To the ***1437** extent other provisions of this division are consistent with the provisions of this chapter and with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, those provisions shall be applicable to actions and procedures provided for in this chapter. The provisions of this chapter shall prevail over other provisions of this division to the extent of any inconsistency. The provisions of this chapter shall apply only to actions required under the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto. The provisions of this chapter relating to the discharge of dredged and fill material shall be applicable only to discharges for which the state has an approved permit program, in accordance with the provisions of the Federal Water Pollution Control Act, as amended, for the discharge of dredged and fill material."

(Stats. 1987, ch. 1189, § 3.) Section 13372 and section 13374 must be read together and in the context of enactment of chapter 5.5 for the purpose of allowing California to administer the NPDES.

The Water Board suggests that "actions required under the [FWPCA]" in section 13372 only means actions pertaining to the administration of the NPDES (and any other federally required permit systems under the FWPCA.) This is consistent with the purpose of chapter 5.5. Plaintiffs' ultimate thesis is that the chapter is applicable to all "actions" taken under the FWPCA including all components of the adoption of water quality standards and implementation plans. Under their reading, section 13374 would preclude the state agency charged with adopting water quality standards and implementation plans under the FWPCA (33 U.S.C. § 1313) from continuing to use the state's permit system to regulate pollution from nonpoint sources as a part of its implementation plan.

Assuming for the sake of argument that the import of section 13372 is that chapter 5.5 is to apply to all actions required under the FWPCA,[6] plaintiffs' reading is nevertheless unpersuasive. It is inconsistent with the history of California's statutory program to regulate water pollution and the action is not "required by" the FWPCA. The federal law neither requires nor prohibits the control of pollution from nonpoint sources by means of a permit system. Accordingly, the employment of a permit system to regulate nonpoint source pollution in a plan implementing the federal law is not an "action [ ] *required* under the [FWPCA]." (§ 13372, italics added.) ***1438**

II

([3]) Plaintiffs contend that the Plan is invalid because it conflicts with section 13360.[7] Section 13360 says that the Water Board may not prescribe the manner in which compliance may be achieved with a discharge standard. That is to say, the Water Board may identify the disease and command that it be cured but not dictate the cure. The Plan sets a discharge prohibition - no greater discharge than would occur if the coverage standard were met. It does not dictate the manner in which a landowner can meet the standard. This presents no violation of section 13360. Plaintiffs appear to argue that the Water Board has violated section 13360 because the Water Board expects that the only practical manner of complying with the discharge standard is to comply with the coverage restrictions. Plaintiffs' claim, boiled to its essence, is that if only one manner of meeting a discharge standard is feasible the Water Board may not prohibit the discharge. This contention is devoid of merit.

Section 13360 is a shield against unwarranted interference with the ingenuity of the party subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard. That is all that it does. If, under present conditions of knowledge and technology, there is only one manner in which compliance may be achieved, that is of no moment. (*Pacific Water Conditioning Assn., Inc. v. City Council* (1977) 73 Cal.App.3d 546, 554 [140 Cal.Rptr. 812].) Where the lack of available alternatives is a constraint imposed by present technology and the laws of nature rather than a law of the Water Board specifying design, location, type of construction or particular manner of compliance, there is no violation of section 13360. ***1439**

III

([4a]) Plaintiffs contend that the Plan denies them procedural due process of law because the discharge prohibition is no greater discharge than would occur because of development within the permitted coverage restrictions. Plaintiffs argue that it is a denial of due process to fail to specify discharge in terms of quantities of materials. They argue that they are unfairly precluded from showing they can develop and nonetheless meet the Plan water quality standards because the coverage standard does not specify discharge in terms of quantities of materials. As appears, plaintiffs' real grievance is not that the form of the discharge prohibition is unfair but rather that the substance of the discharge prohibition may preclude a showing that a development with excess coverage is in compliance with the prohibition. We perceive no cognizable unfairness in the standard which undergirds the discharge prohibition.

The Water Board's discharge prohibition is an administrative rule. ([5]) An administrative rule, legislative in character, is subject to the same tests of validity as an act of the Legislature. (See *Knudsen Creamery Co. v. Brock* (1951) 37 Cal.2d 485, 494 [234 P.2d 26].) One who attacks such a rule has the burden of showing its unreasonableness. (E.g. *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408 [95 Cal.Rptr. 852].) A standard that has no content is no standard at all and is unreasonable. (See generally *Wheeler v. State Bd. of Forestry* (1983) 144 Cal.App.3d 522, 527-528 [192 Cal.Rptr. 693].) Plaintiffs claim that the discharge prohibition is unreasonable on this ground, but do not support it by persuasive reasoning or examples of the manner in which the prohibition is deficient.

([4b]) Plaintiffs argue that they cannot show that a development exceeding the coverage restriction will not cause a prohibited discharge because the Plan does not tell them what a prohibited discharge is in terms of amounts of materials attributable to incremental runoff. Plaintiffs assert that they cannot compare the discharge attributable to a development with excess coverage with a permissible coverage development without a qualitative and quantitative analysis of a permissible discharge. They suggest that it is incumbent upon the Water Board to assert the quantities of materials that are permitted so that the landowner can prove that a proposed development exceeding the coverage restrictions would not generate an impermissible discharge. The argument is faintly reminiscent of the disingenuous request in Hansel and Gretel that Gretel be shown how to enter the oven.

We are given no reason why the classification system, incorporated in the Plan, and the provisions of the Plan do not afford a landowner sufficient ***1440** information concerning the causes and nature of the discharge of soil products into Lake Tahoe attributable to excess coverage of land to address the discharge prohibition. The factors causing discharge are listed in those materials. There is no indication that it is impossible to reason from those factors and the quantitative coverage standards contained in the land classification scheme to an adequate approximation of the permissible incremental runoff. To make the comparison called for by the discharge prohibition the landowner must show that in some fashion the incremental runoff caused by excess coverage will be contained and disposed of in a manner that will not give rise to increased discharge of sediment and nutrients into Lake Tahoe. If the landowner can show that additional runoff, attributable to the impervious surface coverage of his parcel, has been averted in some manner, this will satisfy the standard upon which discharge prohibition is predicated. We perceive no intrinsic unfairness in this kind of standard in light of the nature of the problem that is addressed by the Plan.

Plaintiffs' real complaint is that they know of no present, feasible technology that would enable them to develop in excess of the coverage restrictions and not cause incremental detrimental runoff. That problem, however, is one of substantive due process and not procedural due process. The plaintiffs have not pled such a claim and hence that question is not properly before us. Nonetheless, we note that nothing in plaintiffs' arguments poses a tenable substantive due process claim. To prevail on such a claim plaintiffs would have to establish that the discharge of pollutants attributable to added impervious surface is not rationally related to a legitimate state interest. (See *American Bank & Trust Co.* v. *Community Hospital* (1984) 36 Cal.3d 359, 368-369 [204 Cal.Rptr. 671, 683 P.2d 670, 41 A.L.R.4th 233].) On this record there is no lack of support for the conclusion by the Water Board that water runoff in excess of that attributable to the permitted coverage will cause increased erosion and increased transportation of sediment and nutrients into Lake Tahoe with a consequent increase in the turbidity and discoloration of the lake. It is incontestable that avoidance of this consequence is a legitimate state interest. (See *Morshead* v. *California Regional Water Quality Control Bd.* (1975) 45 Cal.App.3d 442, 449 [119 Cal.Rptr. 586].)? Indeed, plaintiffs impliedly concede as much in their "taking" argument.

Plaintiffs' related attack on the form of the discharge standard is that it operates as a conclusive presumption. This attack is also unpersuasive. Plaintiffs argue that the discharge prohibition eliminates the means by which they might show that a proposed excess-coverage development will not in fact result in a prohibited discharge. They imply that the "elimination" of the opportunity is achieved by failure to state a discharge standard ***1441** in quantitative terms. But the discharge prohibition does not preclude plaintiffs from showing that, despite excess coverage, there is no prohibited discharge for a proposed development, as explained above. No mode of evidence to prove the ultimate fact of the absence of excess discharge is barred by the discharge prohibition. It does not operate as a conclusive presumption.

IV

([6a]) Plaintiffs contend that the trial court erred in rejecting the claim that Plan is invalid because it amounts to a taking of their property without just compensation in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and article I, section 19, of the California Constitution. Plaintiffs argue that the Plan restrictions constitute an unreasonably excessive regulation which rises to the level of a taking. Their second amended complaint seeks a declaration that: "... the absolute prohibitions against development in the Tahoe Plan are facially invalid and invalid *as applied* to plaintiffs' property because they preclude substantially all reasonable and beneficial use of plaintiffs' property, thereby constituting a taking of private property for public use without payment of just compensation ...." (Original italics.) Thus, two kinds of takings claims are proffered. The Water Board argues, inter alia, that these claims are not ripe for adjudication. This argument is persuasive and dispositive.[8]

The preliminary question is whether plaintiffs have

tendered a triable takings claim that the Plan is invalid on its face. A claim that a regulation is *facially* invalid is only tenable if the terms of the regulation will not permit those who administer it to avoid an unconstitutional *application* to the complaining parties. (See, e.g., *Pennell v. City of San Jose* (1986) 42 Cal.3d 365 [228 Cal.Rptr. 726, 721 P.2d 1111]; *CSEA v. State of California* (1988) 199 Cal.App.3d 840, 846 [245 Cal.Rptr. 232]; 2 Longtin's Cal. Land Use ***1442** (2d ed. 1987) §§ 12.04[5], 12.15[3], 12.30[3].) This restraint stems from the prudent judicial policy of avoiding officious checking of the political branches of the government. (See Tribe, American Constitutional Law (1988) § 3-10; cf., e.g., *Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 65-66 [195 P.2d 1]; *People v. Williams* (1976) 16 Cal.3d 663, 667 [128 Cal.Rptr. 888, 547 P.2d 1000].) ([7]) The question whether an alleged unconstitutional *application* of a regulation may be avoided is not governed by the conclusional allegations of the complaint. Rather, it turns upon the court's appraisal of the legal effect of the regulation. (See, e.g., *Agins* v. *Tiburon* (1980) 447 U.S. 255, 259, fn. 6 [65 L.Ed.2d 106, 111, 100 S.Ct. 2138].)

([6b]) We will assume, for the sake of the present argument, that the Plan would count as a taking by overregulation if it were applied to preclude the construction of any residential structure on the parcels of the landowner plaintiffs. However, we cannot accept the conclusional assumptions of the plaintiffs concerning how the Plan would be applied to them. Specifically, we cannot accept as true the controverted allegations concerning how the parcels in issue would be characterized under the classification system of the Plan. Under the Plan each plaintiff is entitled to an administrative review of the applicability of the land coverage standards, established for the zone in which his parcel is located, and may show that the specific property does not share the characteristics of the standards by which the general classification is measured. (See *California Tahoe Regional Planning Agency v. Day & Night Electric, Inc.* (1985) 163 Cal.App.3d 898, 901 [210 Cal.Rptr. 48] [property classification altered from 1 percent to 24 percent coverage in an administrative review process].)

Until plaintiffs have sought a waste discharge requirement under the Plan from the responsible administrative authorities, it cannot be ascertained whether there is any potential taking in the application of the Plan to the "complaining parties" for it cannot be shown that the Plan has any effect on the beneficial use of the plaintiff's property. For the reasons that follow concerning the lack of ripeness of a claim that the Plan results in a taking as applied to the parcels in issue, plaintiffs are necessarily limited to an attack on the Plan as applied.[9] We note that this was the view of the trial court in ***1443** granting judgment on the pleadings to plaintiffs' facial taking claim in their penultimate complaint.

A.

"[A] claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." (*Williamson Planning Comm'n. v. Hamilton Bank* (1985) 473 U.S. 172, 186 [87 L.Ed.2d 126, 139, 105 S.Ct. 3108].) Here, none of the landowner plaintiffs alleges that a waste discharge requirement for a proposed development was sought. As the Water Board notes, the Plan does not establish the classification of *parcels* of property. It sets forth a methodology for ascertaining the appropriate classification and presumptively places land in zones bearing that classification. The general classification scheme assumes that all of the land within a zone shares the characteristics arrived at by application of the land classification methodology. However, the methodology is amenable to specific application to a parcel of property and the reviewing body has interpretive latitude in making that determination. (Cf. *California Tahoe Regional Planning Agency v. Day & Night Electric, Inc., supra,* 163 Cal.App.3d at p. 901.) The exercise of this interpretive latitude is assigned in the first instance to the regional water quality control board that must pass upon a request for a waste discharge requirement.

Plaintiffs argue that they should not be required to obtain a determination of classification from the regional water quality control board because they have alleged in the complaint the land classifications of their parcels. They rely upon their good faith belief that these allegations are correct and assert that the classification of their parcels under the system incorporated into the Plan is "inexorable and inevitable." But the plaintiffs cannot by means of alleging conclusions plead themselves into a *facial* challenge to the constitutionality of the Plan. ([8]) Where, as here, administrative means are at hand by which an individual plaintiff may escape the strictures of the Plan, the burden of pleading compliance with that means is on the plaintiffs. Carrying that burden is a condition for obtaining an adjudication of the ***1444** constitutionality of the state's adoption of the Plan. As related, such adjudication is not lightly to be undertaken. Plaintiffs' assertion that the specific application of the land classification scheme to their property would be a foregone conclusion in administrative proceedings before

the regional water quality control board is not backed by a persuasive showing that it is correct. It is belied by analogous authority emanating from this court. (See *Day and Night Electric, supra,* 163 Cal.App.3d 901.) Absent such backing it cannot be accepted.

Plaintiffs' remaining rejoinder to the Water Board's prematurity argument is that applying for a waste discharge requirement is necessarily a futile act. Plaintiffs argue that because of the Plan's narrative standard of compliance they could never establish conformity with the standard. However, this argument is founded on the unsupported view that there is no possibility of obtaining a more favorable land classification in waste discharge requirement proceedings before the regional water quality control board.[10] ***1445**

B.

([6c]) That brings us to the question of prematurity for failure to seek just compensation. A takings claim is also not ripe until the claimant has sought and been denied just compensation through available adequate procedures for obtaining compensation. (*Williamson Planning Comm'n.* v. *Hamilton Bank, supra,* 473 U.S. at pp. 194-197 [87 L.Ed.2d at pp. 143-145].) "[I]f a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." (*Id.,* at p. 195 [87 L.Ed.2d at p. 144].)

The Lake Tahoe Acquisitions Bond Act (Act) provides a funded program "[f]or the acquisition of undeveloped lands threatened with development that will adversely affect the [Tahoe basin's] natural environment ...." (Gov. Code, § 66957, subd. (a).) "In particular, preference shall be given to the acquisition of undeveloped lands within stream environment zones and other undeveloped lands that, if developed, would be likely to erode or contribute to the further eutrophication or degradation of the waters of the region due to that or other causes." (Gov. Code, § 66957, subd. (a).) It appears that the Act provides a source of compensation for the plaintiff landowners. Accordingly, we requested briefing on whether the Act is a procedure for obtaining just compensation within the meaning of *Williamson Planning Comm'n* v. *Hamilton Bank, supra*.

Plaintiffs' sole argument on the point is that the amount of compensation actually available under the Act is not just compensation. Government Code section 66959 is as follows. "If the value of any land to be purchased by the agency has been substantially reduced by any statute, ordinance, rule, regulation, or other order adopted after January 1, 1980, by state or local government for the purpose of protecting water quality or other resources in the region, the agency may purchase the land for a price it determines would assure fairness to the landowner. In determining the price to be paid for the land, the agency may consider the price which the owner originally paid for the land, any special assessments paid by the landowner, and any other factors the agency determines should be considered to ensure that the landowner receives a fair and reasonable price for the land."

Plaintiffs argue that the terms of this statute permit payment of less than just compensation as measured by fair market value at the time of the alleged taking. They assert that it has been the practice under the Act to ***1446** offer amounts less than just compensation as measured by this standard. The plaintiffs' argument is unpersuasive because nothing in the text of the Act precludes payment of an amount equal to just compensation and their bare factual assertion of the practice under the Act cannot be accepted as accurate for appellate purposes. As with independent development strictures briefly noted *ante*, at footnote 9, the only sure way to ascertain the amount that would be offered under the Act is to solicit an offer from the authorities who administer it. Certainly plaintiffs are free under the text of the Act to argue in such negotiations that the amount that should be offered to assure fairness and to avoid potential detrimental development, in view of potential takings claims, is fair market value as they view it.

However, there are considerations, unaddressed by the parties, which impel us not to rest the disposition of this appeal upon failure to seek compensation under the Act. The essential problem is that the Act was enacted after the filing of plaintiffs' original complaint; albeit before the amendment of the complaint to allege a claim of a taking by the Plan as applied. The result of these circumstances is not obvious. Perhaps when such a program is enacted after a claimed taking by overregulation the action should be abated and resort to the program required in order to determine if the claim has become moot. Such a course of action might be prudent since otherwise under the *Agins* approach of invalidation of the regulation the state's policy could be frustrated unnecessarily. Since we have decided that plaintiffs' takings claims are not ripe in any event, we decline to render an advisory opinion on the abatement point. If plaintiffs renew the takings claim proffered in this case it would be prudent first to seek compensation under the Act. In view of the foregoing none of the other points raised by the parties warrants discussion.

Disposition

As to plaintiffs' claims of takings by unreasonable overregulation the judgment is modified to one of dismissal on the ground that the claim is not ripe for the reasons given in this opinion. As so modified, the judgment is affirmed. The parties shall recover their own costs on appeal.

Puglia, P. J., and Evans, J., concurred.

A petition for a rehearing was denied June 28, 1989, and the opinion was modified to read as printed above. Appellants' petition for review by the Supreme Court was denied September 21, 1989. Panelli, J., did not participate therein. ***1447**

Footnotes

1 All further unspecified references to sections are to the Water Code.

2 Nonpoint sources are defined by obverse inference from the definition of point sources of water pollution, generally sources of pollution directly attributable to a specific property or project or action. A point source is defined under the Federal Water Pollution Control Act as a "'discernible, confined and discrete conveyance ... from which pollutants are or may be discharged.'" (33 U.S.C. § 1362(14)); see *EPA v. State Water Resources Control Board* (1976) 426 U.S. 200, 204 [48 L.Ed.2d 578, 583, 96 S.Ct. 2022].) So viewed, we assume for purposes of this case that impervious surface coverage is a nonpoint source of the pollutants entering Lake Tahoe.

3 Plaintiffs do not address the question whether the enforcement mechanism of the Plan, the permit system, is an inseparable part of the Plan such as to require invalidation of the whole if the part is found defective. (Cf. *People's Advocate, Inc.* v. *Superior Court* (1986) 181 Cal.App.3d 316, 329-334 [226 Cal.Rptr. 640].) Rather, they assume that to be the case. The assumption is not viable. If plaintiffs' argument were persuasive this would not compel invalidation of the Plan. The Water Board in a water quality control plan within its jurisdiction may "specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted." (§ 13243.) Such discharge prohibitions may be enforced by cease and desist orders of the regional water quality control board. (See § 13303; Ayer, *Water Quality Control at Lake Tahoe: Dissertation on Grasshopper Soup* (1971) 1 Ecology L.Q. 40, fn. 245.) Since we find no flaw in the use of the waste discharge permit system we need not pursue this analysis.

4 An initial difficulty with plaintiffs' claim that the Plan is invalid on this ground is that it is nowhere alleged in the plaintiffs' second amended complaint. Nonetheless, we consider the claim because it was presented in a plaintiffs' memorandum and was considered and rejected on its merits by the trial court. This action may have misled the plaintiffs into the otherwise insupportable belief that their pleading was adequate to tender the claim. Though we consider the claim, we do not approve this as a proper manner of pleading a cause of action.

5 Plaintiffs' opening brief characterizes the Plan as a 208 plan under the FWPCA and claims that the Water Board is without authority to adopt such a plan. The argument leads down a blind alley. Plaintiffs concede that the Plan was submitted to EPA as a 303 plan under 33 United States Code section 1313. Since the Water Board's authority under section 13170 extends to a 303 plan, the 208 plan argument is a meaningless excursion. Neither party addresses the relationship under the FWPCA of the two types of plans, nor is such a discussion to be found in the FWPCA or secondary materials we have reviewed.

6 The Water Board notes that the direction that chapter 5.5 is applicable "only to actions required under the [FWPCA]" does not mean that the chapter is applicable to every action required under the FWPCA. Carefully read this only says that the chapter is inapplicable to actions not required under the FWPCA.

7 Section 13360 said at the pertinent time: "No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply therewith in any lawful manner. However, regarding disposal sites other than evaporation ponds from which there is no drainage or seepage, the restrictions of this section shall not apply to waste discharge requirements or orders or decrees with respect to the discharge of solid waste requiring the installation of riprap, the construction of walls and dikes, the installation of surface and underground drainage facilities to prevent runoff from entering the disposal area or leakage to underground or surface waters, or other reasonable requirements to achieve the above or similar purposes. If the court, in an action for an injunction brought under this division, finds that the enforcement of an injunction restraining the discharger from discharging waste would be impracticable, the court may

issue any order reasonable under the circumstances requiring specific measures to be undertaken by the discharger to comply with the discharge requirements, order or decree." (Stats. 1981, ch. 714, § 453, p. 2803.)

8 The position of the Water Board on the merits is that there is no taking, even assuming as pled that the effect of the Plan is to preclude substantially all reasonable and beneficial use. The Water Board argues there is no "right" to use land in a manner that causes water pollution, such use is a public nuisance or similar to a public nuisance, and a prohibition of an activity does not count as a taking. This rationale was recently discussed in *Keystone Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 491-494 [94 L.Ed.2d 472, 490-493, 107 S.Ct. 1232]. We entertained a similar defense in *Fallen Leaf Protection Assn. v. State of California* (1975) 46 Cal.App.3d 816.
The trial court accepted the Water Board's position on the merits. "[The Water Board] correctly point[s] out, however, that proscriptions on the taking of private property have not been applied so as to require government to pay for the abatement of the pollution of its waters or other forms of direct nuisance. [Citations omitted.] [¶] The bottom line is that the State of California does not have to pay people to keep them from turning Lake Tahoe brown." Because the claims here are not ripe we do not reach this issue.

9 Plaintiffs fare no better if we assume for the sake of argument that they could tender a third party taking claim, i.e., without showing that they are a person affected by the regulation. For example, plaintiffs assert that since under the Plan new coverage is effectively precluded in "stream environmental zones" [SEZ] the Plan is amenable to a facial attack with respect to that aspect. However, it cannot be said from looking at the face of the Plan that such rule necessarily results in a taking. (Once again, assuming for the sake of argument that barring new development here is not justified under the nuisance exception to the takings prohibition.) The rule as to SEZ's could only result in a facial taking if it were incontestable that there is land subject to the rule for which there is no feasible economic use that does not require new coverage. But it is not self-evident that there is such land for which there are categorically no feasible alternative uses. That question turns upon the nature and character of particular parcels and the economic viability of alternative uses that may be available depending, for example, upon the terrain, location, and customs of land usage. To attack the rule plaintiffs must adduce an evidentiary showing that the application of the rule to their land would leave them without a viable economic use. That is to say they must attack the rule *as applied* to a particular piece of property.

10 We note that the concerns which undergird ripeness doctrine also require the landowner plaintiffs to show that but for the Plan they would have been able to build at the time of the alleged taking by the Plan. Plaintiffs have not alleged facts showing that a denial of a waste discharge requirement allowing development was *the* cause of the claimed diminution in value of their parcels. No plaintiff alleges formulation of an actual development proposal and pursuit of such a proposal by obtaining or attempting to obtain the other permits that are a prerequisite to development. We shall assume that such matters need not be pled, or that it would be unfair to uphold the judgment on the basis of such a pleading defect without granting an opportunity for amendment. Nonetheless, in the absence of an attempt to develop the parcels, proof that development at any particular point in time was precluded solely by reason of the Plan would present knotty and perhaps insurmountable problems.
Plaintiffs concede that before they could begin development of their parcels they must obtain sewer permits from the local sanitation district, a county building permit, and a Tahoe Regional Planning Agency building permit, in addition to a waste discharge requirement under the Plan. They implicitly concede that they have not obtained these prerequisites since their briefing on the point asserts that such permits either are or were: available from the pertinent government entity; limited but obtainable in a private (transfer) market for a price; or unavailable but that the question of availability is being litigated. Assuming that plaintiffs could address the causation question in this abstract manner, showing the probable aggregate effect of the various restrictions over time could cross the border between acceptable proof and speculation. The better, perhaps the only, way to show that development is precluded by the Plan in this context would be to formulate a proposal and pursue it to the point where the Plan is the only remaining obstacle.
The development of land in the Lake Tahoe basin is subject to multiple layers of restriction by various government entities; local, state, interstate, and federal. The Plan itself alludes to an independent restriction on the number of sewer permits available for residences. The Tahoe Regional Planning Compact (Gov. Code, §§ 66800-66801) limited the number of building permits for residential units during 1980, 1981, 1982, and portions of 1983. Plaintiffs' theory in the complaint, as to the parcels alleged to be classified so some coverage is permitted, is that the preclusion of development is caused by the combination of the maximum coverage restrictions of the Plan and the local zoning ordinance requirements for minimal coverage. Yet there is no indication of submission of a development proposal conforming to coverage restrictions of the Plan and refusal of a variance by the local zoning authorities. (We imply no view on how a taking, if any, attributable to such a regulatory composite should be remedied under *Agins v. City of Tiburon* (1979) 24 Cal.3d 266 [157 Cal.Rptr. 372, 598 P.2d 25].)

259 Cal.Rptr. 132

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California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

February 3, 2010

Dr. Matt A. Yeager, D. Env
Storm Water Program Manager
San Bernardino County Flood Control District
825 E. Third Street, Room 201
San Bernardino, CA 92415

WASTE DISCHARGE REQUIREMENTS FOR THE COUNTY OF SAN BERNARDINO AND THE INCORPORATED CITIES OF SAN BERNARDINO COUNTY, ORDER NO. R8-2010-0036, NPDES NO. CAS618036, AREAWIDE URBAN STORM WATER RUNOFF

Dear Dr. Yeager,

Enclosed is a certified copy of Order No. R8-2010-0036, NPDES No. CAS 618036. This order renews waste discharge requirements for the discharge of urban storm water from areas of San Bernardino County within the Santa Ana Region to waters of the U.S. This order was adopted at a public hearing during the January 29, 2010 Board meeting. Please note that Order No. R8-2010-0036 expires on January 29, 2015 and a Report of Waste Discharge must be filed no later than 180 days in advance of that expiration date.

If you have any questions, please call Maria Macario at (951) 321-4583.

Sincerely,

G J Thibeault

Gerard J. Thibeault
Executive Officer

Enclosures: Adopted Order No. R8-2010-0036 w/ attachments

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

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ORDER NO. R8-2010-0036
NPDES NO. CAS618036

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT AND WASTE DISCHARGE REQUIREMENTS FOR THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, THE COUNTY OF SAN BERNARDINO, AND THE INCORPORATED CITIES OF SAN BERNARDINO COUNTY WITHIN THE SANTA ANA REGION

AREA-WIDE URBAN STORM WATER RUNOFF MANAGEMENT PROGRAM

The following Dischargers (Table 1) are subject to waste discharge requirements as set forth in this Order:

Table 1. Municipal Permittees

Principal Permittee	San Bernardino County Flood Control District (SBCFCD)	
Co-Permittees	1. County of San Bernardino	9. City of Loma Linda
	2. City of Big Bear Lake	10. City of Montclair
	3. City of Chino	11. City of Ontario
	4. City of Chino Hills	12. City of Rancho Cucamonga
	5. City of Colton	13. City of Redlands
	6. City of Fontana	14. City of Rialto
	7. City of Grand Terrace	15. City of San Bernardino
	8. City of Highland	16. City of Upland
		17. City of Yucaipa

The Principal Permittee and the Co-Permittees are collectively referred to as the Permittees or the Dischargers.

Table 2. Administrative Information

This Order was adopted by the Regional Water Quality Control Board on:	**January 29, 2010**
This Order shall become effective on:	**January 29, 2010**
This Order shall expire on:	**January 29, 2015**
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Board have classified this discharge as a major discharge.	
The Discharger shall file a Report of Waste Discharge in accordance with Title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than 180 days in advance of the Order expiration date.	

IT IS HEREBY ORDERED, that this Order supersedes Order No. R8-2002-012 except for enforcement purposes, and, in order to meet the provisions contained in division 7 of the Water Code (commencing with section 13000) and regulations adopted thereunder, and the provisions of the federal Clean Water Act (CWA) and regulations and guidelines adopted thereunder, the Dischargers shall comply with the requirements in this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on January 29, 2010.

Gerard J. Thibeault, Executive Officer

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I. FACILITY INFORMATION

A. Each of the Permittees listed in Table 1, above, owns and/or operates storm water and urban runoff conveyance systems, including flood control facilities. These conveyance systems are commonly referred to as municipal separate storm sewer systems (MS4s[1]) or storm drains, through which storm water and urban runoff are discharged into waters of the United States (Waters of the U.S.) that are located within the Santa Ana Region. Some of the natural channels, streambeds and other drainage facilities that are generally considered as Waters of the U.S. have been converted to flood control facilities. In such cases, where a natural streambed is modified to convey storm water flows, the conveyance system becomes both an MS4 and a water of the U.S. The primary purpose for which these MS4s were constructed was for flood control to minimize threat to public safety and property damage. 40 CFR 122.26(b) categorizes MS4s as follows: (1) a medium or large MS4 that services a population of greater than 100,000 or 250,000 respectively; or (2) an MS4 which contributes to a violation of a water quality standard; (3) an MS4 which is a significant contributor of pollutants to waters of the United States; or (4) an MS4 owned and/or operated by a small municipality that is interrelated to a medium or large municipality. Urban Runoff[2] from these MS4 systems must be regulated under a National Pollutant Discharge Elimination System (NPDES) permit as per Section 402(p) of the federal Clean Water Act (CWA).

B. This Order regulates the discharge of pollutants (as defined in Attachment 4, Glossary) in Urban Runoff from anthropogenic (generated from non-agricultural human activities) sources from MS4s that are either under the jurisdiction of the Permittees, and/or where Permittees have MS4 maintenance responsibility, or have authority to approve modifications of the MS4s. Urban Runoff includes those discharges from residential, commercial, industrial and construction areas within the permitted area and excludes discharges from feedlots, dairies, and farms or other agricultural activities. The Permittees have jurisdiction over and/or maintenance responsibility for storm water conveyance systems within San Bernardino County. The Permittees lack legal jurisdiction over storm water discharges into their systems from State and federal facilities, e.g., schools and hospitals, utilities and special districts, Native American tribal lands, wastewater management agencies and other point and non-point source discharges otherwise permitted by the Regional Board. The Regional Board recognizes that the Permittees should not be held responsible for such facilities and/or

[1] A MS4 (municipal separate storm sewer system) system is any conveyance or a system of conveyances designed to collect and transport storm water which is not part of a Publicly Owned Treatment Works (i.e., not a combined sewer).

[2] Urban runoff is defined as all flows in a storm water conveyance system and consists of the following components: (1) storm water (wet weather flows) and (2) authorized non-storm water discharges

discharges. The Regional Water Board will coordinate with these entities to implement programs that are consistent with the requirements of this Order. The Regional Board, pursuant to 40 CFR 122.26(a), has the discretion and authority to require non-cooperating entities to participate in this Order. The Regional Board may also consider such facilities for coverage under its NPDES permitting scheme pursuant to USEPA Phase II storm water regulations.

C. To the extent that the Permittees authorize the connection of these discharges into their MS4s, this Order requires the Permittees to provide written notification of Water Quality Management Plan (WQMP) requirements for post-construction BMPs and/or other applicable requirements of this Order. A WQMP approved by the Permittee who owns the MS4 may constitute compliance with the General Construction Permit post-construction requirements[3] for the Permit Area.

D. Certain activities that generate pollutants present in storm water runoff may be beyond the ability of Permittees to prevent or eliminate. Examples of these include, but are not limited to: emissions from internal combustion engines, brake pad and tire wear, atmospheric deposition, bacteria from wildlife (including feral dogs and cats) or from bacterial resuscitation or reactivation from treated waters or growth of bacteria in the environment (such as in sediments, surface water, or other substrate), and leaching of naturally occurring nutrients and minerals from local soils. This Order is not intended to address background or naturally occurring pollutants or flows.

E. The Permittees serve a population of approximately 1.5 million[4] (75% of the County population), occupying an area of approximately 620 square miles[5]. The permitted area is shown on Attachment 1.

F. The Permittees' MS4 systems include an estimated 378 miles of above-ground channels and 485 miles of underground storm drain channels, for a total of 863 miles within the permitted area. Approximately seven percent (7%) of the San Bernardino County area drains into water bodies within this Regional Board's jurisdiction. This Order regulates urban and storm water runoff from areas within the Santa Ana Regional Board's jurisdiction. Approximately 50% of the remaining San Bernardino County drainage areas are within the jurisdiction of the Lahontan Regional Board. Urban and storm water runoff from those areas is regulated by the Lahontan Regional Board. The other 43% is within the jurisdiction of the Colorado River Basin Regional Board. The Colorado River Basin Regional Board regulates urban and storm water runoff from those areas. As indicated above, most of the urbanized areas of San Bernardino County are located within the Santa Ana Regional Board's jurisdiction.

[3] The State General Construction Permit Order No. 2009-0009-DWQ Section XIII.
[4] Per 2006 Report of Waste Discharge (ROWD).
[5] Per 2006 ROWD.

II. FINDINGS

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter the Regional Board) finds that:

A. Background

1. The Co-Permittees own and operate flood control facilities.
2. The discharge of Urban Runoff from the San Bernardino County areas within the Santa Ana Region is currently regulated under Order No. R8-2002-0012, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS 618036. Order No. R8-2002-0012 expired on April 27, 2007 and was administratively extended until adoption of this Order in accordance with Title 23, Division 3, Chapter 9, §2235.4 of the California Code of Regulations.
3. The Permittees jointly submitted a Report of Waste Discharge (ROWD) on October 26, 2006, as application to renew their NPDES permit. To effectively carry out the requirements of this Order, the Permittees have agreed that the San Bernardino County Flood Control District (SBCFCD) will continue as the Principal Permittee and the County and the 16 incorporated cities will continue as the Co-Permittees.
4. The ROWD proposed revisions to the Municipal Storm Water Management Plan (MSWMP) that includes performance commitments for each program element, letters of intent from each of the eighteen Permittees listed in Table 1, and proposed activities to be conducted during the fourth term permit. The MSWMP incorporated a number of other documents by reference. The ROWD, the letters of intent, the MSWMP and the documents referenced therein are hereby made enforceable elements of this Order. The ROWD included: (a) a summary of accomplishments; (2) discharge characterization; (3) program effectiveness analysis; and (4) recommendations for program improvements.
5. This Order, Order No. R8-2010-0036 (hereinafter the Order or the Permit), renews NPDES Permit No. CAS618036 that was first issued on October 19, 1990 (Order No. 90-136, first-term permit) and renewed on March 8, 1996 (Order No. 96-32, second-term permit) and October 25, 2002 (Order No. R8-2002-0012, third-term permit). Order No. R8-2010-0036 is the fourth-term permit. The Permit outlines additional steps for an effective, risk-based, storm water management program and specifies requirements to meet applicable water quality standards. This Order requires the Permittees to investigate sources of pollutants in storm water runoff where activities that the Permittees conduct, approve, regulate or authorize through their licensing and permitting processes, have a reasonable potential to exceed water quality standards.

B. **Regulatory Basis/Legal Authorities**

1. This Order is issued pursuant to CWA Section 402(p) (USC §1342(p)) and implementing regulations adopted by the United States Environmental Protection Agency (USEPA) as codified in Code of Federal Regulations, Title 40, Parts 122, 123, and 124 (40 CFR 122, 123 & 124); the Porter Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000); all applicable provisions of statewide Water Quality Control Plans and Policies adopted by the State Water Resources Control Board (State Board); the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan); the California Toxics Rule (CTR); and the California Toxics Rule Implementation Plan. The Basin Plan also incorporates all state water quality control plans and policies. This Order also serves as Waste Discharge requirements (WDRs) pursuant to Article 4, Chapter 4, Division 7 of the Water Code (commencing with Section 13260).

2. This Order is consistent with the following precedential Orders adopted by the State Board addressing municipal storm water NPDES permits: Order 99-05-DWQ (Petition of Environmental Health Coalition/Receiving Water Limitation Language for Municipal Storm Water Permits); Order WQ-2000-11 (Petitions of Bellflower, City of Arcadia, Western States Petroleum Association/Review of RWQCB and Its Executive Officer Pursuant to Order 96-054, Permit for Municipal Storm Water and Urban Run-Off Discharges within Los Angeles County); Order WQ 2001-15 (In the Matter of the Petitions of Building Industry Association of San Diego County and Western States Petroleum Association); and Order WQO 2002-0014 (Petitions of Aliso Viejo, et al/Order to stay provision F.5.f of the permit and part of last sentence of Finding 26 (permit issued by San Diego Regional Board)).

3. The requirements contained in this Order are deemed necessary to protect water quality standards[6] of the receiving waters and to implement the plans and policies described in Finding 1, above. These plans and policies contain numeric and narrative water quality standards for the waterbodies in this Region. In accordance with Section 402(p)(2)(B)(iii) of the CWA and its implementing regulations (40 CFR Parts 122, 123, & 124), this Order requires the Permittees to develop and implement programs and policies necessary to reduce the discharge of pollutants in Urban Runoff to Waters of the U.S. to the maximum extent practicable (MEP). The legislative history and the preamble to the federal storm water regulations (40 CFR Parts 122, 123 and 124) indicate that Congress and the USEPA were aware of the difficulties in regulating Urban Runoff solely through traditional end-of-pipe treatment. Consistent with the CWA, it is the Regional Board's intent that this Order require the implementation of

[6] Under the Clean Water Act, the beneficial uses and the water quality objectives to protect those beneficial uses are collectively referred to as water quality standards.

best management practices (BMPs)[7] to reduce, consistent with the MEP standard, the discharge of pollutants in urban storm water from the MS4s in order to support attainment of water quality standards.

4. On June 17, 1999, the State Board adopted Water Quality Order No. 99-05. This is a precedential Order that incorporates the receiving water limitations language recommended by USEPA. Consistent with the State Board's order, this Order requires the Permittees to comply with the applicable water quality standards, which is to be achieved through an iterative approach requiring the implementation of BMPs that are designed to meet water quality standards. Most municipal storm water permits issued in California specify certain minimum control measures and incorporate an iterative process that requires increasingly more effective control measures if the water quality standards are not met.

5. This Order is also consistent with the 2006 San Bernardino County Superior Court decision related to storm water permitting that upheld the Regional Board's position regarding the City of Rancho Cucamonga's appeal of the 2002 San Bernardino County MS4 Permit, Order No. R8-2002-0012 (City of Rancho Cucamonga vs. Regional Water Quality Control Board – Santa Ana Region, Fourth Appellate Court, Super. Ct. No. RCV 071613).

6. This Order does not constitute an unfunded mandate subject to subvention under Article XIII.B, Section (6) of the California Constitution for several reasons, including the following:

   a. This Order implements federally mandated requirements under Clean Water Act Section 402(p)(3)(B). (33 USC §1342(p)(3)(B)).
   b. The Permittees' obligation under this Order are similar to, and in many respects less stringent than, the obligations of non-governmental dischargers who are issued NPDES permits for storm water discharges.
   c. The Permittees have the authority to levy service charges, fees, or assessments to pay for compliance with this Order. Certain assessments may require voter approval[8].
   d. The Permittees requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in federal Clean Water Act Section 301, subdivision (a). (33 USC §1311(a)).

[7] Best Management Practices (BMPs) are programs, policies and practices, including structural and engineering controls, to control the discharge of pollutants that are maximized in efficiency. Also see BMP definition under Glossary.

[8] For example, the City of Santa Cruz voted to raise property taxes to fund the storm water program at the November 4, 2008 election (see: http://www.santacruzsentinel.com/localnews/ci_10904561).

C. **Rationale for Requirements**

1. The Regional Board developed the requirements in this Order based on information submitted as part of the ROWD, the MSWMP, monitoring and reporting data, program audits, and other available information and these requirements are consistent with the federal and state laws and regulations. The Fact Sheet (Attachment 6) contains additional regulatory background information and rationale for requirements in this Order. The Fact Sheet is hereby incorporated into this Order and constitutes part of the Findings for this Order. Attachments 1 through 9 are also incorporated into this Order.
2. The ROWD included a program effectiveness analysis and recommended a shift in the San Bernardino County MS4 program from programmatic/administrative tasks to compliance based on water quality standards and on tasks identified in the implementation plans for total maximum daily loads (TMDLs). The MSWMP includes risk-based, outcome-oriented and compliance-focused programs and performance commitments. The MSWMP is a dynamic document that implements programs and policies to control the discharge of pollutants in Urban Runoff consistent with the MEP standard. If the control measures proposed and implemented as per the MSWMP and other requirements included in this Order are not effective in meeting water quality standards, the Permittees are required to revise the MSWMP with more effective control measures.
3. The MSWMP includes the Permittees' performance commitments for each of the major program elements and those performance commitments are incorporated into this Order.
4. Regional Board staff evaluated each of the Permittees' storm water programs and determined that one of the major deficiencies in the programs was a lack of a written procedure on how to implement various elements of the MSWMP. This Order requires each of the Permittees to develop and implement its own Local Implementation Plan (LIP). The LIP should document internal procedures for implementation of the program elements described in the MSWMP.
5. This Order requires the Permittees to revise the MSWMP and associated documents, as needed, to incorporate any applicable requirements in this Order, any applicable TMDLs adopted by the Regional Board and approved by the State Board, Office of Administrative Law and the USEPA, and to incorporate any additional applicable BMPs needed to meet water quality standards. All documents submitted in accordance with this Order for approval by the Executive Officer or the Regional Board

will be publicly noticed prior to approval by the Executive Officer or the Regional Board[9].

D. **California Environmental Quality Act (CEQA)**

1. Under Water Code Section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code Sections 21100 et seq. (*County of Los Angeles v. California State Water Resources Control Board* (2006) 142 Cal.App.4th 985, mod. (Nov 6, 2006, B184034) 50 Cal. Rptr.3d 619, 632-636.) This action also involves the re-issuance of waste discharge requirements for existing MS4s that discharge storm water and urban runoff and as such, is exempt from the provisions of California Environmental Quality Act (commencing with Section 21100) in that the activity is exempt pursuant to Title 14 of the California Code of Regulations Section 15301.

E. **Discharge Characteristics/Risk-Based Storm Water Management**

1. This Order regulates the discharge of pollutants from anthropogenic (generated from human activities, excluding agricultural activities) sources and/or activities in urban and storm water runoff, and certain types of de-minimus discharges specifically authorized under Section V of this Order, from areas under the jurisdiction of the Permittees. The term storm water as used in this Order includes storm water runoff, snowmelt runoff, and surface runoff and drainage. Storm water discharges consist of surface runoff that discharges into Waters of the U.S. The quality of these discharges varies considerably and is affected by land use activities, hydrology and geology, season, the frequency and duration of storm events, and the presence of illicit disposal practices and illegal connections.

2. Studies conducted by the USEPA, the states, counties, cities, flood control districts and other political entities dealing with urban and "storm water" runoff identified the following major sources of urban runoff "pollution" nationwide[10]:

   a. Industrial sites where appropriate pollution prevention and best management practices (BMPs) are not implemented;

[9]The Executive Officer shall provide members of the public with notice and at least a 30-day comment opportunity for all documents submitted in accordance with this Order. If the Executive Officer, after considering timely submitted comments, concludes that the document is adequate or adequate with specified changes, the Executive Officer may approve the document or present it the to Board for its consideration at a regularly scheduled and noticed meeting. If there are significant issues that cannot be resolved by the Executive Officer, the document will be presented to the Board for its consideration at a regularly scheduled meeting.

[10] See Attachment 4-Glossary, for definition of "storm water", and "pollution".

b. Construction sites where erosion and siltation controls and other BMPs are not implemented; and,
c. Runoff from urbanized areas; and
d. Natural background, including leaching of naturally-occurring nutrients and minerals from local soils.

3. A number of permits have been adopted to address pollution from the anthropogenic sources identified in Finding 2, above. The State Board issued three statewide general NPDES permits: one for storm water runoff from industrial activities (NPDES No. CAS000001, General Industrial Activities Storm Water Permit), a second permit for storm water runoff from construction activities (NPDES No. CAS000002, General Construction Activity Storm Water Permit) and a third permit for Storm Water Runoff Associated with Small Linear Underground/Overhead Construction Projects (CAS000005, now incorporated into NPDES No. CAS000002). Industrial activities (as identified in 40 CFR 122.26(b)(14)) and construction sites of one acre or more, are required to obtain coverage under these statewide general permits. The permittees have developed project conditions of approval for projects requiring coverage under the State's General Permits to be effective at the time of grading or building permit issuance for construction sites on one acre or more and at the time of local permit issuance for industrial facilities.

4. The State Board also adopted NPDES No. CAS000003 for storm water runoff from facilities (including freeways and highways) owned and/or operated by California Department of Transportation (Caltrans) and NPDES No. CAS000004, for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems. The Regional Board adopted Order No. R8-2007-0001, NPDES No. CAG018001, for concentrated animal feeding operations, including dairies. The Regional Board also issues individual storm water permits for certain industrial facilities within the Region. Currently there are two facilities located within San Bernardino County (California Steel and Ecology Auto Wrecking[11]) with individual storm water permits. Additionally, for a number of facilities that discharge process wastewater and storm water, storm water discharge requirements are included with the facilities' NPDES permit for process wastewater.

5. In most cases, the industries and construction sites covered under the Statewide General Industrial and Construction Permits discharge into storm drains and/or flood control facilities owned and operated by the Permittees. The Permittees have enacted a system of local ordinances, building permits and business licensing practices to regulate residential, industrial and construction sites within their jurisdiction for the purpose of reducing storm water pollution consistent with the maximum extent practicable standard.

[11] Ecology Auto Wrecking does not discharge storm water into waters of the U.S.

6. The Regional Board administers compliance with the State's General Industrial and Construction Activities Storm Water Permits. A coordinated effort between the Permittees and the Regional Board staff is critical to avoid duplicative effort when overseeing the compliance of dischargers covered under these General Permits. As part of this coordination, the Permittees have been notifying Regional Board staff when, during their routine activities, they observe conditions that pose a potential threat to water quality or when they discover an industrial facility or construction activity that failed to obtain coverage under the applicable general storm water permit.

7. The Permittees have conducted storm water and receiving water monitoring as required under the first, second and third term permits. These monitoring data and data from other sources have confirmed that urban and storm water may contain waste, as defined in CWC § 13050, and pollutants that adversely affect the quality of the Waters of the U.S. The discharge of Urban Runoff from an MS4 is defined in the CWA as a "discharge of pollutants from a point source" into Waters of the U.S.

8. Urban and storm water runoff may contain elevated levels of pathogens (bacteria, protozoa, viruses), sediment, trash, fertilizers (nutrients: nitrogen and phosphorus compounds), pesticides (DDT, chlordane, diazinon, chlorpyrifos, etc.), heavy metals (cadmium, chromium, copper, lead, zinc, etc.), and petroleum products (oil, grease, petroleum hydrocarbons, polycyclic aromatic hydrocarbons, etc.). Storm water can carry these pollutants to rivers, streams, lakes, bays and the ocean (receiving waters).

9. These pollutants can impact the beneficial uses of the receiving waters and can cause or threaten to cause a condition of pollution or nuisance.

10. Pathogens (from sanitary sewer overflows, septic system leaks, spills and leaks from portable toilets, pets, wildlife, and human activities) can impact water contact recreation and non-contact water recreation. Runoff from San Bernardino County areas is tributary to the Santa Ana River which periodically discharges into the Pacific Ocean in Orange County. Although microbial contamination of the beaches from urban runoff and other sources has resulted in beach closures and health advisories in Orange County, discharges from San Bernardino County are typically captured and infiltrated in designated recharge areas downstream of Prado Dam. In the middle Santa Ana River basin areas, the bacterial levels exceed the Basin Plan objectives (see Finding F, below).

11. The Santa Ana River Watershed has been hydraulically separated into the Upper SAR Watershed (upstream from Prado Dam), and the Lower SAR Watershed (downstream from Prado Dam) since the construction of Prado Dam in 1941. The Regional Board regulates discharges from sewage treatment plants upstream of the dam. According to the USGS (2004[12]),

[12] Water Quality in the Santa Ana Basin, California, 1999-2001, Kenneth Belitz, et al, USGS Circular 1238. January 29, 2010 (Final)

water managers utilize almost all of the base flow and most of the stormflow to recharge the coastal aquifer system. Baseflow consists primarily of treated wastewater. Baseflows from the dam are managed, in coordination with the US Army Corps of Engineers, to be captured and infiltrated downstream from the dam; stormflows occasionally exceed the infiltration capacity (OCWD 2009[13]). Water quality in flows from the dam have been monitored for over 40 years and generally found to meet water quality standards specified in the Basin Plan. The dam and the wetlands help to reduce pollutant transport from the upper watershed to the lower watershed. The impoundment area also reduces the transport of trash and debris. As such, water quality management in the upper watershed is targeted to primarily address problems upstream from Prado Dam. Addressing pollutants of concern above Prado Dam will also improve water quality downstream. Augmentation of groundwater through infiltration of baseflow and stormflow is also actively managed in the upper watershed area (e.g. 2006 Chino Creek Integrated Plan: Guidance for Working Together to Protect, Improve, and Enhance the Lower Chino Creek Watershed).

12. Oil and grease from spills can coat birds and aquatic organisms, adversely affecting respiration and/or thermoregulation. Other petroleum hydrocarbon components may cause toxicity to aquatic organisms and may impact human health.

13. Suspended and settleable solids (from construction sites, other sediment sources, trash, and industrial activities) may be deleterious to benthic organisms and may cause anaerobic conditions to form. Sediments and other suspended particulates can cause turbidity, clog fish gills and interfere with respiration in aquatic fauna. They may also screen out light, hindering photosynthesis and normal aquatic plant growth and development.

14. If released into the environment, toxic substances (including pesticides, petroleum products, metals, and industrial wastes) can cause acute and/or chronic toxicity, and can bioaccumulate in organisms to levels that may be harmful to human health.

15. Excessive levels of nutrients (from fertilizer use, fire fighting chemicals, decaying plants, confined animal facilities, pets, and wildlife) can cause excessive algal blooms. These blooms may lead to problems with taste, odor, color and increased turbidity, and may depress the dissolved oxygen content, leading to fish kills.

16. Trash and debris, in particular plastics, are aesthetic nuisances and as threats to freshwater and marine environments. Plastic debris harms hundreds of wildlife species through ingestion, entanglements and

[13] Orange County Water District: Groundwater Management Plan, 2009 Update. July 9, 2009, pp. 4-4

entrapment. Plastic nurdles[14] have the capability of absorbing pollutants, such as PCBs, and when ingested by wildlife, expose those animals to pollutant concentrations that are orders of magnitude higher than the surrounding water. Water Code Section 13367 requires the State Board and the regional boards to implement a program to control discharges of pre-production plastic from point and nonpoint sources. "Floatables" (from trash and debris) are an aesthetic nuisance and can be a substrate for algae and insect vectors. This Order requires the Permittees to control the discharge of trash and debris, including plastic nurdles, from the MS4s to Waters of the U.S.

17. Management of dry weather discharges resulting from urbanization provides an opportunity to promote water conservation as well as address water quality. This Order requires the Permittees to promote and implement best management practices for water conservation, and thereby, minimize non-stormwater flows into and from the MS4s.

18. In order to characterize storm water discharges, to identify problem areas, to determine the impact of urban runoff on receiving waters, and to determine the effectiveness of the various BMPs, an effective monitoring program is critical. The Principal Permittee administers the monitoring program for the Permittees. This program includes storm drain outfall monitoring, receiving water monitoring, and dry weather monitoring. The ROWD compared the monitoring results to: (a) water quality objectives in the Basin Plan; (b) CTR objectives; and (c) USEPA storm water benchmarks contained in the USEPA Multi-Sector Industrial Storm Water Permit. In order to ascertain overall water quality conditions in the permitted area, the Permittees also evaluated monitoring data from other sources such as: (a) National Water Quality Assessment conducted by the USGS[15] (NAWQA); and (b) Santa Ana Regional Water Quality Board's Water Quality Assessment per Section 305(b) of the CWA (RWQCB 305(b) Assessment).

19. The Permittees' water quality monitoring data submitted to date document a number of exceedances of water quality objectives specified in the Basin Plan, CTR criteria and/or USEPA's storm water bench mark for fecal coliform bacteria, total suspended solids, nutrients, COD and metals These findings indicate that urban and storm water runoff is causing or contributing to water quality impairments.

20. Comparison of wet weather water quality monitoring data for 2000-2006[16] with that from 1994-1999[17] shows that the median concentrations for most

[14] Nurdles: pre-production plastic pellets or plastic resin pellets

[15] Belitz, K., Hamlin, S.N.,Burton, C.A., Kent, R., Fay, R.G., and Johnson, T., 2004. *Water Quality in the Santa Ana Basin, California,* 1999-2001.Circular 1238. U. S. Geological Survey. (This is only one of several USGS reports.)

[16] 2006 ROWD

[17] 2002 ROWD

constituents have not changed significantly. Furthermore, monitoring data for the period 1994-2006 indicate that median concentrations of wet weather composite samples at monitoring stations[18] 2, 3, and 8 exceeded the USEPA benchmarks for TSS, COD, NO_3-N, and metals. With the exception of Site 10 (Santa Ana River upstream of Seven Oaks Dam, with drainage from mostly undeveloped areas), coliform bacteria concentrations were far above the Basin Plan water quality objectives. These data support the need for continued monitoring and additional control measures to control the discharge of pollutants from the MS4s.

21. A limited number of constituents were monitored during dry weather at representative urban runoff locations and some of these constituents also exceeded the Basin Plan objectives. These findings indicate that additional surveillance and controls may be needed to minimize and/or eliminate dry weather flows into and from the MS4s.

22. The Principal Permittee conducted an analysis of the receiving water monitoring data collected during the last 15 years for a number of monitoring sites (Sites 2, 3, 8[19], and 10[20]). This analysis indicates that the most significant water quality problem associated with urban and storm water runoff is bacterial contamination. It also showed that Basin Plan objectives for metals such as lead, copper, and zinc[21] are exceeded more frequently than Federal promulgated standards. The Permittees monitoring data were then compared to monitoring data available from other sources (NAWQA, RWQCB 305(b) Assessment) to determine beneficial use impacts and pollutants causing the impacts. This analysis was then used to prioritize problem areas and to propose a risk-based approach to address these problems.

23. Based on the evaluation of monitoring data described above, the ROWD prioritized the pollutants of concern with regards to storm water management as follow:

    a. High Priority: Coliform bacteria
    b. Medium Priority: Zinc, copper, lead
    c. Low Priority: Nutrients, COD, TSS

[18] Drainage at Site 2 (Cucamonga Creek @ Hwy 60) is predominantly urban, influenced by commercial and industrial land uses with some contribution from open space/rural and residential land uses. The predominant land use at Site 3 (Cucamonga Creek @ Hellman) is agricultural, but there is contribution from open space/rural, and discharge from a municipal wastewater treatment plant between Sites 2 and 3. Monitoring site 5 (Hunts Lane n/o Hospitality Lane) is within a constructed storm drain system and flow is mostly from commercial and light industrial land uses with some urban contribution.

[19] Site 8 station is located in the Santa Ana River (SAR) at Hamner Avenue, runoff is mostly from urban land uses.

[20] Site 10 station is located at SAR, upstream of Seven Oaks Dam; runoff is mostly from open/rural areas.

[21] There is no Basin Plan objective for zinc, USEPA benchmark is 0.117 mg/l.

F. CWA Section 303(d) Listed Waterbodies and TMDLS (Also see Section L)

1. Considerable sampling data have been collected to characterize ambient receiving water quality in the Region. Water quality assessments conducted by the Regional Board have identified a number of beneficial use impairments, due in part, to urban runoff. Section 305(b) of the CWA requires each of the regional boards to routinely monitor and assess the quality of waters of its region. If this assessment indicates that beneficial uses are not met, then that waterbody must be listed under Section 303(d) of the CWA as an impaired waterbody.
2. The Regional Board's 2006 water quality assessment listed a number of water bodies within the permitted area under Section 303(d) as impaired water bodies (see Table 3)[22].
3. Federal regulations require that a total maximum daily load (TMDL) be established for each 303(d) listed waterbody for each of the pollutants causing impairment. The TMDL is the maximum amount of a pollutant that can be discharged into a water body from all sources (point and non-point) and still maintain water quality standards. A TMDL is the sum of the individual wasteload allocations (WLA) for point source inputs, load allocations (LA) for non-point source inputs and natural background, with a margin of safety. The TMDLs are one of the bases for limitations established in waste discharge requirements.
4. For 303(d) listed waterbodies without a TMDL, the Permittees are required to participate in the development and implementation of TMDLs and Watershed Action Plans. If a TMDL has been developed and an implementation plan is yet to be developed (e.g., when the USEPA has established the TMDL), the Permittees are required to develop constituent specific source control measures, conduct additional monitoring and/or cooperate with the development of an implementation plan.

Table 3. CWA Section 303(d) List of Water Quality Limited Segments, Santa Ana Region {Waterbodies Requiring a TMDL in San Bernardino County[1]}

Water Body Name	Pollutant / Stressor	Potential Sources	Proposed TMDL Completion
Big Bear Lake	Copper[2]	Resource extraction	2007
	Mercury	Resource extraction[5]	2007
	Metals	Resource extraction	2007

[22] On April 24, 2009, the Regional Board adopted Resolution No. R8-2009-0032 approving the 2008 Integrated Report of Federal Clean Water Act Section 305(b) and Section 303(d) List of Water Quality Limited Segments. Minor additional modifications were approved by the Regional Board on October 23, 2009. When the revised list is approved by the State Board and the USEPA, the 2006 list will be updated.

	Noxious aquatic plants	Construction/Land development, Unknown point source	2006
	Nutrients	Construction/Land development, Snow skiing activities	2006
	PCBs (Polychlorinated biphenyls)	Source unknown	2019
	Sedimentation/Siltation[3]	Construction/Land development, Snow skiing activities, Unknown nonpoint source	2006
Summit Creek	Nutrients	Construction/Land development	2008
Knickerbocker Creek	Pathogens[4]	Unknown nonpoint source	2005
	Metals	Unknown nonpoint source	2007
Grout Creek	Metals	Unknown nonpoint source	2007
	Nutrients	Unknown nonpoint source	2008
Rathbone (Rathbun) Creek	Sedimentation/Siltation	Unknown nonpoint source Snow skiing activities	2006
	Nutrients	Unknown nonpoint source Snow skiing activities	2008
Mountain Home Creek	Pathogens	Unknown nonpoint source	2019
Mountain Home Creek, East Fork	Pathogens	Unknown nonpoint source	2019
Lytle Creek	Pathogens	Unknown nonpoint source	2019
Mill Creek (Prado Area)	Nutrients	Agriculture, Dairies	2019
	Total Suspended Solids (TSS)	Dairies	2019
Prado Park Lake	Nutrients	Nonpoint source	2019
Chino Creek Reach 1	Nutrients	Agriculture, Dairies	2019
Mill Creek Reach 1	Pathogens	Unknown nonpoint source	2019
Mill Creek Reach 2	Pathogens	Unknown nonpoint source	2019
Santa Ana River, Reach 4	Pathogens	Nonpoint source	2019

[1] Based on STATE BOARD 2006 CWA Section 303(d) List of Water Quality Limited Segments, Santa Ana Regional Water Quality Control Board, USEPA Approved June 28, 2007 (http://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/303dlists2006/epa/r8_06_30_3d_reqtmdls.pdf)

[2] Big Bear Lake is recommended for delisting for copper in the Proposed 2008 303(d)-305(b) Integrated Report

[3] Big Bear Lake is recommended for delisting for sedimentation/siltation in the Proposed 2008 303(d)-305(b) Integrated Report

[4] (See Section 6, below).

[5] Resource extraction was removed as a potential source for Mercury in Big Bear Lake and replaced with atmospheric deposition in the Proposed 2008 303(d)-305(b) Integrated Report

5. Big Bear Lake is included under the 2006 CWA Section 303(d) list for mercury. Historical and recent monitoring conducted by Regional Board staff and other entities confirm that the Office of Environmental Health

Hazard Assessment's (OEHHA) mercury fish tissue screening level of 0.3 mg/kg has been exceeded. This finding is likely to impact REC1 (fishing) uses of Big Bear Lake. Recent monitoring efforts and technical support documents (Tetra Tech, 2008)[23] to determine the source of mercury and to develop TMDLs indicate that though majority of the watershed load originates from atmospheric deposition, delivery is dependent on runoff and sediment transport to the lake. However, there is insufficient data to draw conclusions about the effect of urbanization on mercury input to the Lake.

a. It has been demonstrated that mercury loadings are proportional to fine sediment loads and sediment loads are directly proportional to increases in flow rates.

b. Urbanization generally increases impermeable surfaces and that results in increased flow rates which in turn could increase mercury loadings to Big Bear Lake.

c. The Big Bear Lake Mercury TMDL is expected to be completed and approved within this permit cycle. This Order may be reopened to include any additional requirements from the Mercury TMDL Implementation Plan.

d. Pending adoption of the Big Bear Lake Mercury TMDL, this Order requires the stakeholders to participate in the implementation of control measures to minimize the impact of urbanization on water quality.

6. **Knickerbocker Creek Sole Source Pathogen Investigation and Control:**

a. Knickerbocker Creek is one of Big Bear Lake's tributaries. It is engineered and constructed of concrete through the Big Bear Village area to carry flows from 100-year frequency flood event, but is a natural channel within the upper boundaries of the City and the Forest Service area. The Creek is an ephemeral stream that flows largely in response to storm events or during the spring when runoff is comprised largely of snowmelt.

b. The Basin Plan designates municipal and domestic water supply (MUN), water contact recreation (REC1) and non-contact water recreation (REC2) as beneficial uses of Knickerbocker Creek.

c. To protect MUN beneficial use, the Basin Plan specifies a numeric water quality objective for total coliform of less than 100 organisms/100 mL. To protect REC1 beneficial use, the Basin Plan specifies numeric water quality objectives for fecal coliform indicator bacteria of log mean less than 200 organisms/100 mL based on five or more samples/30

[23] Big Bear Lake Technical Support Document for Mercury TMDL,, September 2008, Prepared by Tetratech for U.S EPA Region 9 and Santa Ana Regional Water Quality Board

day period and not more than 10% of the samples shall exceed 400 organisms/100 ml for any 30-day period.

d. In 1994, Regional Board issued a report titled "The Investigation of Toxics and Nutrients in Big Bear Lake" which included test results for Big Bear Lake and many of its tributaries for bacterial indicators.

e. The test results indicated that Knickerbocker Creek had bacteria indicator levels that exceeded the MUN and REC1 Basin Plan objectives for total coliform and fecal coliform. In 1994, Knickerbocker Creek was placed on the Clean Water Act Section 303(d) List as impaired for pathogens.

f. As a result of the 303(d) listing, the Regional Board needed to develop a regulatory strategy to address the elevated bacterial levels. Typically, this is the development and implementation of TMDLs.

g. In 2000, Regional Board staff initiated development of TMDLs in the Big Bear Lake watershed, including the Knickerbocker Creek bacteria indicator TMDL. A sampling program was conducted from June 2002 through April 2003, on five sites along the Creek, to identify potential sources of elevated bacteria levels, if any.

h. The results of the sampling program indicated that at times, bacterial indicators exceeded the Basin Plan objectives for total and fecal coliform objectives at the sampling sites located within city boundaries. However, data from the station representing drainage from the forested area indicated that bacterial indicator concentrations complied with the Basin Plan objectives.

i. The monitoring results indicated that although bacteria were also detected outside of city boundaries, the concentrations were not high enough to cause water quality objectives to be exceeded in Knickerbocker Creek.

j. The sampling program identified the runoff from the City as a sole source of bacteria contamination in Knickerbocker Creek. Regional Board staff determined that the bacteria sources in Knickerbocker Creek could be addressed through the MS4 permit without developing a detailed TMDL.

k. Since most of the inlets to Knickerbocker Creek are from a conduit or other channelized systems from the City, the City was required to address this bacterial problem.

l. Pursuant to Provision IV, Receiving Water Limitations, Order No. R8-2002-0012 (third-term permit), the Executive Officer directed the City of Big Bear Lake to submit by September 30, 2005: (i) a plan and a schedule for identification and investigation of the sources of bacteria; (ii) a list of the BMPs that are currently being implemented and additional BMPs that must be implemented to address the exceedance

of bacteria in Knickerbocker Creek; (iii) a plan and a schedule for implementation of additional control measures (including BMPs) to reduce or eliminate the exceedances; and (iv) a plan and a schedule for implementation of a monitoring program to evaluate the efficacy of any control measures implemented[24].

m. In compliance with the above, the City of Big Bear Lake submitted a plan and a schedule and conducted a source identification study and Phase 1 of the water quality monitoring program in 2006. The City investigated the entire sewer and septic systems located near Knickerbocker Creek and found no sanitary sewer leaks or septic system problems in the area.

n. Molecular DNA analysis confirmed that the bacteria contamination was not from human sources, but more likely from canine sources (domestic dogs).

o. In December 2007, the City purchased and installed several pet waste stations in the Knickerbocker Creek catchment areas, and installed portable toilets near parks and other recreation areas to reduce the potential for bacteria contamination in the Creek. The City believes that these control measures should address the bacteria problems in the Creek.

p. The City is currently implementing Phase 2 of the water quality monitoring program[25] to assess the effectiveness of these control measures. Three sampling locations in the Creek within City boundaries were selected based on increased frequency of high bacteria levels and availability of sustained flows.

q. This Order requires the City to continue monitoring and assessment of the effectiveness of its control measures and to submit an annual progress/status report.

7. Within the permitted area, there are six fully approved TMDLS: (a) five Middle Santa Ana River Bacterial Indicator TMDLs (MSAR TMDL); and (b) one Big Bear Lake Nutrient TMDL for Dry Hydrological Conditions. The Basin Plan amendment incorporating the MSAR TMDLs was approved by the Regional Board on August 26, 2005 (Resolution No. R8-2005-0001), by the State Board on May 15, 2006, by the state's Office of Administrative Law on September 1, 2006, and by the USEPA on May 16, 2007.

[24]Santa Ana Regional Water Quality Control Board, Letter from Gerard J. Thibeault, July 31, 2005, "Determination of Water Quality Standards Exceedance in Knickerbocker Creek Being Caused by MS4 Discharges in the City of Big Bear Lake".

[25]City of Big Bear Lake, January 2008, "Bacteria Monitoring Plan for Knickerbocker Creek Phase 2.

8. The MSAR TMDLs established limits for bacterial source indicators for Santa Ana River (Reach 3) (not in San Bernardino County), Chino Creek (Reaches 1 and 2), Prado Park Lake, Mill Creek (Prado Area), and Cucamonga Creek (Reach 1).

9. The purpose of the MSAR TMDL is to assure that REC1 beneficial uses are protected. To that end, the Regional Board adopted wasteload allocations for fecal coliform and *E. coli* in the above impaired waterbodies. There are two components in the MSAR TMDL (fecal coliform and *E. coli*). The Basin Plan currently does not have an established objective for *E. coli*. Stakeholders in the Santa Ana Region have formed the Storm Water Quality Standards Task Force (SWQSTF) to evaluate USEPA's bacterial indicator recommendations and appropriate recreational beneficial use designations for waterbodies throughout the Region. The SWQSTF is expected to make recommendations for the adoption of alternative bacterial indicators such as *E.coli,* based on USEPA's "Ambient Water Quality Criteria for Bacteria - 1986". These and other recommendations of the SWQSTF are likely to result in changes to recreational water quality objectives. When and if the Basin Plan is amended to incorporate new beneficial use definitions, designations and/or bacterial standards, the MSAR TMDLs will be revised, as appropriate.

10. The MS4 dischargers are required to develop and implement BMPs designed to reduce bacterial pollution to the maximum extent practicable and to evaluate the effectiveness of those efforts towards attainment of WLAs by the compliance dates. The TMDL implementation plan envisioned short-term solutions, including monitoring, and development of a long-term plan designed to achieve compliance by the deadlines specified in the TMDL.

11. The MSAR TMDL Implementation Plan assigns responsibilities to MS4 dischargers and other stakeholders. These responsibilities include monitoring and evaluating compliance, identifying sources of impairment, and evaluating the effectiveness of BMPs and other control actions. The MSAR TMDL implementation plan assigns responsibilities for urban discharges to specific MS4 dischargers to identify sources of impairment, to propose BMPs to address those sources, and to monitor, evaluate, and revise BMPs as needed, based on the effectiveness of the BMP implementation program. These are generally considered as the short-term solutions. Specific implementation plan tasks are described in Chapter 5 of the Basin Plan and are assigned to one or more of the Permittees. Requirements of the TMDL implementation plan tasks are incorporated into this Order. A number of these implementation plan tasks are also jointly assigned to non-Permittee stakeholders. The stakeholders have established TMDL task forces to jointly implement and coordinate the TMDL implementation plan tasks.

12. The MSAR TMDL Task Force members are listed in Table 4:

Table 4. Middle Santa Ana River Bacterial Indicator TMDL Task Force

MS4 Permittees	Non-MS4 Permittees
San Bernardino County Flood Control District (as Principal Permittee and on behalf of the Co-Permittees named in the TMDL)	Santa Ana Watershed Project Authority (SAWPA)
Corona, City of (Riverside County MS4 Permittee)	
Norco, City of (Riverside County MS4 Permittee)	US Department of Agriculture-Forest Service
Riverside, City of (Riverside County MS4 Permittee)	Milk Producers Council
Riverside, County of (Riverside County MS4 Permittee)	Chino Basin Watermaster Agricultural Pool
Riverside County Flood Control and Water Conservation District (Riverside County MS4 Principal Permittee)	Region 4 MS4 Permittees: Cities of Claremont and Pomona (pending formal agreement)

13. Requirements in the MSAR TMDLs include the following:

a. WLAs for urban discharges and for CAFOs (Concentrated Animal Feeding Operations), and LAs for agriculture and natural sources (open space and undeveloped forest land) during wet and dry weather conditions.

b. Numeric targets for fecal coliform and *E. coli*.

c. Specific implementation tasks to ensure compliance with the numeric targets, WLAs and LAs. Some of these tasks have been completed.

i. Pursuant to Task 3, the MSAR TMDL Task Force submitted a monitoring plan which was approved by the Regional Board on June 29, 2007 (Resolution No. R8-2007-0046). A revised monitoring plan that included a BMP effectiveness study was approved by the Regional Board on April 18, 2008 (Resolution No. R8-2008-0044).

ii. A BMP effectiveness study was completed as part of the watershed-wide BMP effectiveness component of the Middle Santa Ana River Water Quality Monitoring Plan (dated April 3, 2008). The results of this study will be incorporated into BMP selection criteria that will be utilized as a guide to address bacterial indicator sources within the MSAR watershed. The Riverside County Flood Control District plans to conduct a phase 2 study at its LID testing facility to evaluate the effectiveness of several LID-based BMPs, which will further guide BMP selection in the watershed.

iii. Pursuant to Task 4.1, the MSAR TMDL Task Force submitted an Urban Bacterial Indicator Source Evaluation Plan (USEP) that was approved by the Regional Board on April 18, 2008 (Resolution No. R8-2008-0044). The USEP is a phased approach. The first phase

of the approved USEP has been completed and a report is currently under review by Regional Board staff. Several discrete sources of bacterial indicator were identified, controlled or eliminated as a result of this effort. Based on the outfall monitoring data collected to date, additional sites are identified, monitored and prioritized yearly for further evaluation. The next phase of the USEP will focus on BMP retrofit implementation to address elevated indicator bacteria from urban drainage areas flowing into Mill Creek and Cucamonga Creek.

iv. Consistent with Task 4.2, this Order requires the Permittees to revise the MSWMP to incorporate the results of the USEP and/or other studies. The MSWMP revisions shall include schedules for meeting the bacterial indicator wasteload allocations based on the schedule established in the MSAR TMDLs and the results of the USEP and/or other studies.

v. Pursuant to Task 4.4, the Permittees are required to revise the Water Quality Management Plan to incorporate BMPs as per the USEP, Task 4.1, for new development and significant redevelopment projects.

vi. Based on the results of pre-compliance evaluation monitoring[26], it has been determined that the short-term solutions discussed above are not expected to achieve the WLAs by the compliance dates. This Order requires the MSAR Permittees to develop a long-term plan (a comprehensive bacteria reduction plan, CBRP) designed to achieve compliance with the WLAs by the compliance dates.

vii. If necessary, the CBRP will be updated based on an evaluation of the effectiveness of the BMPs implemented. In the absence of an approved CBRP the WLAs become the final numeric water quality-based effluent limit that must be achieved by the compliance dates.

14. On April 21, 2006, the Regional Board adopted the Big Bear Lake Nutrient TMDL for Dry Hydrological Conditions (Resolution R8-2006-0023); the State Board approved the Basin Plan Amendment on April 3, 2007 and the Office of Administrative Law approved the Basin Plan Amendment on August 21, 2007. USEPA approved the TMDL on September 25, 2007. There were insufficient watershed and in-lake nutrient data to support development of TMDLs, load allocations, and wasteload allocations for average and/or wet hydrologic conditions; therefore the TMDL is specific to dry hydrological conditions. This Order requires the Permittees to implement the tasks identified in the implementation plan for the Big Bear Lake Nutrient TMDL for Dry Hydrological Conditions (Big Bear Lake Nutrient TMDL).

[26] Pre-compliance evaluation monitoring is monitoring conducted prior to the TMDL compliance date to assess the effectiveness of BMPs implemented in reducing pollutant(s) of concern by the compliance date.

15. Some of the details of the implementation plan for the Bear Lake Nutrient TMDL are described below.

    a. The Big Bear Lake Nutrient TMDL includes an urban WLA for total phosphorus for dry hydrologic conditions. Phosphorus is the primary limiting nutrient in Big Bear Lake and nitrogen can be a limiting nutrient under certain conditions.

    b. Nutrient discharges to the Lake have promoted the proliferation of nuisance aquatic plants which have impacted the Lake's beneficial uses and dissolved oxygen levels.

    c. The Big Bear Lake Nutrient TMDL specifies response targets for chlorophyll a, macrophyte coverage and percentage of nuisance aquatic vascular plant species for Big Bear Lake. These response-targets provide a method to track improvements in water quality resulting from reductions in phosphorus loading.

    d. Whereas the Big Bear Lake Nutrient TMDL is applicable only to dry hydrologic conditions, the numeric targets specified in the TMDL apply to all hydrological conditions. The TMDL specifies that these targets be achieved no later than 2015 for dry hydrological conditions and no later than 2020 for all other hydrological conditions. The Regional Board will judge BMP effectiveness primarily on the basis of how well the MS4s adaptive management program does at meeting these targets for the controllable sources within their jurisdiction.

    e. The urban wasteload allocations are currently being met. This Order requires the County of San Bernardino, San Bernardino County Flood Control District and the City of Big Bear Lake (the Big Bear Lake MS4 Permittees) to continue to monitor and to develop and implement additional BMPs, if necessary.

    f. The Big Bear Lake MS4 Permittees also participate in a stakeholder effort to achieve the following Big Bear Lake Nutrient TMDL numeric targets:

Table 5. Big Bear Lake Nutrient TMDL Numeric Targets

Indicator	Target Value[a]
Total P concentration	Annual average[b] no greater than 35 µg/L; to be attained no later than 2015 (dry hydrological conditions), 2020 (all other times)[c]
Macrophyte Coverage	30-40% on a total lake area basis; To be attained by 2015 (dry hydrological conditions), 2020 (all other times)[c,d]
Percentage of Nuisance Aquatic Vascular Plant Species	95% eradication on a total area basis of Eurasian Watermilfoil and any other invasive aquatic plant species; to be attained no later than 2015 (dry hydrological conditions), 2020 (all other times) [c,d]
Chlorophyll a concentration	Growing season[e] average no greater than 14 µg/L; to be attained no later than 2015 (dry hydrological conditions), 2020 (all other times)[c]

a Compliance with the in-lake targets to be achieved as soon as possible, but no later than the dates specified

b Annual average determined by the following methodology: the nutrient data from both the photic composite and discrete bottom samples are averaged by station number and month; a calendar year average is obtained for each sampling location by averaging the average of each month; and finally, the separate annual averages for each location are averaged to determine the lake-wide average. The in-lake open-water sampling locations used to determine the annual average are MWDL1, MWDL2, MWDL6, and MWDL9 (see 1.B.4. Implementation Task 4.2, Table 5-9a-i).

c Compliance date for wet and/or average hydrological conditions may change in response to approved TMDLs for wet/average hydrological conditions.

d Calculated as a 5-yr running average based on measurements taken at peak macrophyte growth as determined in the Aquatic Plant Management Plan (see 1.B.4. Implementation, Task 6C)

e Growing season is the period from May 1 through October 31 of each year. The open-water sampling locations used to determine the growing season average are MWDL1, MWDL2, MWDL6, MWDL9 (see 1.B.4. Implementation Task 4.2, Table 5-9a-i). The chlorophyll a data from the photic samples are average by station number and month; a growing season average is obtained for each sampling location by averaging the average of each month; and finally, the separate growing season averages for each location are averaged to determine the lake-wide average.

g. Continued compliance with the WLA will be determined by watershed modeling conducted and reported by the Big Bear Lake MS4 Permittees. By March 31, 2010, the Big Bear Lake MS4 Permittees will submit a final watershed modeling plan that is ready to be implemented and that details how compliance with the WLA will be determined and evaluated. This plan is to be implemented upon approval by the Executive Officer.

h. Where effectiveness assessments indicate WLAs are not being achieved, Big Bear Lake MS4 Permittees must develop and implement additional BMPs or demonstrate that no additional practicable BMPs are available. Compliance with the WLAs is to be achieved through the Permittees' implementation of

BMPs in accordance with the TMDL Implementation Plans or as identified as a result of TMDL special studies approved by the Regional Board.

i. The Big Bear Lake Nutrient TMDL Implementation Plan requires the collection and evaluation of nitrogen data to determine compliance with the existing total inorganic nitrogen (TIN) objective for Big Bear Lake.

j. The Big Bear Lake Nutrient TMDL does not specify nutrient reductions from external watershed sources, which include urban discharges (WLAs), resorts and open space/forested lands (LAs). Instead, the TMDL for Dry Hydrological Conditions specifies a reduction in phosphorus from internal nutrient sources, which are lake sediment and macrophytes. External load dischargers are responsible for reducing their contributions to the internal nutrient loads.

k. On December 6, 2006, the City of Big Bear Lake and Snow Summit, Inc., signed a Memorandum of Understanding (MOU) regarding Snow Summit's storm water discharges into the City's MS4 system. The City of Big Bear Lake and Snow Summit agreed that the City has the authority to regulate storm water discharges from properties, including Snow Summit's facilities; to the extent such storm water discharges enter lands within the boundaries of the City, any waters within the jurisdiction of the City, or the City's MS4 facilities. This provides the City an additional tool to control nutrient discharges to the Lake. Responsible agencies and dischargers in the Big Bear Lake watershed have formed a Big Bear Lake TMDL Task Force. The Big Bear TMDL Task Force members are working jointly to implement requirements of the Big Bear Lake Nutrient TMDL.

l. On May 4, 2009, the Big Bear Lake TMDL Task Force submitted a revised watershed-wide monitoring plan. At the May 22, 2009 board meeting, the Regional Board approved the Big Bear Lake Watershed-wide Nutrient Monitoring Plan by adopting Resolution No. R8-2009-0043. This includes a watershed-wide monitoring plan. The Big Bear Lake In-lake Monitoring Plan was adopted on July 18, 2008 (Resolution No. R8-2008-0070). The monitoring program is designed to determine the sources of phosphorus; support the development of TMDLs applicable to other hydrologic conditions; and evaluate progress towards meeting (by the specified compliance dates) the numeric targets specified in the TMDLs.

m. The Big Bear Lake Nutrient TMDL Task Force has also submitted a lake management plan that is currently being revised based on Regional Board staff comments.

n. Based on a weight of evidence evaluation, if the numeric targets for the Lake are met through in-lake controls or other techniques, this would constitute compliance with the requirements of the TMDL implementation plan.

16. As indicated in Table 3 above, bacteria, metals and nutrients are the pollutants of concern for a majority of the waterbodies within the permitted area. One of the major sources of bacteria and nutrients is concentrated animal feeding

operations. Dairy facilities within the region are regulated under the Regional Board's Concentrated Animal Feeding Operations (CAFO) Permit. The Regional Board enforces the CAFO Permit. The Permittees are required to identify and control urban sources of bacteria, nutrients and other pollutants within their jurisdictions, consistent with the MEP standard.

G. **New Development/Significant Redevelopment – WQMP/LID**

1. Significant numbers of development projects have taken place in San Bernardino County in the last decade. These developments have increased the area of the urbanized portion of the watershed. As development occurs, natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants providing an effective natural purification process. In contrast, impervious surfaces (e.g., concrete surface) can neither absorb water nor remove pollutants, and the natural purification characteristics are lost. Urbanization generally increases storm water runoff, volume, and flow velocity. Additionally, conventional urban development significantly increases pollutant loads as the increased population density causes proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage wastes, pesticides, household hazardous wastes, lawn fertilizers, pet wastes, trash, and other anthropogenic pollutants.
2. Impacts from urbanization can especially threatens environmentally sensitive riparian areas as well as stream habitat and structure. Such areas may be much more susceptible to degradation from increased pollutant loads. Therefore, development that would otherwise have minimal impact on the environment may adversely impact a sensitive environment. These State-designated environmentally sensitive areas (ESAs) include those areas designated in the Basin Plan as supporting the following beneficial uses: (1) "Rare, Threatened, or Endangered Species (RARE)"; and (2) "Preservation of Biological Habitats of Special Significance (BIOL)".
3. Increased volumes and velocities of storm water discharges from MS4s into natural watercourses can cause stream bank erosion and physical modifications that adversely impact aquatic ecosystems and stream habitat. The collective changes in the hydrologic regime caused by development is termed hydromodification. For the permitted area, the remaining natural streams in the mountains and in lightly urbanized or undeveloped portions of the watershed are most likely to experience adverse impacts from any new development or significant redevelopment projects that are built.
4. On October 5, 2000, the State Board adopted Order No. WQ-2000-11, which required that urban runoff generated by 85th percentile storm events from specific types of development categories (priority projects) be infiltrated, filtered or treated. The essential elements of this precedential Order were incorporated into the third-term permit. The Permittees developed a model Water Quality

Management Plan (WQMP) Guidance and Template and are currently implementing the essential elements of the approved model WQMP.

5. Recent studies have indicated that low impact development[27] LID is an effective storm water management approach that minimizes adverse impacts on storm water runoff quality and quantity resulting from urban developments. The Southern California Monitoring Coalition (SMC), including the project lead agency (the San Bernardino County Flood Control District), in collaboration with SMC member Southern California Coastal Water Research Project (SCCWRP) and the California Storm Water Quality Association (CASQA), with funding from the State Water Resources Control Board and CASQA is developing a Low Impact Development Manual for Southern California. This manual will be incorporated into the CASQA BMP Handbooks. The Permittees will incorporate, where feasible and practicable, the LID process outlined in this manual into a revised version of the WQMP.

6. This Order requires project proponents to first consider preventative and conservation techniques (e.g., preserve and protect natural features to the maximum extent practicable) prior to considering mitigative techniques (structural treatment, such as infiltration systems). The mitigative measures should be prioritized with the highest priority for BMPs that remove storm water pollutants and reduce runoff volume, such as infiltration, then other BMPs, such as harvesting and use, evapotranspiration and bio-treatment[28] should be considered. To the maximum extent practicable, these LID BMPs must be implemented at the project site. The Regional Board recognizes that site conditions, including site soils, contaminant plumes, high groundwater levels, etc., could limit the applicability of infiltration and other LID BMPs at certain project sites. Where LID BMPs are not feasible at the project site, more traditional[29], but equally effective control measures should be implemented. This Order provides for alternatives and in-lieu programs where the preferred LID BMPs are infeasible.

7. The USEPA has determined that LID can be a cost-effective and environmentally preferable approach for the control of storm water pollution and to minimize downstream impacts by mimicking pre-development hydrology and minimizing changes in site hydrology. LID techniques promote the reduction of impervious areas which may achieve multiple environmental and economic benefits in addition to enhanced water quality and supply, stream and habitat protection,

[27] LID a set of technologically feasible and cost-effective approaches and practices that are designed to reduce runoff of water and pollutants from the site at which they are generated. By means of infiltration, evapotranspiration, and use of rainwater, LID techniques manage water and water pollutants at the source. LID and Green Infrastructure are sometimes used interchangeably. See also Attachment 4-Glossary, for definition of LID.

[28] In general, these types of BMPs utilize vegetation that promote pollutant uptake and evapotranspiration and/or natural or soil type media filtration with volume retention capacity and ability to reduce pollutant concentration.

[29] Typical engineered and/or proprietary treatment devices that capture/filter pollutants but do not contribute to maintenance of pre-development site hydrology. Examples are vortex separators, catch basin filters.

cleaner air, reduced urban temperature, increased energy efficiency and other community benefits such as aesthetics recreation, and wildlife areas. This Order incorporates a volume capture metric based on the use of preferred LID BMPs.

8. It is recognized that LID principles are universal concepts, however, their applicability is dependent on site-specific factors such as: soil conditions including soil compaction and permeability, groundwater levels, soil contaminants (brown field development), space restrictions (in-fill projects, redevelopment projects, high density development, transit-oriented developments), etc. In the event that LID BMPs techniques, particularly infiltration, evapotranspiration, capture-use, and/or biotreatment, are not feasible at a site, alternatives and in-lieu programs are included that will address water quality/quantity concerns.

9. The model WQMP Guidance and Template provide a framework to incorporate some of the watershed protection principles into the Permittees' planning, construction and post-construction phases of priority projects. The model WQMP requires site design (including, where feasible, LID principles), source control and treatment control elements to reduce the discharge of pollutants in urban runoff. On April 30, 2004, the Regional Board approved the model WQMP Guidance and Template. The Permittees are requiring project proponents to develop and implement site-specific WQMPs. This Order requires the Permittees to verify functionality of post-construction structural BMPs prior to issuance of certificate of occupancy and to track and ensure long term operation and maintenance of post-construction BMPs in approved WQMPs.

10. An audit of each of the Permittees' storm water management programs during the third-term permit indicated a need for improved integration of the watershed protection principles, including LID techniques, specified in the WQMP into the Permittees' General Plan or related documents such as Development Standards, Zoning Codes, Conditions of Approval, Project Development Guidance, etc. It appears that many of the existing procedures, Development Standards, Ordinances and Municipal Codes may include barriers for implementation of LID techniques. This Order requires the Permittees to review and revise the Permittees' CEQA documentation, General Plan, Comprehensive or Master Plan, Municipal Codes, Subdivision Ordinances, Project Development Standards, Conditions of Approval or related documents to remove any barriers, as necessary, and within their control, for implementation of LID techniques and other requirements of this Order.

11. This Order requires the Permittees to ensure that Covenants, Conditions and Restrictions (CC&R) or other mechanisms for proper long term operation and maintenance of post-construction BMPs are carried out in perpetuity.

12. In addition to addressing post-development urban storm water quality, the WQMP includes requirements to protect environmentally sensitive areas and to address potential hydromodification issues that may result from each project. Section 2.3 of the WQMP requires identification of hydrologic conditions of concern (HCOC). An HCOC exists when a site's hydrologic regime is altered

and there are likely to be significant[30] impacts on downstream channels and aquatic habitats, alone or in conjunction with impacts of other projects. Currently, new development and significant re-development projects are required to perform this assessment and incorporate appropriate BMPs to ensure existing hydrologic conditions are maintained. This Order requires the Permittees to implement, where feasible, LID techniques to minimize HCOC and supports the implementation of in-stream hydromodification protection and/or mitigation alternatives where appropriate.

13. Management of the impacts of urbanization on water quality, stream stability and aquatic habitats can sometimes be more effective if the techniques are implemented based on an overall watershed plan, whether done at the project site, within the neighborhood or within each municipality. During the third term permit, the Permittees initiated a watershed mapping project to develop a GIS-based map of the permitted area with the goal of identifying and developing specific action plans for protecting those segments of streams and channels that are vulnerable to impacts from urbanization.

14. This Order also requires the Permittees to develop a Watershed Action Plan to address cumulative impacts of development on vulnerable streams, preserve or restore to the maximum extent practicable the structure and function of streams in the permitted area, and protect surface water quality and groundwater recharge areas. The Watershed Action Plan should integrate hydromodification and water quality management strategies with land use planning policies, ordinances, and plans within each jurisdiction.

15. Pending approval of a Watershed Action Plan, the Permittees are required to address the impacts of urbanization as required under the approved model WQMP by requiring project proponents to develop and implement project-specific WQMPs.

16. If not properly designed and maintained, the structural treatment control BMPs could create a nuisance and/or habitat for vectors[31] (e.g., mosquitoes and rodents). Third term permit required the Permittees to closely collaborate with the local vector control agencies during the development and implementation of such treatment systems. The Permittees should continue these collaborative efforts with the vector control agencies to ensure that treatment control systems do not become a nuisance or a potential source of pollutants. The requirements specified in this Order include identification of responsible agencies for maintaining the systems and for providing funding for operation and maintenance.

17. If not properly designed and maintained, groundwater infiltration systems could also adversely impact groundwater quality. Restrictions placed on urban runoff

[30] It is expected that the current HCOC mapping effort and stream/risk characterization effort will define what should be considered as significant impact or stream vulnerability to hydromodification on a watershed basis.

[31] Managing Mosquitoes in Stormwater Treatment Devices, Marco E. Metzger, University of California Davis, Division of Agriculture and Natural Resources, Publication 8125.

infiltration in this Order (Section XI.D.8) are based on recommendations provided by the USEPA Risk Reduction Laboratory. The Permittees should continue to work closely with the water districts and water conservation districts to ensure groundwater protection.

H. **Municipal Inspection Programs**

1. The Permittees are required to conduct inspections of construction sites, industrial facilities, and commercial establishments. An evaluation of the Permittees' inspection programs during the third-term permit indicated a wide range of compliance and non-compliance with the inspection requirements. In many instances, the facilities' return to compliance was not properly documented. This Order includes requirements for a more effective inspection program and includes a performance measure, time to return to compliance, as a metric for program effectiveness.
2. During the third term, the Permittees initiated development of a risk-based prioritization scheme to prioritize facilities for inspections. In the absence of an approved risk-based prioritization scheme, the Permittees are required to use the prioritization methodology specified in the third-term permit. Upon approval of the risk-based prioritization scheme, the Permittees are required to utilize that system to prioritize their inspections.

I. **Illegal Discharges/Illicit Connections**

1. Illegal discharges to the MS4s could contribute to storm water and other surface water contamination. During the second term permit, the Permittees completed a reconnaissance survey of their open channels and underground storm drains to detect and eliminate any illicit connections (undocumented or unpermitted connections to the MS4s). The Permittees have trained their staff on illegal discharge surveillance/cleanup procedures. Audits conducted during the third-term permit indicated that this program element is generally carried out through complaint response. This Order requires each Permittee to revise this program element based on the Center for Watershed Protection's Illegal Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments.

J. **Technology-Based Effluent Limitations (Not Applicable)**

K. **Non-storm Water/De-Minimus Discharges**

1. The MS4s generally convey non-storm water flows such as irrigation runoff, runoff from non-commercial car washes, runoff from miscellaneous washing and cleaning operations, and other nuisance flows generally referred to as de-minimus discharges. Federal regulations, 40 CFR Part 122.26(d)(2)(i)(B), prohibit the discharge of non-storm water containing pollutants into the MS4s and to Waters of the U.S. unless they are regulated under a separate NPDES permit or are exempt as indicated in Effluent Limitations and Discharge Specifications,

Section V.A of this Order. On March 24, 2009, the Regional Board adopted Order No. R8-2009-0003, to address de-minimus types of discharges. The Permittees need not get coverage under the de-minimus permit for the types of discharges listed under Section V.B, as long as they are in compliance with the conditions specified in this Order and the substantive requirements of Order No. R8-2009-0003.

L. **Water Quality-Based Effluent Limitations (WQBELs) and TMDL WLA**

1. 40 CFR 122.44(d) requires that permits include WQBELs to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving waters. Where numeric water quality criteria have not been established, 40 CFR 122.44(d) specifies that WQBELs may be established using USEPA criteria guidance under CWA section 304(a), proposed state criteria or a state policy interpreting narrative criteria supplemented with other relevant information, or an indicator parameter. In *Defenders of Wildlife, et al* v. *Browner,* No. 98–71080 (9th Circuit, October 1999). The Court held that the CWA does not require "strict compliance" with State water quality standards for MS4 permits under section 301(b)(1)(C), but that at the same time, the CWA does give EPA discretion to incorporate appropriate water quality-based effluent limitations under another provision, CWA section 402(p)(3)(B)(iii). 40 CFR 122.44(k)(3) allows the use of BMPs to control or abate the discharge of pollutants when numeric effluent limitations are infeasible or when practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA. The legislative history and the preamble to the federal storm water regulations indicated that Congress and the USEPA were aware of the difficulties in regulating urban and storm water runoff solely through traditional end-of-pipe treatment. It is the Regional Board's intent to require the Permittees to implement best management practices consistent with the MEP standard in order to support attainment of water quality standards. This Order includes receiving water limitations based on applicable water quality standards; it prohibits the creation of nuisance and requires the reduction of water quality impairment in receiving waters. The Permit includes a procedure for determining whether storm water discharges are causing or contributing to exceedances of receiving water limitations and for evaluating whether the MSWMP must be revised to include additional or more effective BMPs designed to meet water quality standards. The Order establishes an iterative process to determine compliance with the receiving water limitations.

2. To support attainment of water quality standards, consistent with MEP, this Order requires the Permittees to implement a number of management practices and an iterative process to ensure that water quality standards are achieved. The Permittees are required to:

   a. Implement BMPs at all their facilities and for all their activities,

b. Require BMPs, including, where appropriate, LID techniques, to be implemented at new and re-development project sites prior to accepting discharge from these sites into their MS4s,

c. Implement and annually evaluate the MSWMP and each Permittee's LIP for effectiveness in reducing pollutants in urban and storm water runoff, and

d. Perform monitoring and reporting to determine the adequacy of BMPs within the permitted area and to determine the pollutants of concern based on comparisons of monitoring data with the applicable water quality standards.

3. Federal regulations (40 CFR 122.44(d)(1)(vii)(B) require inclusion of effluent limits that are "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA." Consistent with this requirement, this Order includes a process for developing a BMP-based approach, which, if adopted by the Regional Board prior to the compliance date(s) specified in the associated TMDL Implementation Plan, shall become the final water quality-based effluent limitation(s). Permittees are required to submit a BMP-based comprehensive plan (comprehensive plan) describing the proposed BMPs and the documentation demonstrating that the BMPs are expected to attain the WLAs by the compliance dates when implemented. Once the Regional Board approves this comprehensive plan, this Order will be amended to include the comprehensive plan as the final water quality-based effluent limit that is consistent with the WLAs. If the Regional Board does not approve the comprehensive plan prior to the compliance date(s), the WLAs will become the final water quality-based effluent limits on the applicable compliance date and will remain in effect until a BMP comprehensive plan is approved by the Regional Board. The comprehensive plan will be updated, as necessary, to reflect evaluations of the effectiveness of the BMPs, including evaluations presented in the annual reports. The WLAs for Big Bear Lake Nutrient TMDLs are currently being achieved. The Permittees in the Big Bear Lake area are required to continue to implement BMPs (specific tasks identified in the Big Bear Lake Nutrient TMDL Implementation Plan) and to monitor to ensure continued compliance with the WLAs.

4. If water quality standards in the irnpaired receiving waters are met through implementation of appropriate control measures, this would constitute compliance with the effluent limits.

5. Maximum daily concentration limits are also included for de-minimus types of discharges from Permittee owned and/or operated facilities and activities and for total dissolved solids and total inorganic nitrogen for dry weather discharges.

M. Water Quality Control Plan (Basin Plan)

1. The Regional Board adopted a revised Water Quality Control Plan for the Santa Ana River Basin (hereinafter Basin Plan) that became effective on January 24, 1995. The Basin Plan designates beneficial uses, establishes water quality

objectives, and contains implementation programs and policies to achieve those objectives for all waters in the Santa Ana Region addressed through the Plan.

2. More recently, the Basin Plan was amended significantly to incorporate revised boundaries for groundwater sub-basins, now termed "management zones", new nitrate-nitrogen and TDS objectives for the new management zones, and new nitrogen and TDS management strategies applicable to both surface and ground waters. This Basin Plan Amendment (R8-2004-0001) was adopted by the Regional Water Board on January 22, 2004. The State Water Resources Control Board (State Water Board) and Office of Administrative Law (OAL) approved Order No R8-2004-0001 on September 30, 2004 and December 23, 2004, respectively. The U.S. Environmental Protection Agency approved the surface water quality standards and related provisions of Order R8-2004-0001 on June 20, 2007. Order R8-2004-0001 includes TDS/TIN limits for direct dry weather discharges into surface waters within the permitted area based on the objectives specified in Table 4-1 of the Basin Plan, as amended. Storm water was considered to be an insignificant source for nitrogen/TDS in groundwater. These amendments were all incorporated into and updated in a single revised basin plan in February 2008.

3. In addition, the Basin Plan implements State Water Resources Control Board (State Water Board) Resolution No. 88-63, which established state policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic water supply. Beneficial uses recognized in the Basin Plan for surface waters in the permitted area are as follows:

   a. Municipal and Domestic Supply,
   b. Agricultural Supply,
   c. Industrial Service Supply,
   d. Industrial Process Supply,
   e. Groundwater Recharge,
   f. Hydropower Generation,
   g. Water Contact Recreation,
   h. Non-contact Water Recreation,
   i. Warm Freshwater Habitat,
   j. Limited Warm Freshwater Habitat,
   k. Cold Freshwater Habitat,
   l. Preservation of Biological Habitats of Special Significance,
   m. Wildlife Habitat,
   n. Rare, Threatened or Endangered Species, and
   o. Spawning, Reproduction, and Development

   The existing and potential beneficial uses of groundwater that could be impacted by the discharge of urban and storm water runoff within the permitted area include the following:

   a. Municipal and Domestic Supply,
   b. Agricultural Supply,

c. Industrial Service Supply, and
d. Industrial Process Supply

4. The Basin Plan also incorporates by reference all State Board water quality control plans and policies including the 1990 Water Quality Control Plan for Ocean Waters of California (Ocean Plan) and the 1974 Water Quality Control Policy for Enclosed Bays and Estuaries of California (Enclosed Bays and Estuaries Plan). This Order implements the Basin Plan and other statewide plans and policies incorporated into the Basin Plan.

N. **National Toxics Rule (NTR) and California Toxics Rule (CTR)**

Regional Board believes that compliance with water quality standards through implementation of best management practices is appropriate for regulating urban and storm water runoff. EPA articulated this position on the use of BMPs in storm water permits in the policy memorandum entitled, "Interim Permitting Approach for Water Quality-Based Effluent Limitations In Storm Water Permits" (61 FR 43761, August 9, 1996).[32] NTR and CTR are blanket water quality criteria that apply to all surface water discharges. Water quality objectives specified in the Basin Plan are local numeric and narrative objectives that may be more stringent than the national or statewide water quality criteria.

O. **State Implementation Policy (SIP) (Not Applicable)**

See Section N., above.

P. **Compliance Schedules and Interim Requirements**

The Basin Plan contains schedules for achieving compliance with wasteload allocations for MSAR TMDLs and the Big Bear Lake Nutrient TMDLs. This Order requires the Permittees within these watersheds to comply with those time schedules for various deliverables as specified in the approved implementation plans. Consistent with the State Board's Compliance Schedule Policy, Resolution No. 2008-0025, this Order incorporates interim and final effluent limits, where appropriate. Additionally, since the final TMDL compliance dates are outside the term of this permit, this Order also requires the Permittees to monitor and report the effectiveness of BMPs implemented to evaluate progress towards attainment of TMDL WLAs by the time schedules specified in the implementation plans.

Q. **Antidegradation Policy**

40 CFR 131.12 requires that State water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the

[32]See discussions on Wet Weather Flows in the Federal Register/Vol. 65, No. 97/Thursday, May 18, 2000/Rules and Regulations

federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. As discussed in detail in the Fact Sheet, the permitted discharges are consistent with the antidegradation provisions of 40 CFR 131.12 and State Board Resolution No. 68-16.

R. **Anti-Backsliding**

Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations of 40 CFR 122.44(*l*) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. All effluent limitations in this Order are at least as stringent as the effluent limitations in the previous Order. Therefore this Order conforms with the anti-backsliding requirements of the CWA.

S. **Public Education/Participation**

1. Public participation during the development of urban runoff management programs and implementation plans is necessary to ensure that all stakeholder interests and all applicable control measures are considered. In addition, the storm water regulations require public participation in the development and implementation of the storm water management program. As such, the Permittees are required to solicit and consider all comments received from the public and submit copies of the comments to the Executive Officer of the Regional Board with the annual reports. In response to public comments, the Permittees may modify reports, plans, or schedules prior to submittal to the Executive Officer.
2. Urban runoff can contain pollutants from privately owned and operated facilities such as residences, businesses and commercial establishments, and from public and private institutions. A successful storm water management program should include the participation and cooperation of public entities, private businesses, and public and private institutions. The MSWMP recognizes public education as a critical element. As the population increases in the permitted area, it will be even more important to continue to educate the public regarding the impact of human activities on the quality of urban runoff.
3. In addition to the Regional Board, a number of other stakeholders are involved in the management of the water resources of the Region. These include, but are not limited to, the incorporated cities in the Region, Publicly Owned Treatment Works, Orange, Riverside, and San Bernardino counties, and the Santa Ana Watershed Project Authority and its member agencies. The entities listed in Attachment 3 are considered as potential dischargers of urban runoff in the permitted area. It is expected that these entities will also work cooperatively with the Permittees to manage urban runoff. The Regional Board, pursuant to 40 CFR 122.26(a), has the discretion and authority to require non-cooperating

entities to participate in this Order, or to issue individual discharge permits to these entities.

4. Cooperation and coordination among the stakeholders (regulators, Permittees, the public, and other entities) are critical to optimize the use of finite public resources, and to ensure economical management of water quality in the Region. Recognizing this fact, this Order focuses on watershed management and seeks to integrate the programs of the stakeholders, especially the Permittees under the Orange, Riverside, and San Bernardino County MS4 permits within the Santa Ana Watershed.
5. Public education is an important aspect of every effective urban runoff management program and can promote changes in behavior at a societal level. Public education, designed to target various urban land users and other audiences, is also essential to inform the public of how individual actions affect receiving water quality and how adverse effects can be minimized.
6. Some urban runoff issues, such as general education and training, can be effectively addressed on a regional basis. Regional approaches to urban runoff management can improve program consistency and promote sharing of resources, which can result in implementation of more efficient programs. In particular, the counties of San Bernardino, Riverside and Orange and the municipalities within these counties are encouraged to cooperatively work together and generate a unified education and training program.

T. **Monitoring and Reporting**

1. 40 CFR 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results. Sections 13267 and 13383 of the CWC authorize the Regional Board to require technical and monitoring reports. The Monitoring and Reporting Program establishes monitoring and reporting requirements to implement federal and State requirements.
2. An effective monitoring program should characterize urban runoff, identify problem areas, determine the impact of urban runoff on receiving waters and assess the effectiveness of BMPs. The Principal Permittee administers and conducts the storm water monitoring program for the Permittees. The third-term Permit includes only wet weather monitoring of MS4 outfalls and receiving waters.
3. The Regional Board and the Permittees recognize the importance of watershed management initiatives and regional planning and coordination in the development and implementation of programs and policies related to water quality protection, including urban runoff and TMDL programs. A number of such efforts are underway where the Permittees are active participants, including the Storm Water Quality Standards Task Force, the Middle Santa Ana River Watershed TMDL Task Force, and the Big Bear TMDL Task Force. This Order encourages continued participation in such programs. Furthermore, this Order recognizes that some of these planning efforts may result in significant changes

to the Basin Plan. If this occurs, the Regional Board may reopen the permit to modify applicable terms and conditions through a public hearing process. In addition, the Regional Board also recognizes that in certain cases it may be necessary and appropriate to fund regional water quality monitoring programs by reallocating funds from lower priority local monitoring programs. The Executive Officer is authorized to approve, after public notification and consideration of all comments received, changes to the watershed management initiatives, regional planning and coordination activities and regional monitoring programs. If the Executive Officer receives any significant comments during the public notification process that cannot be resolved, it shall be scheduled for a public hearing during a regularly scheduled Board meeting. To improve the effectiveness of adopted TMDLs and TMDLs that are expected to be adopted in the near future, this Order requires the Permittees to develop an Integrated Watershed Monitoring Plan that will comprehensively integrate the various urban run-off related monitoring programs, TMDLs and program effectiveness assessments. The Monitoring and Reporting Program is provided in Attachment 5.

4. The Stormwater Monitoring Coalition[33], with technical guidance from the Southern California Coastal Water Research Project prepared "Model Monitoring Program for Municipal Separate Storm Sewer Systems in Southern California", August 2004 Technical Report No. 419. This report indicated that "...the lack of mass emissions stations in the inland counties hampers their ability to estimate the proportional contribution of these inland areas to cumulative loads downstream." Accordingly, the Monitoring and Reporting Section requires the establishment of urban discharge mass emission stations. An integrated Watershed Monitoring Plan should address any shortcomings in the overall monitoring programs and avoid duplicative efforts within the same watershed.

5. The Storm Water Monitoring Coalition, in partnership with the Southern California Coastal Water Research Project, is conducting a Regional Bioassessment Monitoring effort. This Order requires the Permittees to continue their participation in this regional effort.

U. Standard and Special Provisions

Standard Provisions, reporting requirements, and notifications which apply to all NPDES permits are specified in Federal NPDES Regulation 40 CFR122.41, and additional conditions applicable to specified categories of permits are specified in 40 CFR 122.42. The discharger must comply with all standard provisions and with those additional conditions that are applicable under 40 CFR 122.42.

[33] The Stormwater Monitoring Coalition consists of representatives from the Counties of Ventura, Los Angeles, Orange, San Bernardino, Riverside, and San Diego, the Cities of Long Beach and Los Angeles, the SWRCB, CRWQCB Regions 4, 8, and 9, the USEPA, and Caltrans.

V. **Notification of Interested Parties**

The Regional Board has notified the dischargers and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Details of notification are provided in the Fact Sheet of this Order.

W. **Consideration of Public Comment**

The Regional Board has notified the Permittees, all known interested parties, and the public of its intent to issue waste discharge requirements for this discharge and has provided them with an opportunity to submit their written views and recommendations. The Regional Board, in a public meeting, heard and considered all comments pertaining to the discharge and the requirements of this Order.

X. **Alaska Rule**

On March 30, 2000, USEPA revised its regulation that specifies when new and revised State and Tribal water quality standards (WQS) become effective for CWA purposes (40 CFR 131.21, 65 FR 24641, April 27, 2000). Under the revised regulation (also known as the Alaska rule), USEPA must approve new and revised standards submitted to USEPA after May 30, 2000 before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000 may be used for CWA purposes, whether or not approved by USEPA.

Y. **Compliance with CZARA**

The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), Section 6217(g), requires coastal states with approved coastal zone management programs to address non-point source pollution impacting or threatening coastal water quality. CZARA addresses five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This Order addresses the management measures required for the urban category. Compliance with requirements specified in this Order relieves the Permittees of developing a non-point source plan, for the urban category, under CZARA. .

Z. **Stringency Requirements for Individual Pollutants (Not Applicable)**

PERMIT REQUIREMENTS:

IT IS HEREBY ORDERED that the Permittees, in Order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, and the provisions of the Clean Water Act, as amended, and the regulations and guidelines adopted thereunder, shall comply with the following:

III. PERMITTEE RESPONSIBILITIES

A. Responsibilities of the Principal Permittee:

1. The Principal Permittee shall be responsible for managing the overall storm water program and shall:

   a. Conduct chemical, biological, bacteriological water quality and other monitoring as required by this Order and any additional monitoring directed by the Executive Officer.

   b. Prepare and submit to the Executive Officer of the Regional Board, unified reports, plans, and programs necessary to comply with this Order.

   c. Coordinate and conduct Management Committee meetings as specified in the MSWMP.

   d. Coordinate permit activities and participate in any subcommittees formed as necessary, to coordinate compliance activities with this Order.

   e. Provide technical and administrative support and inform the Co-Permittees of the progress of other pertinent municipal programs, pilot projects, research studies, and other information to facilitate implementation of Co-Permittees' storm water program.

   f. Coordinate the implementation of area-wide storm water quality management activities such as the monitoring program, public education, pollution prevention, etc.

   g. Gather and disseminate information on the progress of statewide municipal storm water programs and evaluate the information for potential use in the execution of this Order.

   h. Monitor the implementation of the plans and programs required by this Order and determine their effectiveness in attaining water quality standards.

   i. Coordinate with the Regional Board on activities pertaining to implementation of this Order, including the submittal of all reports, plans, and programs as required under this Order.

   j. Develop and implement mechanisms, performance standards, design standards, etc., and assist in the consistent implementation of BMPs to the maximum extent practicable among the Permittees.

   k. Cooperate in watershed management programs and regional and/or statewide monitoring programs.

   l. Solicit and coordinate public input for any proposed major changes to areawide storm water management programs (MSWMP) and implementation plans.

   m. In collaboration with the Co-Permittees, develop guidelines for defining expertise and competencies of storm water program managers and inspectors

and develop and submit for approval a training program for various positions in accordance with these guidelines

n. Within 18 months of permit adoption, the Principal Permittee shall coordinate a review of areawide documents with the Co-Permittees to determine the need for update or revisions and establish a schedule for those revisions. These documents include but are not limited to the Enforcement Consistency Guide, the Municipal Activities Pollution Prevention Strategy, Water Quality Management Plan Guidance and Template, BMP brochures and other areawide documents.

o. Within 6 months of adoption of this Order, the Principal Permittee, in coordination with the Co-Permittees, shall develop and submit an area-wide model Local Implementation Plan (LIP) to the Executive Officer of the Regional Board. The submitted model LIP shall be deemed acceptable to the Regional Board if the Executive Officer raises no written objections within 30 days of submittal. The model LIP should describe each program element per the MSWMP; the departments and personnel responsible for its implementation; applicable standard operating procedures, plans, policies, checklists, and drainage area maps; and tools and resources needed for its implementation. The model LIP should also establish internal and external reporting and notification requirements to ensure accountability and consistency. The model LIP should also describe the mechanisms, procedures, and/or programs whereby the Permittees' individual LIPs will be coordinated through the WAP.

2. In addition, the activities of the Principal Permittee shall include but not be limited to the following for MS4 systems owned or operated by the Principal Permittee:

   a. Within 18 months of adoption of this Order, the Principal Permittee shall develop and implement a Principal Permittee-specific LIP, based on the areawide model LIP. A copy of the LIP, signed by the Chair of the Board of Directors for the Principal Permittee, shall be submitted to the Executive Officer within 18 months of the adoption of this Order.

   b. Take appropriate enforcement actions necessary to ensure compliance with Water Quality Management Plans, ordinances, implementation plans, and other applicable plans and policies.

   c. Inspect, clean, and maintain the MS4 systems within its jurisdiction consistent with the MEP standard.

   d. Review Water Quality Management Plans or other post-construction management plans requiring local agency permits.

   e. Prior to accepting permanent connections to its MS4 from entities outside its jurisdictional authority, the Principal Permittee shall notify the entities in writing of the General Stormwater Permit (Order No. 2009-0009-DWQ) post-construction standards and the regulatory requirements for control of pollutants in MS4 discharges (including relevant requirements from the MSWMP and WQMP), where feasible, and consistent with the MEP standard. A WQMP

approved by the Co-Permittee with jurisdictional authority may constitute compliance with the General Construction Permit post-construction requirements[34].

f. Review and revise, if necessary, policies and ordinances necessary to establish and maintain adequate legal authority, as required by the federal storm water laws and regulations.

g. Respond to or arrange for responding to emergency situations such as accidental spills, leaks, illicit connections/illegal discharges, etc., to prevent or to reduce the discharge of pollutants to storm drain systems and Waters of the U.S.

h. Track, monitor, and keep training records of all personnel involved in the implementation of the Principal Permittee's LIP.

i. Implement management programs, monitoring programs, and related plans as required by this Order.

j. Solicit and coordinate public input for any proposed major changes to its LIP, the MSWMP, and/or Model WQMP, as appropriate.

B. Responsibilities of the Co-Permittees

1. Within 18 months of adoption of this Order, each Co-Permittee shall develop and implement an LIP for its jurisdiction. The LIP shall describe the Co-Permittee's legal authority, its ordinances, policies and standard operating procedures; identify departments and personnel for each task and needed tools and resources. The LIP shall establish internal departmental coordination and reporting requirements to ensure accountability and consistency. Within 18 months from the adoption of this Order, each Co-Permittee shall adopt a Permittee-specific LIP, based on the areawide model LIP. The LIP shall have the written approval of the Permittee's City Manager or County Supervisor prior to its implementation and shall be updated on an as needed basis. Each Permittee's approved LIP shall be submitted, in electronic format, to the Executive Officer within 18 months of the adoption of this Order.

2. Each Co-Permittee shall be responsible for managing the storm water program within its jurisdiction and shall:

   a. Implement all applicable program elements including but not limited to the management programs, monitoring programs, implementation plans and appropriate BMPs outlined in the MSWMP and the LIP within each respective jurisdiction, and take such other actions as may be necessary to meet the maximum extent practicable (MEP) standard.

   b. Review and revise policies and ordinances necessary to establish and maintain adequate legal authority as stated in Section VI.1 of this Order and

[34] The State General Construction Permit Order No. 2009-0009-DWQ Section XIII

as required by the federal storm water regulations, 40CFR, Part 122.26(d)(2)(i)(A-F).

c. Obtain public input for any proposed major changes to its storm water management program and implementation plans.

d. Inspect, clean, and maintain the MS4 systems within its jurisdiction.

e. Maintain up-to-date GIS-based MS4 facility maps. Annually review these maps and, if necessary, submit revised maps to the Principal Permittee for integration with the HCOC mapping and with the information required for preparation of the Annual Report.

f. Prepare and submit to the Principal Permittee in a timely manner all required information necessary to develop a unified Annual Report for submittal to the Executive Officer of the Regional Board.

3. The Co-Permittees' activities shall include, but not be limited to, the following:

a. Designate at least one representative to the Management Committee and attend at least 7 out of the 8 Management Committee meetings per year. The Principal Permittee shall be notified immediately, in writing, of any changes to the designated representative to the Management Committee.

b. Conduct, and/or coordinate with the Principal Permittee to conduct, any surveys and/or characterizations needed to identify pollutant sources from specific drainage areas.

c. Review and comment on all plans, strategies, management programs, monitoring programs, as developed by the Management Committee, the Principal Permittee or any subcommittee to comply with this Order.

d. Participate in committees or subcommittees formed to address storm water related issues to comply with this Order.

e. Respond to or arrange for responding to emergency situations such as accidental spills, leaks, illegal discharges/illicit connections, etc. to prevent or reduce the discharge of pollutants to storm drain systems and Waters of the U.S.

f. Pursue enforcement actions as necessary within its jurisdiction for violations of storm water ordinances, prohibitions on illicit connections and illegal discharges, and other elements of its storm water management program.

g. Track, monitor, and keep training records of all personnel involved in the implementation of its LIP.

h. Track and monitor operation and maintenance of post-construction BMPs installed in areas within each Permittee's jurisdiction.

i. Prior to accepting permanent connections to its MS4 from entities outside its jurisdictional authority, the co-Permittee shall notify these entities in writing of General Stormwater Permit post-construction standards and the regulatory requirements for control of pollutants in MS4 discharges (including relevant

requirements from the MSWMP and WQMP), where feasible, and consistent with the MEP standard. A WQMP approved by the Co-Permittee with jurisdictional authority may constitute compliance with the General Construction Permit post-construction requirements[35]. The Permittees will also send these notifications to the Regional Board.

j. Track and monitor operation and maintenance of post-construction BMPs installed in areas within each Permittee's jurisdiction.

C. Implementation Agreement

1. As needed, the Permittees shall evaluate the storm water management structure and the Implementation Agreement and determine the need for any revision. The annual report shall include the finding of any such review and provide a schedule if revisions are planned. The Implementation Agreement shall be reviewed and revised, if necessary, to include any cities that were not signatories to this agreement or other non-traditional entities that own or operate conveyance systems within the permitted area. See Attachment 3. If the Implementation Agreement is revised, a copy of the signature page and any revisions to the Agreement shall be included in the annual report.

IV. DISCHARGE PROHIBITIONS

A. In accordance with the requirements of 40 CFR 122.26(d)(2)(i)B) and 40 CFR 122.26(d)(2)(i)(F), the Permittees shall prohibit illegal connections and illicit discharges (non-storm water) from entering municipal separate storm sewer systems unless such discharges are either authorized by a NPDES permit or Waste Discharge Requirements issued by the Regional Board, or not prohibited in accordance with Section V, below.

B. The discharge of Urban Runoff from Permittees' municipal separate storm sewer systems, containing pollutants, including trash and debris that have not been reduced to the maximum extent practicable, to waters of the U. S. is prohibited.

C. The Permittees shall effectively prohibit the discharge of non-storm water into the MS4s unless authorized by a separate NPDES permit, granted a waiver or as otherwise specified in Section V, below.

D. Non-storm water discharges from Permittee activities into Waters of the U.S. are prohibited unless the non-storm water discharges are permitted by a NPDES permit, granted a waiver, or are as otherwise specified in Section V, below.

E. Discharges from the MS4s shall be in compliance with the discharge prohibitions contained in Chapter 5 of the Basin Plan.

F. Discharges into and from the MS4s in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance, as that term is defined in Section 13050 of the Water Code, into waters of the State are prohibited.

[35] The State General Construction Permit Order No. 2009-0009-DWQ Section XIII

G. The discharge to Waters of the U.S., of any substances in concentrations toxic to animal or plant life is prohibited.

H. The discharge to Waters of the U.S., of any radiological, chemical, or biological warfare agent or high level radiological waste is prohibited.

V. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

For purposes of this Order, a discharge may include storm water or other types of discharges identified below.

A. **Authorized Discharges:**

The discharges identified below need not be prohibited by the Permittees except if identified by the Permittees or the Executive Officer as a significant source of pollutants or as a significant vehicle that may cause pollutants to migrate to Waters of the U.S. The MSWMP shall include public education and outreach activities directed at reducing these discharges even if they are not substantial contributors of pollutants to the MS4s and/or the receiving waters.

1. Discharges composed entirely of storm water;
2. Air conditioning condensate;
3. Irrigation water. These discharges shall be minimized through public education and water conservation efforts. Also see Section X.E, Residential Program, and Section C., Nonpoint Source Discharges, below;
4. Passive foundation drains[36];
5. Passive footing drains[37];
6. Water from crawl space pumps[38];
7. Non-commercial vehicle washing, ,e.g. residential car washing (excluding engine degreasing) and car washing for fundraisers by non-profit organizations[39];
8. Dechlorinated swimming pool discharges (cleaning wastewater and filter backwash shall not be discharged into the MS4s or to Waters of the U.S.)
9. Diverted stream flows[40];

[36]The discharge is allowed only if the source water drained from the foundation is stormwater or uncontaminated groundwater. Discharges from contaminated groundwater may require coverage under the General Groundwater Cleanup Permit (Order No. R8-2007-0008, NPDES Permit No CAG918001) or its latest version.

[37]Only uncontaminated discharge is allowed. Otherwise, coverage under Order No. R8-2007-0008 may be required.

[38]The discharge is allowed only if it is uncontaminated; otherwise permit coverage under the General Permit for Discharges from Utility Vaults and Underground Structures, Water Quality Order No. 2006-0008-DWQ (NPDES No. CAG990002) may be required.

[39]Charity car washes should be limited to bona-fide 501 agencies.

[40]Diversion of stream flows that encroach into Waters of the U.S. requires a 404 permit from the U.S. Army Corps of Engineers and a 401 Water Quality Certification from the Regional Board. Stream diversion that requires active pumping may also require coverage under the De Minimus Permit, Order No. R8-2009-0003.

10. Rising ground waters and natural springs[41];
11. Uncontaminated ground water infiltration as defined in 40 CFR 35.2005 (20) and uncontaminated pumped groundwater,
12. Flows from riparian habitats and wetlands;
13. Emergency fire fighting flows (i.e., flows necessary for the protection of life and property do not require BMPs and need not be prohibited. However, appropriate BMPs to reduce the discharge of pollutants consistent with the MEP standard must be implemented when they do not interfere with health and safety issues.
14. Waters not otherwise containing wastes as defined in California Water Code Section 13050 (d), and
15. Other types of discharges identified and recommended by the Permittees and approved by the Regional Board.
16. The Permittees must evaluate the authorized discharges listed above to determine if any are a significant source of pollutants to the MS4, and notify the Executive Officer if any are a significant source of pollutants to the MS4. If the Permittee determines that any are a source of pollutants that exceed water quality standards, the Permittee(s) shall either:
    a. Prohibit the discharge from entering the MS4; or
    b. Authorize the discharge category and ensure that "Source Control BMPs" and Treatment Control are implemented to reduce or eliminate pollutants resulting from the discharge; or
    c. Require or obtain coverage under a separate Regional Board or State Board permit for discharge into the MS4.

B. **Discharge Specifications/De-Minimus Discharges from Permittee Owned and/or Operated Facilities/Activities:**

1. The Permittees shall prohibit the following categories of non-storm water discharges (de minimus discharges) into Waters of the U.S. from Permitttee-owned and/or operated facilities/activities unless the stated conditions are met. The de minimus types of discharges listed in the General De Minimus Permit shall be in compliance with the Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG 998001:
    a. Discharges from potable water sources, including water line flushing, superchlorinated water line flushing; discharges resulting from the maintenance of potable water supply pipelines, tanks, reservoirs, etc.; discharges from potable water supply systems resulting from initial system startup, routine startup, sampling activities, system failures, pressure release, etc.; fire hydrant system testing or flushing; and hydrostatic test water: Planned discharges shall be dechlorinated to a

[41]Discharge of rising ground water and natural springs into surface water is only allowed if the groundwater is uncontaminated. Otherwise, coverage under Order No. R8-2007-0008 may be required.

concentration of 0.1 ppm[42] or less, pH adjusted if necessary, and volumetrically and velocity controlled to prevent hydrologic conditions of concern in receiving waters.

b. Dechlorinated swimming pool discharges: Dechlorinated to a concentration of 0.1 ppm[43] or less, pH adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent hydrologic condition of concern in receiving waters. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4s or to Waters of the U.S.

c. Construction dewatering wastes[44] and dewatering wastes from subterranean seepage[45], except for discharges from utility vaults: The following limits shall be met at approved monitoring locations. The maximum daily concentration limit for total suspended solids shall not exceed 75 mg/l, sulfides 0.4 mg/l, oil and grease15 mg/l, total petroleum hydrocarbons 0.1 mg/l; the pH of the discharge shall be within 6.5 to 8.5 pH units and there shall be no visible oil and grease in the discharge.

d. Discharges from facilities that extract, treat and discharge water diverted from waters of the U.S[46]. These discharges shall meet the following conditions: (1) The discharges to Waters of the U.S. must not contain pollutants added by the treatment processes or pollutants in greater concentration than the influent; (2) The discharge must not cause or contribute to a condition of erosion; (3) The extraction and treatment must be in compliance with Section 404 of the Clean Water Act; and (4) Conduct monitoring in accordance with Monitoring and Reporting Program attached to this Order.

2. Discharges from lawn, greenbelt and median watering and other irrigation runoff[47] from Permittee's facilities shall be minimized through water conservation efforts. Also see Section X.E, Residential Program

3. Table 4-1 of the Basin Plan incorporates TDS/TIN[48] limits for direct discharges into surface waters in specified management zones within the Santa Ana Region. Permittees discharging to those receiving waters shall comply with the following for dry weather conditions.

   a. For discharges to surface waters, where groundwater will not be affected by the discharge, the maximum daily concentration (in mg/L) for TDS and/or TIN of the

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[42] Total residual chlorine = 0.1 mg/l or parts per million (ppm) or less; compliance determination shall be at a point before the discharge mixes with any receiving water.

[43] See footnote 42.

[44] Requirements for construction dewatering of stormwater are covered under the General Permit for Stormwater Discharges Associated with Construction Activity Order No. 99-08-DWQ.or the latest version. Where pollutants other than TSS, sulfides, oil and grease, TPH and pH are a concern in the groundwater, coverage under Order No. R8-2007-0008 may be required.

[45] Discharge of dewatering wastes from subterranean seepage into surface water is only allowed if the groundwater meets specifications. If other pollutants of concern are present or discharge specifications are exceeded, coverage under Order No. R8-2007-0008 may be required.

[46] Diversion of stream flows that encroach into Waters of the U.S. requires a 404 permit from the U.S. Army Corps of Engineers and a 401 Water Quality Certification from the Regional Board.

[47] Non-agricultural irrigation using recycled water must comply with the statewide permit for Landscape Irrigation Using Recycled Water and the State Department Health guidelines.

[48] TDS/TIN=Total dissolved solids/total inorganic nitrogen.

discharge shall not exceed the water quality objectives for the receiving surface water where the effluent is discharged, as specified in Table 4-1 of the Basin Plan.

b. For discharges to surface waters, where the groundwater will be affected by the discharge, the TDS and/or TIN concentrations of the effluent shall not exceed the water quality objectives for the surface water where the effluent is discharged and the affected groundwater management zone, as specified in Table 4-1 of the Basin Plan. The more restrictive water quality objectives shall govern. However, treated effluent exceeding the groundwater management zone water quality objectives may be returned to the same management zone from which it was extracted without reduction of the TDS or TIN concentrations so long as the concentrations of those constituents are no greater than when the groundwater was first extracted. Incidental increases in the TDS and TIN concentrations (such as may occur during air stripping) of treated effluent will not be considered as increases for the purposes of determining compliance with this discharge specification.

4 The Regional Board may add categories of non-storm water discharges that are not significant sources of pollutants or remove categories of non-storm water discharges listed above based upon a finding that the discharges are a significant source of pollutants.

5 See Section XV for additional requirements for de-minimus types of discharges.

C. **Non-point Source (NPS) Discharges**

Consistent with the State Water Resources Control Board's 2004 "Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program," the Regional Board may issue Waste Discharge Requirements for non-point source (NPS) pollutant discharges, such as agricultural irrigation runoff or return flows that are not subject to NPDES requirements, if identified as a significant source of pollutants. In addition, if the water quality significance of NPS discharges is not clearly understood, the Regional Board may issue conditional waivers of Waste Discharge Requirements to NPS dischargers, and require monitoring to gather the information necessary to effectively manage these discharges.

D. **Water Quality Based Effluent Limitations to Implement the Total Maximum Daily Loads (TMDLs)**

1. The Middle Santa Ana River (MSAR) Watershed Bacterial Indicator TMDL-Interim WQBELs (effective upon adoption of this Order)

a. The MSAR Permittees[49] shall:

[49] MS4 Permittees in the MSAR watershed (County, Chino, Chino Hills, Fontana, Montclair, Ontario, Rancho Cucamonga, Rialto and Upland) are collectively referred to as the "MSAR Permittees"

i. Continue to implement the watershed-wide water quality monitoring program (including any future amendments thereto) approved by the Regional Board (Resolution No. R8-2007-0046) as per Task 3 of the MSAR-TMDL Implementation Plan.

ii. Submit reports summarizing all relevant data from the watershed-wide water quality monitoring program. Beginning in 2010, the wet season report is due to the Executive Officer by May 31st of each year (for monitoring conducted from November 1st through March 31st) and the dry season report is due to the Executive Officer by December 31st of each year (for monitoring conducted from April 1st through October 31st).

iii. Submit comprehensive reports every three years summarizing the data collected for the preceding 3 year period and evaluating progress towards achieving the urban wasteload allocation by the dates specified in the TMDL. The first report is due to the Executive Officer on February 15, 2010.

iv. Continue to implement the approved (Regional Board Resolution No. R8-2008-0044) urban source evaluation plan (USEP) developed as per Task 4.1 of the MSAR-TMDL Implementation Plan. The USEP must describe the specific methods that will be used to identify urban sources and BMPs to address those sources. Submit semi-annual reports on January 31st and July 31st of each year as required under the approved USEP, and any amendments thereto. In years where the comprehensive report referenced in V.D.1.a.iii above is due on February 15, the comprehensive report, Dry Season report (Due December 31st) and the January 31st USEP reports may be combined into a single submittal due February 15th

v. Revise the Municipal Storm Water Management Plan (MSWMP) as specified in Task 4.2 of the MSAR-TMDL Implementation Plan. Summarize any such revisions in the annual report due to the Executive Officer by November 15 of each year.

vi. Revise the Water Quality Management Plan (WQMP) as specified in Task 4.4 of the MSAR-TMDL Implementation Plan. Summarize any such revisions in the annual report due by November 15 of each year.

vii. Amend the Local Implementation Plans (LIP) to be consistent with the revised MSWMP and WQMPs within 90 days after said revisions are approved by the Regional Board. Summarize any such LIP amendments in the annual report due November 15 of each year.

2. Final WQBELs for MSAR Bacterial Indicator TMDL under DRY Weather Conditions

a. The final WQBELs for bacterial indicators under Dry Weather Conditions contained in this section shall be achieved no later than December 31, 2015. These final effluent limits shall be considered effective for enforcement purposes on January 1, 2016.

b. The Final WQBELs for MSAR Bacterial Indicator TMDL under Dry Weather conditions shall be developed and implemented in the following manner.

i. The MSAR Permittees shall prepare for approval by the Regional Board a Comprehensive Bacteria Reduction Plan (CBRP) describing, in detail, the specific actions that have been taken or will be taken to achieve compliance with the urban wasteload allocation under dry weather conditions (April 1st through October 31st) by December 31, 2015. The CBRP must include:

(a) The specific ordinance(s) adopted to reduce the concentration of indicator bacteria in urban sources.

(b) The specific BMPs implemented to reduce the concentration of indicator bacteria from urban sources and the water quality improvements expected to result from these BMPs.

(c) The specific inspection criteria used to identify and manage the urban sources most likely causing exceedances of water quality objectives for indicator bacteria.

(d) The specific regional treatment facilities and the locations where such facilities will be built to reduce the concentration of indicator bacteria discharged from urban sources and the expected water quality improvements to result when the facilities are complete.

(e) The scientific and technical documentation used to conclude that the CBRP, once fully implemented, is expected to achieve compliance with the urban wasteload allocation for indicator bacteria by December 31, 2015.

(f) A detailed schedule for implementing the CBRP. The schedule must identify discrete milestones to assess satisfactory progress toward meeting the urban wasteload allocations for dry weather by December 31, 2015. The schedule must also indicate which agency or agencies are responsible for meeting each milestone.

(g) The specific metric(s) that will be established to demonstrate the effectiveness of the CBRP and acceptable progress toward meeting the urban wasteload allocations for indicator bacteria by December 31, 2015.

(h) The MSWMP, WQMP and LIPs shall be revised consistent with the CBRP no more than 180 days after the CBRP is approved by the Regional Board.

(i) Detailed descriptions of any additional BMPs planned, and the time required to implement those BMPs, in the event that data from the watershed-wide water quality monitoring program indicate that water quality objectives for indicator bacteria are still being exceeded after the CBRP is fully implemented.

(j) A schedule for developing a CBRP needed to comply with the urban wasteload allocation for indicator bacteria during wet weather conditions (November 1st thru March 31st) to achieve compliance by December 31, 2025.

ii. The draft CBRP must be submitted to the Regional Board no later than December 31, 2010. The Permittees may submit the plan individually, jointly or through a collaborative effort with other urban dischargers such as the existing MSAR-TMDL Task Force. Regional Board staff will review the document and recommend necessary revisions no more than 90 days after receiving the draft plan. The MSAR Permittees must submit the final version of the plan no more than 90 days after receiving the comments from Regional Board staff. The Regional Board will schedule a public hearing to consider approving the CBRP, as a final water quality-based effluent limitation for the Dry Weather Urban Wasteload Allocation, no more than 120 days after the final plan is submitted by the MSAR Permittees. In approving the CBRP as the final WQBELs, the Regional Board shall make a finding that the CBRP, when fully implemented, shall achieve the urban wasteload allocations for indicator bacteria by no later than December 31, 2015.

iii. Once approved by the Regional Board, the CBRP shall be incorporated into this Order as the final WQBELs for indicator bacteria under Dry Weather Conditions. Based on BMP effectiveness analysis, the CBRP shall be updated, if necessary. The updated CBRP shall be implemented upon approval by the Regional Board.

c. Should the process set forth in subdivision, b, of this section not be completed by December 31, 2015, then the urban wasteload allocations for dry weather conditions specified in the MSAR-TMDL shall become the final numeric WQBELs for indicator bacteria in Dry Weather Conditions, effective January 1, 2016 as follows:

i. Wasteload Allocation for Fecal Coliform from Urban Sources in Dry Weather Conditions (April 1st through October 31st)[50]

5-sample/30-day logarithmic mean less than 180 organisms/100mL and not more than 10% of the samples exceed 360 organisms/100mL for any 30-day period.

ii. Wasteload Allocation for *E. Coli* from Urban Sources in Dry Weather Conditions (April 1st through October 31st)

5-sample/30-day logarithmic mean less than 113 organisms/100 mL and not more than 10% of the samples exceed 212 organisms/100mL for any 30-day period.

3. Final WQBELs for MSAR Bacterial Indicator TMDL under WET Weather Conditions (effective Jan. 1, 2026)

In the event this Order is still in effect on December 31, 2025, and the Regional Board has not adopted alternative final water quality-based effluent limits for wet weather conditions by that date, then the urban wasteload allocations specified in the MSAR-TMDL for wet weather conditions (November 1st through March 31st) will automatically become the final numeric water quality-based effluent limits for the MSAR Permittees on January 1, 2026.

4. Big Bear Lake Nutrient TMDL for Dry Hydrological Conditions

a. The City of Big Bear Lake, the County of San Bernardino and San Bernardino County Flood Control District (the Big Bear Lake MS4 Permittees) shall implement BMPs designed to assure continued compliance with the following urban wasteload allocation for phosphorus during dry hydrological conditions[51].

Total Phosphorus (lbs/yr)[52] = 475 (Compliance to be achieved by December 31, 2015)

b. The Big Bear Lake MS4 Permittees shall implement BMPs in the watershed so as not to exceed the urban WLA.for phosphorus.

c. The Big Bear Lake MS4 Permittees, individually or collectively, or in collaboration with the Big Bear TMDL Task Force, shall implement the approved (Regional

[50]The fecal coliform WLA becomes ineffective upon the replacement of the REC1 fecal coliform objectives in the Basin Plan by approved REC1 objectives based on *E. Coli.*

[51]The Big Bear Lake MS4 Permittees are already meeting the WLAs. The TMDL for Dry Hydrological Conditions does not specify nutrient reductions from external watershed sources, including urban discharges (WLA), resorts and open space/forested lands (LAs), these external load dischargers are still responsible for reducing their contributions to the internal nutrient loads, which are lake sediment and macrophytes.

[52] Specified as an annual average for dry hydrological conditions.

Board Resolution No. R8-2008-0070) Big Bear Lake In-lake Nutrient Monitoring Plan dated November 30, 2007, or any lawfully approved amendments thereto. Annual Reports shall be submitted by February 15 of each year.

d. The Big Bear Lake MS4 Permittees, individually or collectively, or in collaboration with the Big Bear TMDL Taskforce, shall implement the approved (Regional Board Resolution No. R8-2009-0043) Big Bear Lake Watershed-wide Nutrient Monitoring Plan (May 2009) in accordance with the schedules specified in Resolution No. R8-2009-0043, or any lawfully approved amendments thereto. Annual Reports shall be submitted by February 15 of each year.

e. No later than February 26, 2010, the Big Bear Lake MS4 Permittees, individually or collectively, or in collaboration with the Big Bear TMDL Task Force, shall submit for approval a plan to evaluate the applicability and feasibility of various in-lake treatment technologies to control noxious and nuisance aquatic plants as described in Task 6C of the BBL-TMDL. The plan shall also include a description of the monitoring conducted and proposed to track aquatic plant diversity, coverage, and biomass. The monitoring data should address, at a minimum, progress toward achieving the numeric targets for macrophyte coverage and percentage of nuisance aquatic vascular plant species. The final approved plan shall be implemented in accordance with the approved schedule.

f. No later than March 31 2010, the Big Bear Lake MS4 Permittees, individually or collectively, or in collaboration with the Big Bear TMDL Task Force, shall submit for approval a plan and schedule for updating the existing Big Bear Lake watershed nutrient model and the Big Bear Lake in-lake nutrient model as described in Task 6A of the BBL TMDL. The plan and schedule must take into consideration additional data and information that are or will be generated from the required TMDL monitoring programs as described in c and d above. The final plan shall be implemented in accordance with the approved schedule.

g. No later than April 15, 2010, the Big Bear Lake MS4 Permittees, individually or collectively, or in collaboration with the Big Bear TMDL Task Force shall submit for approval a proposed plan and schedule for in-lake sediment nutrient reduction for Big Bear Lake as described in Task 6B of the BBL TMDL. The proposed plan shall include an evaluation of the applicability and feasibility of various in-lake treatment technologies to support development of a long-term strategy for control of nutrients from the sediment. The submittal shall also contain a proposed sediment nutrient monitoring program to evaluate the effectiveness of any strategies implemented. The final plan shall be implemented in accordance with the approved schedule.

h. The plans submitted in e, f, and g above comprise Task 6 of the BBL TMDL –the Big Bear Lake – Lake Management Plan. In addition, the plans submitted in e, f, and g above also must also address the following, either individually or holistically:

1. The plan shall be based on identified and acceptable goals for lake capacity, biological resources and recreational opportunities. Acceptable goals shall be identified in coordination with Regional Board staff and other responsible agencies, including the California Department of Fish and Game and the U.S. Fish and Wildlife Service.

2. The plan shall include a proposed plan and schedule for the development of biocriteria for Big Bear Lake. This is intended to complement Regional Board efforts to develop biocriteria.

3. The plan must identify a scientifically defensible methodology for measuring changes in the capacity of the lake.

4. The proposed plan shall identify recommended short and long-term strategies for control and management of sediment and dissolved and particulate nutrient inputs to the lake to the extent that the permittees are responsible for these inputs over and above that which would occur naturally.

5. The plan shall also integrate the beneficial use map developed pursuant to the Regional Board's March 3, 2005, Clean Water Act Section 401 Water Quality Standards Certification for Big Bear Lake Nutrient/Sediment Remediation Project. The purpose of the beneficial use map is to correlate beneficial uses of the lake with lake bottom contours. The map is expected to be used in regulating future lake dredge projects to maximize the restoration and protection of the lake's beneficial uses.

i. The Big Bear Lake – Lake Management Plan shall be implemented upon Regional Board approval. Once approved, the plan shall be reviewed and revised as necessary at least once every three years. The review and revision shall take into account assessments of the efficacy of control/management strategies implemented and relevant requirements of new or revised TMDLs for Big Bear Lake and its watershed. Annual Reports shall be submitted by February 15 of each year.

j. The Big Bear Lake MS4 Permittees, individually or collectively, or in collaboration with the with the Big Bear TMDL Task Force shall submit an annual report by February 15 of each year summarizing all relevant data from both water quality monitoring programs and the Lake Management Plan as described in c, d, e, f, g, and h above and evaluating compliance with the WLA using the modeling tools developed pursuant to paragraph k, below.

k. Continued compliance with the WLA will be determined by watershed modeling. By March 31, 2010, the Big Bear Lake MS4 Permittees shall submit a final watershed modeling plan that is ready to be implemented and that details how the WLA will be determined and evaluated in future years. Upon approval by the

Regional Board, this watershed modeling plan shall be used to determine compliance with the WLA. The Big Bear Lake MS4 Permittees shall select a watershed model that best fits the conditions they are modeling and document the basis for that selection. Data collected under the approved watershed monitoring program shall be evaluated by the Big Bear Lake MS4 Permittees to determine if it falls within the range of dry hydrological conditions as specified in the Nutrient TMDL. The Big Bear Lake MS4 Permittees shall utilize data collected from the monitoring locations specified in the watershed monitoring program approved on May 22, 2009, as well as any other data that are deemed necessary to calibrate and validate the watershed model. The Big Bear Lake MS4 Permittees will document the basis for the selection of the model, the data evaluation and selection process, and the model calibration/validation process. The Big Bear Lake MS4 Permittees or the Big Bear Lake Task Force, shall provide the results of the first model update by February 15, 2011.

l. The Big Bear Lake MS4 Permittees shall revise the Municipal Storm Water Management Plan (MSWMP), Water Quality Management Plan (WQMP) and Local Implementation Plans (LIP) as necessary to implement the plans submitted pursuant to paragraphs c, d, e, f, and g of this section no later than 180 days after the Regional Board approves these plans. A summary of any such revisions shall be included in the area-wide annual report due November 15 of each year.

m. If water quality monitoring data and related modeling analyses indicate that the urban wasteload allocation for total phosphorus is being exceeded during dry hydrological conditions despite implementation of the lake management plan and the MSWMP and other requirements of this Order, the Big Bear Lake MS4 Permittees shall comply with the following procedure:

    1. Each Big Bear Lake MS4 Permittee upstream of the monitoring locations where exceedances appear to be occurring shall evaluate and characterize discharges from its significant outfall locations.

    2. The Big Bear Lake MS4 Permittees shall submit a report with proposed actions to the Executive Officer that describes the BMPs that are currently being implemented and any additional BMPs that will be implemented to reduce the controllable sources of phosphorus causing the exceedances of the urban wasteload allocation for total phosphorus. The report must be submitted as part of the annual report due in November 15 of each year.

n. **Storm Water Program Modification**: The Big Bear Lake MS4 Permittees shall revise their LIPs, as needed, to incorporate the requirements from TMDL implementation activities. These revisions shall include: (1) the results of the nutrient monitoring programs; (2) an evaluation of the effectiveness of the control measures in meeting the phosphorus WLAs; (3) any additional control measures

proposed to be implemented if the WLA or numeric targets are exceeded, including control measures for controlling nutrient inputs from new developments and/or new sources; and (4) a progress report evaluating progress towards meeting the WLAs (pre-compliance evaluation monitoring[53]).

5. Knickerbocker Creek Sole Source Pathogen Investigation and Control

a. The City of Big Bear Lake shall continue to participate in and implement the January 2008 Phase 2 Monitoring and Reporting Program in accordance with the agreed sampling locations, parameters, schedule, and protocol.

b. The City of Big Bear Lake shall annually review and revise, if necessary, the control measures implemented and undertake an iterative approach until water quality objectives within Knickerbocker Creek are attained, unless it can be demonstrated that the pathogen sources are from uncontrollable sources.

c. The City of Big Bear Lake shall continue to work with Regional Board staff and the Storm Water Quality Standards Task Force to review and update designated uses and related water quality objectives for Knickerbocker Creek. This may result in different water quality objectives for bacteria.

6. Big Bear Lake Mercury TMDL

Pending adoption of the Mercury TMDL, the City of Big Bear Lake shall participate in the development and implementation of monitoring programs and control measures, including any BMPs that the City is currently implementing or proposing to implement.

7. Compliance with WLAs

The determination of compliance with the WLAs shall be based on implementation of BMPs as specified in the implementation plans for the approved TMDLs or based on plans developed as per the approved TMDLs. The Permittees obligation to meet the WLAs is met if the water quality standards in the impaired receiving waters are met through implementation of control measures approved by the Regional Board.

VI. RECEIVING WATER LIMITATIONS

A. Discharges from the MS4s shall not cause or contribute to exceedances of receiving water quality standards (designated beneficial uses and water quality objectives) contained in Chapter 4 of the Basin Plan, and amendments thereto, for surface or groundwater.

B. The MSWMP and its components, including LIPs shall be designed to achieve compliance with receiving water limitations consistent with the MEP standard. It is

[53]Pre-compliance evaluation monitoring is monitoring conducted prior to the compliance date to evaluate effectiveness of pollution reduction efforts.

expected that compliance with receiving water limitations will be achieved through an iterative process and the application of increasingly more effective BMPs.

C. The Permittees shall comply with Section VI.A of this Order through timely implementation of control measures and other actions to reduce pollutants in urban and storm water runoff in accordance with the MSWMP and its components and other requirements of this Order, including any modifications thereto

D. Upon a determination by either the Permittees or the Executive Officer that the discharges from the MS4 systems are causing or contributing to an exceedance of an applicable water quality standard, the Permittees shall promptly notify either by phone or by e-mail and, thereafter submit a report within 30 days (or if approved by the Executive Officer, this report may be incorporated into the annual report) to the Executive Officer for review and approval. At a minimum, the report shall:

   a. Describe BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce those pollutants that are causing or contributing to the exceedance of water quality standards.

   b. Address the cause of the impairment or exceedance, and the technical and economic feasibility of control actions available to the Permittees to reduce or eliminate the impairment or exceedance consistent with the MEP standard.

   c. Include an implementation schedule.

   d. Contain a comparative analysis of monitoring data to the USEPA Multi-Sector Permit Parameter Benchmark Values and applicable water quality objectives for inland surface streams as specified in Chapter 4 of the Basin Plan.

   e. A status report on the effectiveness of the pollution source investigation and control plan implementation to address exceedance of water quality objectives or elevated pollutant levels above benchmark values may be incorporated in the annual report unless the Executive Officer directs a different submittal date. The transmittal letter shall indicate that the annual report contains a description of additional BMPs proposed, pollution investigation report, and/or pollution source investigation and control plan.

E. The Executive Officer may require modifications to the plan and/or report. The Permittees shall submit any modifications required by the Executive Officer within 30 calendar days of notification. The plan and/or report shall be deemed acceptable if the Executive Officer does not respond with requested modifications within 30 days of the submittal date.

F. Within 60 calendar days following the Executive Officer's approval of the plan and/or report described above (or within 60 days following the date the plan and/or report were deemed acceptable due to lack of response from the Executive Officer), the Permittees shall revise the storm water management programs (MSWMP and LIP) and monitoring program to incorporate the additional BMPs that will be implemented, the implementation schedule, and any additional monitoring required.

G. Permittees must implement the revised the MSWMP, the LIP and the monitoring and reporting programs in accordance with the schedule approved by the Executive Officer.

H. So long as the Permittees have complied with the procedures set forth above and are implementing the revised LIP, MSWMP, and monitoring program, the Permittees do not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless the Executive Officer determines it is necessary to develop additional BMPs.

I. Nothing in Section VI.D must prevent the Regional Board from enforcing any provision of this Order while the Permittee prepares and implements the above programs.

VII. LEGAL AUTHORITY/ENFORCEMENT

A. The Permittees shall maintain adequate legal authority to control the discharge of pollutants to their MS4s through ordinance, statute, permit, contract or similar means and enforce these authorities. This legal authority must, at a minimum, include and authorize the Permittees to:

1. Carry out all inspections, surveillance, and monitoring necessary to determine compliance and noncompliance with local ordinances and permits. The Permittee must have authority to enter, sample, monitor, inspect, take measurements, photographs, videos, review and copy records, and require reports from industrial, commercial, and construction sites discharging into their MS4s;

2. Recover its cost to correct a discharger's significant non-compliance or to respond to immediate and serious threat to water quality violations through various mechanisms, such as forfeiture of permit deposits, trust funds/bonds or other short-term funding sources to allow Permittees to immediately address and remedy serious water quality violations at construction, industrial, or commercial sites;

3. Require the use of BMPs to prevent or reduce the discharge of pollutants into MS4s;

4. Require documentation on the effectiveness of BMPs implemented to reduce the discharge of pollutants to the MS4s;

5. Prohibit the disposal of wastes onto public or private land that may cause water quality concerns, unless permitted by Waste Discharge Requirements (WDR) or waiver by the Regional Board;

6. The Permittees' storm water ordinances or other local regulatory mechanisms shall include sanctions to ensure compliance. Sanctions shall include but are not limited to: verbal and/or written warnings, notice of violation or non-compliance, monetary penalties, non-monetary penalties, bonding requirements, stop work or cease and desist Orders and/or permit denials/revocations/stays for non-compliance, civil or criminal prosecution. These sanctions shall be issued in a decisive manner within a predetermined timeframe, from the time of the violation's occurrence and/or follow-up inspection.

B. The Permittees shall document progressive and decisive enforcement actions against violators of their storm water codes and ordinances in accordance with the formalized enforcement procedures developed by the Management Committee.

C. The Permittees shall use the most effective tool(s) at their disposal (such as Stop Work Orders and suspended inspections) to achieve immediate compliance. Permittees must have the ability to enforce any violations of the Stop Work Order through either an automatic fine or other effective means.

D. Within three (3) years of adoption of this Order, the Permittees shall implement fully adopted ordinances that would specify control measures for known pathogen or bacterial sources such as animal wastes if those types of sources are present within their jurisdiction.

E. The Permittees shall continue to provide notification to Regional Board staff of storm water related information obtained during site inspections of industrial and construction sites regulated by the Statewide General Storm Water Permits or sites which should be regulated under the State's General Permits. The notification should include any observed violations of the General Permits or local requirements, prior history of violations, any enforcement actions taken and will be taken by the Permittees, and any other relevant information.

F. The Permittees shall annually notify owners of other MS4 systems outside the Permittees' jurisdiction, regarding the regulatory requirements for control of pollutants in MS4 discharges (including relevant requirements from the MSWMP and WQMP), where feasible, and consistent with the MEP standard. The Permittees will also send these notifications to the Regional Board. The Permittees shall specify, in the LIP, the mechanisms or procedures to control the contribution of pollutants into their MS4s prior to accepting connections from owners of other MS4 systems outside the Permittees' jurisdiction. At a minimum, the Permittees shall notify these owners of other MS4 systems outside their jurisdiction of the requirement to comply with the post-construction standard in the State's General Construction Permit (Order No. 2009-0009-DWQ). A copy of the notification shall be provided to the Regional Board.

G. The Permittees shall annually review their water quality ordinances and evaluate their effectiveness in prohibiting the following types of discharges to the MS4s (the Permittees may propose appropriate control measures in lieu of prohibiting these discharges, where the Permittees are responsible for ensuring that dischargers adequately maintain those control measures):

1. Sewage (also prohibited under the Statewide SSO Order[54]);
2. Wash water resulting from the hosing or cleaning of gas stations, auto repair garages, and other types of automobile service stations;
3. Discharges resulting from the cleaning, repair, or maintenance of any type of equipment, machinery, or facility, including motor vehicles, concrete mixing equipment, portable toilet servicing, etc.;
4. Wash water from mobile auto detailing and washing, steam and pressure cleaning, carpet/upholstery cleaning, pool cleaning and other such mobile commercial and industrial activities;

[54]State Board WQO No. 2006-0003.

5. Water from cleaning of municipal, industrial, and commercial sites, including parking lots, streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas, etc.;
6. Runoff from material storage areas or uncovered receptacles that contain chemicals, fuels, grease, oil, or other hazardous materials[55];
7. Discharges of runoff from the washing of toxic materials[56] from paved or unpaved areas;
8. Discharges of pool or fountain water containing chlorine, biocides, or other chemicals; pool filter backwash containing debris and chlorine;
9. Pet waste, yard waste, litter, debris, sediment, etc.; and,
10. Restaurant or food processing facility wastes such as grease, floor mat and trash bin wash water, food waste, etc.

H. Each Permittee shall include in its LIP the legal authorities and mechanisms used to implement the various program elements required by this Order to properly manage, reduce and mitigate potential pollutant sources within its jurisdiction. The LIP shall include citations of appropriate local ordinances, identification of departmental jurisdictions and key personnel in the implementation and enforcement of these ordinances. The LIP shall include procedures, tools and timeframes for progressive enforcement actions and procedures for tracking compliance.

I. The Permittees shall enforce their ordinances and permits at all construction sites, industrial facilities and commercial facilities as necessary to maintain compliance with this Order. Sanctions for non-compliance shall include: monetary penalties, bonding requirements and/or permit denial or revocation.

J. Within 12 months of adoption of this Order, each Permittee shall submit a certification statement, signed by legal counsel, that the Permittee has obtained all necessary legal authority in accordance with 40 CFR 122.26(d)(2)(i)(A-F) and to comply with this Order through adoption of ordinances and/or municipal code modifications. A copy of the certification shall also be placed in the LIP. Those Permittees who have already complied with this requirement during the third-term permit need not submit additional certification statements.

K. Annually thereafter, Permittees shall review adequacy of their ordinances, implementation and enforcement response procedures with respect to the above items. The findings of the reviews, along with supporting details and recommended corrective actions and schedules shall be submitted as part of the annual report for the corresponding reporting period. The Permittees' LIPs shall be updated accordingly.

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[55]Hazardous material is defined as any substance that poses a threat to human health or the environment due to its toxicity, corrosiveness, ignitability, explosive nature or chemical reactivity. These also include materials named by EPA to be reported if a designed quantity of the material is spilled into the waters of the United States or emitted into the environment.

[56]Toxic material is a chemical or a mixture that may present an unreasonable risk of injury to health or the environment.

VIII. ILLICIT DISCHARGES (ID)/ILLEGAL CONNECTIONS (IC); LITTER, DEBRIS AND TRASH CONTROL

A. The Permittees shall continue to prohibit all illegal connections to the MS4s through their ordinances, inspections, monitoring programs, and enforcement actions. The Permittees shall develop a pro-active IC/ID or illicit discharge detection and elimination program (IDDE) using the Guidance Manual for Illicit Discharge, Detection, and Elimination by the Center for Watershed Protection[57] or any other equivalent program. Any illegal connections identified by routine inspections, the IDDE program, or dry weather screening and/or monitoring shall be investigated and eliminated or permitted within 120 days of discovery.

B. The Permittees' IDDE program shall specify a procedure to conduct focused, systematic field investigations, outfall reconnaissance survey, indicator monitoring, and tracking of discharges to their sources[58]. The IDDE program(s) shall be linked to urban watershed protection efforts including: a) the use of GIS maps of the Permittees' conveyance systems to track sources ; b) aerial photography to detect IC/IDs; b) municipal inspection programs of construction, industrial, commercial, storm drain systems, municipal facilities, etc.; c) analysis of watershed monitoring and other indicator data; d) watershed education to educate the public about illegal discharges; e) pollution prevention for generating sites; f) stream restoration efforts/opportunities; and g) rapid assessment of stream corridors to identify dry weather flows and illegal dumping.

C. The LIP shall identify the staff positions responsible for different components of the IDDE program.

D. The Permittees shall maintain a database of permitted and unpermitted connections, routine inspections and dry weather monitoring. This information shall be updated on an ongoing basis and submitted with the annual report.

E. The Permittees shall control, consistent with the MEP standard, the discharge of spills, leaks, or dumping of any materials other than storm water and authorized non-storm water per Section V, above, into the MS4s. All reports of spills, leaks, and/or illegal dumping shall be promptly investigated and reported as specified under Section XVII (Notification Requirements).

F. The Permittees shall continue to characterize trash, determine its main source(s) and develop and implement appropriate BMPs and control measures to reduce and/or to eliminate the discharge of trash and debris to Waters of the U.S. to the MEP. These control measures and their effectiveness in reducing trash shall be reported in the annual report.

[57] USEPA (Illicit Discharge Detection and Elimination - A Guidance Manual for Program Development and Technical Assessments) by the Center for Watershed Protection and Robert Pitt, University of Alabama, October 2004, updated 2005).

[58] Table 2: Land uses, Generating Sites and Activities that Produce Indirect Discharges from IDDE, A Guidance Manual for Program Development and Technical Assessments, October 2004 CWP.

IX. SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, SEPTIC SYSTEM FAILURES, AND PORTABLE TOILET DISCHARGES

A. The Permittees shall provide local sanitation districts 24-hour access to the MS4s to address sewage spills and shall provide updated contact information to enable such access. The Permittees shall work cooperatively with the local sewering agencies to determine and control the impact of infiltration from leaking sanitary sewer systems on storm water quality. Each Permittee shall implement control measures necessary to minimize infiltration of seepage from sanitary sewers to the storm drain systems through routine preventive maintenance of the storm drain system.

B. Permittees who are regulated under the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-0003-DWQ, (SSO Order), shall continue to comply with that Order to control sanitary system overflows.

C. The Principal Permittee shall collaborate with the local sewering agencies to review and revise, as needed, the Sanitary Sewer Overflow Unified Response Plan to ensure its consistency with the SSO Order.

D. The interagency or interdepartmental sewer spill response coordination and responsibility within each Permittee's jurisdiction shall be described in the LIP.

E. The Permittees shall implement management measures and procedures to prevent, respond to, contain and clean up all sewage and other spills that may be discharged into their MS4s. Management and/or preventative measures shall also be implemented for sources including portable toilets and failing septic systems that are causing or contributing to urban and storm water runoff pollution problems in their jurisdictions.

F. Within 2 years of adoption of this Order, Permittees with septic systems in their jurisdiction shall develop an inventory of septic systems within its jurisdiction and establish a program to ensure that failure rates are minimized pending adoption of regulations as per Assembly Bill 885[59] regarding onsite waste water treatment systems.

X. MUNICIPAL INSPECTION PROGRAMS

A. General Requirements

1. The Permittees shall continue to maintain and update the inventory of all construction, industrial and commercial facilities within their jurisdiction that have a reasonable potential to discharge pollutants to the MS4 regardless of whether the sites are subject to the California Statewide General NPDES Permit for Storm Water Discharges Associated with Construction Activities or the California Statewide General NPDES Permit for Storm Water Discharges Associated with Industrial Activities or other individual NPDES permit or Waste Discharge Requirements. The Permittees may use the MS4 Solutions or equivalent database for this purpose (see X.A.2., below).

[59] http://www.waterboards.ca.gov/water_issues/programs/septic_tanks/

2. The Permittees shall conduct regular inspections of construction sites, industrial and commercial facilities to evaluate compliance with applicable municipal ordinances, local permits, Storm Water Management Plans, and Water Quality Management Plans (see Sections B, C, and D, below for frequency of inspections). Inspections shall review pollution control practices, implementation and maintenance of pollution control measures, material handling and waste disposal practices, spill prevention and response programs and owner/operator knowledge of environmental laws and regulations, including local ordinances. The Permittees shall enforce their ordinances and permits at all construction, industrial, and commercial facilities in a fair, firm and consistent manner.

3. The municipal inspection program activities shall be documented in an electronic database. The database system must include relevant information on ownership, Standard Industrial Classification (SIC) codes, General Permit Waste Discharge Identification (WDID) number (if any), size, Geographic Information System (GIS) data in NAD83/WGS84[60] compatible formatting with latitude/longitude in decimal degrees, and other pertinent details describing the nature of activities at the site. The information shall be maintained in the MS4 Solution Database or equivalent internet accessible database. In addition to the facility information, the inspection information shall include: date of inspection; inspectors and facility personnel present; site conditions, any observed non-compliance; enforcement actions and/or corrective actions required and schedules for corrective actions; and date of full compliance. The database shall be updated at least once each year and an electronic copy provided to the Regional Board with each annual report.

4. Within 18 months of adoption of this Order, the Principal Permittee, in coordination with the Co-Permittees shall develop a risk-based scoring system to prioritize construction, industrial and commercial facilities and to determine the frequency of inspections. The scoring system shall consider factors including, but not limited to: the hazardous nature of materials used on site; potential for erosion and pollutant discharges, particularly such materials as pre-production plastic (nurdles) or pollutants for which the receiving water is impaired; site size and location including proximity to receiving water, history of spills and leaks; use of pollution control and prevention measures; and compliance history. The risk-based scoring system shall include criteria to identify the facilities as high, medium or low risk and shall be submitted to the Executive Officer for approval. The electronic database submitted with the annual report (see X.A.3, above) shall include the risk-based scores for each facility. The facility scores must be reviewed and updated annually, if necessary.

5. Prior to development and implementation of the risk-based scoring system, construction, industrial and commercial sites shall be inspected in accordance with the prioritization scheme set forth in the third term permit.

6. Any site found in significant non-compliance with the Statewide General Permits or the MS4 Permit is deemed a high priority site and must be contacted or inspected at

[60] NAD83/WGS84=North American Datum of 1983 and World Geodetic System of 1984 are systems to define three dimensional coordinates of a single physical point.

least once per month until full compliance is achieved.

7. The Permittees shall verify during inspections and/or prior to local permit issuance whether a site has obtained necessary permit coverage under one or more of the Statewide General Permits, an individual NPDES permit, Waste Discharge Requirements, and/or 401 Certification. Local permits, certificates of occupancy, or other approvals shall not be granted until proof of coverage under the applicable statewide permit is verified.
8. The Permittees shall deem facilities operating without a proper permit to be in significant non-compliance. Appropriate enforcement measures shall be implemented including a time schedule to obtain coverage, or suspension of business license until evidence of permit coverage is provided. Non-filers shall be reported within 14 calendar days to the Regional Board by electronic mail or other written means. The Permittees shall include in their LIP the method for verification of permit coverage and for notification of non-filers to the Regional Board.
9. Permittees shall maintain hard or electronic copies and make available upon request all information related to their inspections, including inspection reports, photographs, videotapes, enforcement actions, notices of correction issued to dischargers and other relevant information. This information shall be linked to the electronic database identified in Section X.A.3 above.
10. The Permittees need not inspect facilities already inspected by Regional Board staff if the inspection was conducted within the specified time period. Regional Board staff inspection information is available at www.ciwqs.ca.gov[61].
11. Each Permittee shall respond to complaints received from third parties in a timely manner to ensure that the construction, industrial and commercial sites are not a source of pollutants in the MS4s and the receiving waters. Each Permittee shall implement a system of prioritizing the complaints based on threat to the environment (water quality/public health) and an appropriate response time based on this prioritization.
12. Each Permittee shall document, evaluate, and annually report the effectiveness of its enforcement procedures in achieving prompt and timely compliance. When timely compliance is not achieved, the Permittee shall take appropriate corrective measures to immediately prevent or abate the discharge of pollutants into its MS4 system.
13. Where storm water related inspections and/or enforcement required by this Order are carried out on behalf of the Permittee by other agencies or departments such as: the County Public Health, county and/or local fire departments, code enforcement, industrial pretreatment, building and safety, etc., the Permittee shall monitor and annually evaluate and report adequacy of such programs in complying with this Order.

[61]To obtain access to the State database, registration at the following link is necessary: http://www.waterboards.ca.gov/water_issues/programs/ciwqs/chc_npdes.shtml. Contact information is available at http://www.waterboards.ca.gov/water_issues/programs/ciwqs/contactus.shtml.

14. All inspectors conducting storm water inspection as required in this Order shall be trained in accordance with the training requirements specified in Section XVI.

B. Construction Sites

1. Each Permittee shall include in the electronic database identified in Section X.A.3 an inventory of all construction sites within its jurisdiction for which building or grading permits are issued and activities at the site include: soil movement; uncovered storage of materials or wastes, such as dirt, sand or fertilizer; or exterior mixing of cementaceous products, such as concrete, mortar or stucco.
2. Prior to approval of the risk-based scoring and prioritization system, the Permittees shall continue to prioritize construction sites within its jurisdiction as a high, medium or low threat to water quality. This prioritization of construction sites shall be based on factors, which shall include but not be limited to: soil erosion potential, project size, proximity and sensitivity of receiving waters and any other relevant factors. At a minimum, high priority construction sites shall include: sites 50 acres and greater; sites over 1 acre that are tributary to Clean Water Act section 303(d) waters listed for sediment or turbidity impairments; site specific characteristics[62], and any other relevant factor. At a minimum, medium priority construction sites shall include: sites between 10 to less than 50 acres of disturbed soil. Upon approval of the risk-based scoring system, the sites shall be categorized as high, medium, or low risk based on the risk-based scores.
3. Each Permittee shall conduct construction site inspections for compliance with its ordinances (grading, Water Quality Management Plans, etc.) and local permits (construction, grading, etc.). The Permittees shall develop a checklist for conducting site inspections. Inspections of construction sites shall include, but not be limited to:
   a. Verification of coverage under the General Construction Permit (Notice of Intent (NOI) or Waste Discharge Identification No.) during the initial inspection. Permit coverage shall also be confirmed in the event of a change in ownership.
   b. A review of the Erosion and Sediment Control Plans (ESCP) to ensure that the BMPs implemented on-site are consistent with the appropriate phase of construction (Preliminary Stage, Mass Grading Stage, Streets and Utilities Stage, Vertical Construction Stage, and Post-Construction Stage).
   c. Visual observations for non-storm water discharges, potential illicit connections, and potential pollutant sources.
   d. Determination of compliance with local ordinances, permits, Water Quality Management Plans and other requirements, including the implementation and maintenance of BMPs required under local requirements.
   e. An assessment of the effectiveness of BMPs implemented at the site and the need for any additional BMPs. In evaluating BMP effectiveness, the Permittees may consider applicable action levels (AL) and/or numeric effluent limits (NEL)

[62] The approved General Construction Permit Order No. 2009-0009-DWQ includes risk-based characterization of construction sites based on site-specific conditions.

promulgated by the State or USEPA.

4. At a minimum, the inspection frequency shall include the following:
   a. During the wet season[63] (i.e., Oct 1 through May 31 of each year), all high priority (or high risk) sites are to be inspected, in their entirety, once a month. All medium priority (or medium risk) sites are to be inspected at least twice during the wet season. All low priority (or low risk) sites are to be inspected at least once during the wet season. When BMPs or BMP maintenance is deemed inadequate or out of compliance, an inspection frequency of once every week shall be maintained until BMPs and BMP maintenance are brought into compliance.
   b. During the dry season (i.e., June 1 through September 30 of each year), all construction sites shall be inspected at a frequency sufficient to ensure that sediment and other pollutants are properly controlled and that unauthorized, non-storm water discharges are prevented.
5. The Permittees' implementation of their construction storm water program shall be consistent with the latest version of the statewide General Construction Permit and all applicable provisions of the federal effluent limitations guidelines.

C. Industrial Facilities

1. Prior to approval of the risk-based scoring and prioritization system, the Permittees shall continue to prioritize industrial facilities within its jurisdiction as high, medium, or low threat to water quality. The prioritization of these facilities should be based on such factors as type of industrial activities (SIC codes)[64], materials or wastes used or stored outside, pollutant discharge potential, compliance history, facility size, proximity and sensitivity of receiving waters, and any other relevant factors. At a minimum, a high priority shall be assigned to: facilities subject to section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA); facilities that handle or generate pollutants for which the receiving water is impaired, facilities that have a demonstrated or significant potential to release pre-production plastic or nurdles into the environment, and facilities with a high potential for or history of unauthorized, non-storm water discharges. Upon approval of the risk-based scoring system, the facilities shall be categorized as high, medium or low risk.
2. Each Permittee shall conduct industrial facility inspections for compliance with its ordinances, permits and this Order. Industrial inspections shall include: a review of the site's material and waste handling and storage practices; a review of written documentation of pollutant control BMP implementation and maintenance procedures; digital photographic documentation of water quality violations, and/or evidence of past or present unauthorized-, non-storm water discharges; and enforcement actions issued at the time of inspection if necessary. A summary of

[63] Wet and dry season for TMDL compliance evaluation will be the months as defined in the TMDL development documents and implementation plans. See Glossary, Attachment 4.

[64] Industrial Facilities, as defined at 40 CFR § 122.26(b)(14), including those subject to the General Industrial Permit or other individual NPDES permit;

inspections shall be included in the annual report and shall document the rational for downgrading or upgrading the priority ranking of industrial facilities.

3. All high priority (or high risk) industrial facilities are to be inspected at least once a year; all medium priority (or medium risk) sites are to be inspected at least once every two years; and all low priority (or low risk) sites are to be inspected at least once per permit cycle. In the event that inappropriate material or waste handling or storage practices are observed, or there is evidence of past or present unauthorized, non-storm water discharges, appropriate enforcement actions shall be taken and a re-inspection frequency adequate to bring the site into full compliance must be maintained.
4. Each Permittee shall require industrial facilities to implement source control and pollution prevention measures consistent with the BMP Fact Sheets developed by the Permittees.

D. Commercial Facilities

1. All of the following types of commercial facilities are deemed to have a reasonable potential to discharge pollutants to the MS4s. These types of facilities shall be included in the database identified in Section X.A.3. Commercial facilities may include, but may not be limited to[65]:

   a. Transport, storage or transfer of pre-production plastic pellets;
   b. Automobile mechanical repair, maintenance, fueling or cleaning;
   c. Automobile and other vehicle body repair or painting;
   d. Automobile impound and storage services;
   e. Airplane repair, maintenance, fueling or cleaning;
   f. Marinas and boat repair, maintenance, fueling or cleaning;
   g. Equipment repair, maintenance, fueling or cleaning;
   h. Pest control service facilities;
   i. Eating or drinking establishments, including food markets and restaurants;
   j. Cement mixing, concrete cutting, masonry facilities;
   k. Building materials retailers and storage facilities;
   l. Portable sanitary service facilities;
   m. Painting and coating;
   n. Animal facilities such as petting zoos and boarding and training facilities;
   o. Nurseries, greenhouses, botanical or zoological gardens;
   p. Landscape and hardscape installation;
   q. Pool, lake and fountain cleaning; and
   r. Golf courses, parks and other recreational areas/facilities;

2. The Permittees shall continue to develop BMPs applicable for each of the commercial operations described above.

[65]Mobile cleaning services are addressed in X.D.6 and 7, below.

3. Prior to approval of the risk-based scoring system, each Permittee shall conduct inspections of commercial facilities within its jurisdiction in accordance with the prioritization scheme set forth in the third-term permit.
4. All high priority (or high risk) facilities shall be inspected at least once per year; all medium priority (or medium risk) facilities shall be inspected at least every two years; and all low priority (or low risk) facilities shall be inspected at least once per permit cycle. At a minimum, each facility shall be required to implement source control and pollution prevention measures consistent with the BMP Fact Sheets developed by the Permittees.
5. In the event that inappropriate material or waste handling or storage practices are observed, or there is evidence of past or present unauthorized, non-storm water discharges, appropriate enforcement action shall be taken and documented to bring the site into compliance.
6. Within 36 months of adoption of this Order, the Principal Permittee, in coordination with the Co-Permittees, shall notify all mobile businesses operating within the Permit area regarding the minimum source control and pollution prevention measures that they must develop and implement. For purposes of this Order, mobile businesses include: mobile auto washing/detailing; equipment washing/cleaning; carpet, drape, and furniture cleaning; and mobile high pressure or steam cleaning. The mobile businesses shall be required to implement appropriate control measures within 3 months of being notified of the requirements.
7. Within 36 months of adoption of this Order, the Principal Permittee, in coordination with the Co-Permittees, shall develop an enforcement strategy to address mobile businesses. Each Permittee shall also distribute the BMP Fact Sheets to the mobile businesses identified for notification as required in Section X.D.6, above. At a minimum, the mobile business Fact Sheets/training program should include: laws and regulations dealing with urban runoff and discharges to storm drains; appropriate BMPs and proper procedure for disposing of wastes generated from each mobile business.
8. The Principal Permittee, in coordination with the Co-Permittees shall continue to maintain a restaurant inspection program, or coordinate and collaborate with the San Bernardino County Public Health Agency's restaurant inspection program. The restaurant inspection program shall, at a minimum, address:
    a. Oil and grease disposal to verify that these wastes are not poured into a trash bin, storm sewers, parking lot, street or adjacent catch basin;
    b. Trash bin areas to verify that these areas are clean, the bin lids are closed, and the bins are not used for disposing of liquid wastes;
    c. Parking lot, alley, sidewalk and street areas to verify that floor mats, filters and garbage containers are not washed in those areas and that no wash water is disposed of into those areas;
    d. Parking lots to verify that they are cleaned by sweeping, not by hosing down, and that the facility operator uses dry methods for spill cleanup; and,

e. Inspection of existing devices designed to separate grease from wastewater (e.g., grease traps or interceptors) to ensure adequate capacity and proper maintenance is currently performed under the Fats, Oils and Grease (FOG) program (the FOG inspections conducted under the Statewide SSO Order [Water Quality Order No. 2006-0003] could be substituted for this inspection).

9. All violations of the Water Quality Ordinance shall be enforced by the Permittees and all violations of the Health and Safety Code should be enforced by the Public Health Agency.

E. Residential Program

1. Within 36 months of adoption of this Order, each Permittee shall, consistent with the MEP standard, develop and implement a residential program designed to reduce the discharge of pollutants from residential facilities to the MS4s and to prevent discharges from the MS4s from causing or contributing to exceedances of water quality standards in the receiving waters.
2. The Permittees shall identify residential areas and activities that are potential sources of pollutants and develop Fact Sheets/BMPs. At a minimum, this should include: residential auto washing and maintenance activities; use and disposal of pesticides, herbicides, fertilizers and household cleaners; and collection and disposal of pet wastes. The Permittees shall encourage residents to implement pollution prevention measures. The Permittees should work with sub-watershed groups to disseminate the latest research information from organizations such as the Inland Empire Resource Conservation District[66], The Land Trust Alliance, The USDA Natural Resources Conservation Service, USDA's Backyard Conservation Program[67], and others.
3. Each Permittee shall document its residential program in its LIP.
4. The Permittees shall continue to, collectively or individually, facilitate the proper collection and management of used oil, toxic and hazardous materials, and other household wastes. Such facilitation shall include educational activities, public information activities, and establishment of curbside or special collection sites managed by the Permittees or private entities, such as solid waste haulers. Each Permittee shall continue these programs and periodically evaluate their effectiveness in reducing discharges of pollutants into the MS4s.
5. The Permittees shall develop and implement control measures for common interest areas and areas managed by homeowner associations or management companies. This may include development and promotion of public education materials identifying BMPs for these common interest areas or HOA areas. The Permittees

[66]The District provides gardening and horticulture information appropriate for the area including native plant selection, backyard management, alternatives to pesticide, irrigation scheduling and composting.

[67]Backyard Conservation, Bringing Conservation from the Countryside to Your Backyard, USDA Natural Resources Conservation Service, National Association of Conservation Districts, Wildlife Habitat Council and National Audubon Society.

should evaluate the applicability of programs such as the Landscape Performance Certification Program[68] to encourage efficient water use and to minimize runoff[69].

6. The Permittees shall enforce their Water Quality Ordinance for all residential areas and activities. The Permittees should encourage new developments to use weather-based evapotranspiration (ET) irrigation controllers[70].
7. Each Permittee shall include an evaluation of its Residential Program in the annual report starting with the first annual report after adoption of this Order.

XI. NEW DEVELOPMENT (INCLUDING SIGNIFICANT RE-DEVELOPMENT)

A. General Requirements:

1. Each Permittee shall continue to ensure (prior to issuance of any local permits or other approvals) that all non-Permittee construction sites that are one acre or greater, and sites less than one acre if part of a common plan of development have filed with the State Board a Notice of Intent for coverage under the State's General Construction Permit and have been issued a valid Waste Discharge Identification (WDID) number. Each Permittee shall describe its General Permit coverage verification procedures in its LIP.
2. Each Permittee shall ensure that the erosion and sediment control plans it approves include appropriate erosion and sediment control BMPs (e.g., erosion control measures for sloped or hill-side developments, ingress/egress controls, perimeter controls, run-on diversion, etc.) such that an effective combination of BMPs consistent with site risk is implemented through all phases of construction.
3. Each Permittee shall utilize the BMP studies conducted during the previous permit terms to determine the most appropriate erosion and sediment control BMPs. The conditions of approval shall require erosion and sediment control plans, SWPPPs, and WQMPs, as applicable. These documents shall specify the appropriate BMPs.
4. Each Permittee shall ensure, consistent with the maximum extent practicable standard, that runoff from development projects it approves, does not cause nuisance to adjoining or downstream properties and stream channels.
5. Each Permittee shall ensure, to the MEP, that urban runoff conveyance systems created resulting from development projects it approves are appropriately maintained consistent with Section XIII of this Order or are adequately maintained by a legally responsible party.

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[68] For example, see the Metropolitan Water District of Orange County's Evaluation of the Landscape Performance Certification Program, January 2004.

[69] The Residential Runoff Reduction Study, Municipal Water District of Orange County, Irvine Ranch Water District and Metropolitan Water District of Southern California, July 2004.

[70] Westpark Study, Municipal Water District of Orange County, Irvine Ranch Water District and Metropolitan Water District of Southern California, 2001.

6. Prior to accepting connections from owners of other MS4 systems outside the Permittees' jurisdiction, the Permittees shall notify these owners of other MS4 systems outside their jurisdiction of the requirement to comply with the post-construction standard in the State's General Construction Permit and the regulatory requirements for control of pollutants in MS4 discharges (including relevant requirements from the MSWMP and WQMP), where feasible, and consistent with the MEP standard. A copy of the notification shall be provided to the Regional Board.
7. Each Permittee shall ensure that appropriate control measures to reduce erosion and maintain stream geomorphology are included in the design for replacement of existing culverts or construction of new culverts and/or bridge crossings.
8. Each Permittee shall minimize the short and long-term adverse impacts on receiving water quality from public and private new development and significant re-development projects, as required in Section XI.D (Water Quality Management Plan), below, by continuing to review, approve, and verify implementation of project-specific WQMPs, emphasizing implementation of LID principles, where feasible, and addressing hydrologic conditions of concern, and long term operation and maintenance mechanisms prior to project closure or issuance of certificates of occupancy.
9. Each Permittee shall participate in the development of the Watershed Action Plan, described in Section B below, to integrate water quality, stream protection and stormwater management and re-use within the permitted area with land use planning policies, ordinances, and plans, as applicable, and consistent with the MEP standard.

B. **Watershed Action Plan**

1. The Permittees shall develop an integrated watershed management approach to improve integration of planning and approval processes with water quality and quantity control measures. Management of the water quality and hydrologic impacts of urbanization will be more effective whether managed on a per site, sub-regional or regional basis, if coordinated within the Watershed Action Plan. Pending completion of a Watershed Action Plan, management of the impacts of urbanization shall be accomplished using existing programs.
2. Within twelve months of adoption of this Order, each Permittee shall review the watershed protection principles and policies, specifically addressing urban and storm water runoff, in its planning procedures, including CEQA preparation, review and approval processes; General Plan and related documents including, but not limited to its Development Standards, Zoning Codes, Conditions of Approval, Development Project Guidance; and WQMP development and approval processes.
3. The Principal Permittee, in collaboration with the Co-Permittees, shall develop a Watershed Action Plan (WAP) that describes and implements the Permittees' approach to coordinated watershed management. The WAP shall improve coordination of existing programs and identify new and/or enhanced program elements as applicable. The objective of the WAP is to improve integration of water quality, stream protection, storm water management, water conservation and re-use, and flood protection, with land use planning and development processes. The WAP shall be developed in two phases:

a. Phase 1: within 12 months of adoption of this Order, the Principal Permittee, in coordination with the Co-Permittees shall:

   i. Identify program-specific objectives for the WAP; the objectives will include consideration of:

      1. The watershed protection principles specified in Section XI.C.3.a – g, below;

      2. The Permittee's planning and procedure review required in XI.B.2, above;

      3. Potential impediments to implementing watershed protection principles during the planning and development processes, including but not limited to LID principles and management of the impacts of hydromodification;

      4. Impaired waters [CWA § 303(d) listed] with and without approved TMDLs, pollutants causing impairment, monitoring programs for these pollutants, control measures, including any BMPs that the Permittees are currently implementing, and any BMPs the Permittees are proposing to implement. In addition, if a TMDL has been developed and an implementation plan is yet to be developed, the WAP shall specify that the responsible Permittees should develop constituent-specific source control measures, conduct additional monitoring and/or cooperate with the development of an implementation plan, where feasible, and consistent with the MEP standard.

   ii. Develop a structure for the WAP that emphasizes coordination of watershed priorities with the Permittees' LIPs via the areawide model LIP;

   iii. Identify linkages between the WAP and the SWQSTF, MSWMP, WQMP, the implementation of LID, and the TMDL Implementation Plans;

   iv. Identify other relevant existing watershed efforts (Chino Basin Master Plan, SAWPA's IRWMP, etc., and their role in the WAP;

   v. Ensure that the HCOC Map/Watershed Geodatabase is available to watershed stakeholders via the World Wide Web, and has incorporated the following information:

      1. Delineation of existing unarmored or soft-armored drainages in the permitted area that are vulnerable to geomorphological changes due to hydromodification and those channels and streams that are engineered, hardened, and maintained.

      2. GIS layers for known sensitive species, protected habitat areas, drainage boundaries, and potential storm water recharge areas and/or reservoirs;

      3. 303(d)-listed waterbodies and associated pollutants;

      4. Available and relevant regulatory and technical documents accessible via hyperlinks;

vi. Develop a schedule and procedure for maintaining the Watershed Geodatabase, and develop a draft schedule for expected enhancements to increase functionality;

vii. Review the Watershed Geodatabase with Regional Board staff from the Storm Water, TMDL, and Watershed Planning/ Program Sections, and other resource agencies, to verify attributes of the Geodatabase, including drainage feature stability/susceptibility/risk assessments, and the intended use of the Geodatabase to support regulatory processes such as WQMP approvals, Clean Water Act Section 401 Water Quality Standards Certifications (401 Certifications), and LID BMP feasibility evaluations;

viii. Identify potential causes of identified stream degradation including a consideration of sediment yield and balance on a watershed or subwatershed basis.

ix. Conduct a system-wide evaluation[71] to identify opportunities to retrofit existing storm water conveyance systems, parks, and other recreational areas with water quality protection measures, and develop recommendations for specific retrofit studies that incorporates opportunities for addressing applicable TMDL implementation plans, hydromodification management, and/or LID implementation within the permitted area.

x. Conduct a system wide evaluation to identify opportunities for joint or coordinated development planning to address stream segments vulnerable to hydromodification and coordinated re-development planning to identify restoration opportunities for hardened and engineered streams and channels. The WAP shall identify contributing jurisdictions and the stream segments that will benefit from this coordination.

xi. Invite participation and comments from resource conservation districts, water and utility agencies, state and federal agencies, non-governmental agencies and other interested parties in the development and use of the Watershed Geodatabase;

xii. Submit the Phase 1 components in a report to the Executive Officer for approval. The Report shall be deemed acceptable to the Regional Board if the Executive Officer submitted raises no written objections within 30 days of submittal. .

b. Phase 2: within 12 months of the approval by the Executive Officer of the Report from Phase 1, above, the Principal Permittee, in coordination with the Co-Permittees, shall:

i. Contingent upon consensus with Regional Board staff and other resource agencies as described in XI.B.3.a.vii, above, specify procedures and a schedule to integrate the use of the Watershed Geodatabase into the implementation of the MSWMP, WQMP, and TMDLs;

[71] For example, see the 2005 RBF Retrofit Study conducted for Orange County MS4 permittees.

ii. Develop and implement a Hydromodification Monitoring Plan (HMP) to evaluate hydromodification impacts for the drainage channels deemed most susceptible to degradation. The HMP will identify sites to be monitored, include an assessment methodology, and required follow-up actions based on monitoring results. Where applicable, monitoring sites may be used to evaluate the effectiveness of BMPs in preventing or reducing impacts from hydromodification.

iii. Develop and implement a Hydromodification Management Plan prioritized based on drainage feature/susceptibility/risk assessments and opportunities for restoration.

iv. Conduct training workshops in the use of the Watershed Geodatabase. Each Permittee must ensure that their planning and engineering staff attend a workshop.

v. Conduct demonstration workshops for the Watershed Geodatabase to be attended by appropriate upper-level managers and directors from each Permittee.

vi. Develop recommendations for streamlining regulatory agency approval of regional treatment control BMPs. The recommendations should include information needed to be submitted to the Regional Board for approval of regional treatment control BMPs. At a minimum, this information should include: BMP location; type and effectiveness in removing pollutants of concern; projects tributary to the regional treatment system; engineering design details; funding sources for construction, operation and maintenance; and parties responsible for monitoring effectiveness, operation and maintenance. The Permittees are encouraged to collaborate and work with other counties to facilitate and coordinate these recommendations.

vii. Implement applicable retrofit or regional treatment recommendations from the evaluation conducted in Section B.3.a.ix, above.

viii. Submit the Phase 2 components in a report to the Executive Officer. The submitted report shall be deemed acceptable to the Regional Board if the Executive Officer raises no written objections within 30 days of submittal.

4. Within three years of adoption of this Order, each Permittee shall review the watershed protection principles and policies in its General Plan or related documents (such as Development Standards, Zoning Codes, Conditions of Approval, Development Project Guidance) to determine consistency with the Watershed Action Plan. Each Permittee shall report the findings in the annual report along with a schedule for any necessary revision.

C. **Consideration of Watershed Protection Principles in California Environmental Quality Act (CEQA) and Planning Processes**:

1. The Permittees shall ensure that the direct, indirect, and cumulative water quality impacts of storm water and non-storm water runoff are properly considered and addressed in their land-use planning processes. The following potential water quality impacts shall be considered during the preparation and circulation of environmental documents prepared pursuant to CEQA:
   a. Potential impact of project construction on storm water runoff.
   b. Potential impact of project's post-construction activity on storm water runoff.
   c. Potential for discharge of storm water pollutants from areas of material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoor work areas.
   d. Potential for discharge of storm water to affect the beneficial uses of the receiving waters.
   e. Potential for significant changes in the flow velocity or volume of storm water runoff to cause environmental harm.
   f. Potential for significant increases in erosion of the project site or surrounding areas.
2. For any project that may require a 401 Certification from the State, the Permittees shall coordinate project review with Regional Board staff pursuant to the requirements of CEQA. Upon request by Regional Board staff, this coordination shall include the timely provision of the discharger's identity and their contact information and the facilitation of early-consultation meetings
3. The Principal Permittee shall collaborate with the Co-Permittees to develop recommendations to resolve any impediments to implementing watershed protection principles during the planning and development processes, including LID principles and management of hydrologic conditions of concern (See Section E below). The Principal Permittee shall collaborate with the Co-Permittees to develop common principles and policies necessary for water quality protection. The watershed protection principles and policies should include the following:
   a. Avoid disturbance of natural water bodies, drainage systems and flood plains; conserve natural areas; protect slopes and channels; minimize impacts from storm water and urban runoff on the biological integrity of natural drainage systems and water bodies;
   b. Minimize changes in hydrology and pollutant loading; require incorporation of controls including structural and non-structural BMPs to mitigate any projected increases in pollutant loads and flows; ensure that post-development runoff rates and velocities from a site do not adversely impact downstream erosion, stream habitat; minimize the quantity of storm water directed to impermeable surfaces and the MS4s; maximize the percentage of permeable surfaces to allow more percolation of storm water into the ground;

c. Preserve wetlands, riparian corridors, and buffer zones; establish reasonable limits on the clearing of vegetation from the project site;

d. Use properly designed and well maintained water quality wetlands, biofiltration swales, watershed-scale retrofits, etc., where such measures are likely to be effective and technically and economically feasible;

e. Provide for appropriate permanent measures to reduce storm water pollutant loads in storm water from the development site; and

f. Establish development guidelines for areas particularly susceptible to erosion and sediment loss.

g. Consider pollutants of concern (identified in the risk-based analysis provided in the 2006 ROWD, the annual reports and the list of impaired waterbodies (303(d) list)) and propose appropriate control measures.

4. Within 24 months following the review specified in B.2, above, each Permittee shall incorporate the following information into its LIP and its project approval process:

   a. The Permittees shall identify and map in GIS format the natural channels, wetlands, riparian corridors and buffer zones and identify conservation and maintenance measures for these features. The Watershed Action Plan should include information needed for this effort. This requirement will be most effective if met through development of areawide HCOC maps or other joint efforts.

   b. Each Permittee shall include in the LIP the applicable tools (such as ordinances, design standards, and procedures) used to implement green infrastructure/low impact development principles for public and private development projects.

   c. For hillside development projects, each Permittee shall consider and facilitate application of landform grading techniques[72] and revegetation as an alternative to traditional approaches, particularly in areas susceptible to erosion and sediment loss.

5. Each Permittee shall provide Regional Board staff with the draft amendment or revision when a pertinent General Plan element or the General Plan is noticed for comment in accordance with Govt. Code § 65350 et seq.

D. Water Quality Management Plan (WQMP) Requirements[73]:

1. Each Permittee shall continue to require project-specific Water Quality Management Plans (WQMP) for priority projects listed under Section XI.D.4.a to i.

2. Within 18 months of adoption of this Order, the Principal Permittee shall coordinate the revision of the WQMP Guidance and Template to include new elements required under this Order.

[72] http://www.epa.gov/region3/mtntop/pdf/Appendixes/Appendix%20D%20Aquatic/Aquatic%2OEcosystem%20Enhanc.%20Symp/Proceedings/Support%20Info/Schor/Landform.pdf

[73] Priority projects are those listed under Section XI.D.4.a to i.

3. Each Permittee shall require submittal of a preliminary project-specific WQMP as early as possible during the environmental review or planning phase (land use entitlement). No building or grading permit shall be issued prior to approval of the final project–specific WQMP that is developed based on the preliminary project-specific WQMP and any recommended revisions, as appropriate.

4. The combination of site design/LID BMPs (where feasible), source control, and/or treatment control BMPs, including regional treatment systems, in project-specific WQMPS shall address all identified pollutants and hydrologic conditions of concern from new development and/or significant re-development projects for the categories of projects (priority projects) listed below:

   a. All significant re-development projects. Significant re-development is defined as the addition or replacement of 5,000 or more square feet of impervious surface on an already developed site subject to discretionary approval of the Permittee. . Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of the facility, or emergency redevelopment activity required to protect public health and safety. Where redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing developed site, and the existing development was not subject to WQMP requirements, the numeric sizing criteria discussed below applies only to the addition or replacement, and not to the entire developed site. Where redevelopment results in an increase of fifty percent or more of the impervious surfaces of a previously existing developed site, the numeric sizing criteria applies to the entire development.

   b. New development projects that create 10,000 square feet or more of impervious surface (collectively over the entire project site) including commercial, industrial, residential housing subdivisions (i.e., detached single family home subdivisions, multi-family attached subdivisions or townhomes, condominiums, apartments, etc.), mixed-use, and public projects. This category includes development projects on public and private land, which fall under the planning and building authority of the Permittees.

   c. Automotive repair shops (with SIC codes 5013, 5014, 5541, 7532-7534, 7536-7539).

   d. Restaurants (with SIC code 5812) where the land area of development is 5,000 square feet or more.

   e. All hillside developments of 5,000 square feet or more which are located on areas with known erosive[74] soil conditions or where the natural slope is twenty-five percent or more.

   f. Developments of 2,500 square feet of impervious surface or more adjacent to (within 200 feet) or discharging directly[75] into environmentally sensitive areas (ESAs) such as areas designated in the Ocean Plan as areas of special biological significance or waterbodies listed on the CWA Section 303(d) list of

[74] See General Construction Permit Order No. 2009-0009-DWQ.

[75] Discharging directly means a drainage or conveyance which carries flows entirely from the subject development and not commingled with any other flows.

impaired waters.

g. Parking lots of 5,000 square feet or more exposed to storm water. Parking lot is defined as land area or facility for the temporary parking or storage of motor vehicles.

h. Retail Gasoline Outlets (RGOs) that are either 5,000 sq feet or more, or have a projected average daily traffic of 100 or more vehicles per day.

i. Emergency public safety projects in any of the above-listed categories shall be excluded if the delay caused due the requirement for a WQMP compromises public safety, public health and/or environmental protection.

5. WQMPs shall include BMPs for source control, pollution prevention, site design, LID implementation, where feasible, (see Section E, below) and structural treatment control BMPs. WQMPs shall include control measures for any listed pollutant[76] to an impaired waterbody on the 303(d) list such that the discharge shall not cause or contribute to an exceedance of receiving water quality objectives. The Permittees shall require the following source control BMPs for each priority development project, unless formally substantiated as unwarranted in a written submittal to the Permittees:

   a. Minimize contaminated runoff, including irrigation runoff, from entering the MS4s;

   b. Provide appropriate secondary containment and/or proper covers or lids for materials storage, trash bins, and outdoor processing and work areas;

   c. Minimize storm water contact with pollutant sources;

   d. Provide community car wash and equipment wash areas that discharge to sanitary sewers;

   e. Minimize trash and debris in storm water runoff through regular street sweeping and through litter control ordinances.

   f. The pollutants in post-development runoff shall be reduced using controls that utilize best management practices, as described in the California Storm Water Quality Handbooks, Caltrans Storm Water Quality Handbook or other reliable sources.

6. Treatment control BMPs shall be in accordance with the approved model WQMP and must be sized to comply with one of the following numeric sizing criteria:

   a. VOLUME

   Volume-based BMP design applies to BMPs where the primary mode of pollutant removal depends upon the volumetric capacity, such as detention, retention, and infiltration basins. These criteria specify the capture and infiltration or treatment of a percentile of the average annual rainfall volume (also referred to as percent capture ratio).

[76]For a waterbody listed under Section 303(d) of the Clean Water Act, the pollutant that is causing the impairment is the "listed pollutant".

Volume–based BMPs shall be designed to infiltrate, harvest and use, filter, or treat either:

i. The volume of runoff produced from a 24-hour, 85th percentile storm event, as determined from the County of San Bernardino's 85th Percentile Precipitation Isopluvial Map; or,

ii. The volume of annual runoff produced by the 85th percentile, 24-hour rainfall event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87 (1998); or,

iii. The volume of annual runoff based on unit basin storage volume, to achieve 80 (or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/Commercial (1993); or,

iv. The volume of runoff, as determined from the local historical rainfall record, that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile, 24-hour runoff event;

OR

b. FLOW

Flow-based BMP design applies to BMPs where the primary mode of pollutant removal depends upon the rate of flow thru the BMP, such as swales, sand filters, screening devices, and proprietary devices such as storm drain inserts.

Flow–based BMPs shall be designed to infiltrate, harvest and use, filter, or treat either:

i. The maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour; or,

ii. The maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity, as determined from the local historical rainfall record, multiplied by a factor of two; or,

iii. The maximum flow rate of runoff, as determined from the local historical rainfall record that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile hourly rainfall intensity multiplied by a factor of two.

7. The obligation to install structural BMPs at a new development is met if, for a common plan of development, BMPs are constructed with the requisite capacity to serve the entire common project, even if certain phases of the common project may not have BMP capacity located on that phase in accordance with the requirements specified above. All treatment control BMPs should be located as close as possible to the pollutant sources, should not be located within Waters of the U.S., and pollutant removal should be accomplished prior to discharge to Waters of the U.S. Regional treatment control BMPs shall be completed and operational prior to occupation of any of the priority project sites tributary to the regional treatment BMP.

8. **Groundwater Protection:**

Treatment Control BMPs utilizing infiltration [exclusive of incidental infiltration and BMPs not designed to primarily function as infiltration devices (such as grassy swales, detention basins, vegetated buffer strips, constructed wetlands, etc.) must comply with the following minimum requirements to protect groundwater:

a. Use of structural infiltration treatment BMPs shall not cause or contribute to an exceedance of groundwater water quality objectives.

b. Source control and pollution prevention control BMPs shall be implemented to protect groundwater quality. The need for pre-treatment BMPs such as sedimentation or filtration should be evaluated prior to infiltration.

c. Adequate pretreatment of runoff prior to infiltration shall be required in gas stations and large commercial parking lots.

d. Unless adequate pre-treatment of runoff is provided prior to infiltration structural infiltration treatment BMPs must not be used for areas of industrial or light industrial activity[77], areas subject to high vehicular traffic (25,000 or more daily traffic); car washes; fleet storage areas; nurseries; or any other high threat to water quality land uses or activities.

e. Class V injection wells or dry wells must not be placed in areas subject to vehicular[78] repair or maintenance activities[79], such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop) or any facility that does any vehicular repair work.

f. Structural infiltration BMP treatment shall not be used at sites that are known to have soil and groundwater contamination.

g. Structural infiltration treatment BMPs shall be located at least 100 feet horizontally from any water supply wells.

h. The vertical distance from the bottom of any infiltration structural treatment BMP to the historic high groundwater mark shall be at least 10 feet. Where the groundwater basins do not support beneficial uses, this vertical distance criteria may be reduced, provided groundwater quality is maintained.

i. Structural infiltration treatment BMPs shall not cause a nuisance or pollution as defined in Water Code Section 13050.

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[77] Unless a site assessment pursuant to criteria developed in Section XI.E.3 shows that site operations do not pose a threat to ground water.

[78] Vehicles include automobiles; motor vehicles include trucks, trains, boats, motor cycles, farm machineries, airplanes and recreation vehicles such as snow mobiles, all terrain vehicles, and jet skis.

[79] United States Environmental Protection Agency, Office of Water, EPA 816-R-00-008, September 2000 State Implementation Guidance – (Revisions to the UIC Regulations for the Underground Injection Control Regulations for Class V Injection Wells, 64 FR 68546) indicate that these activities are prohibited from Class V Injection wells.

E. Low Impact Development (LID) and Hydromodification Management to Minimize Impacts from New Development / Significant Redevelopment

The objective of LID is to mimic pre-development site hydrology through technically and economically feasible source control and site design techniques. LID combines hydrologically functional site design with pollution prevention methods to compensate for land development impact on hydrology and water quality.

1. Within 18 months of adoption of this Order, each Permittee shall evaluate any potential barriers to implementing LID principles. This shall be done in conjunction with the requirements specified under Sections XI.B.3.a and XI.C.3. To facilitate implementation of LID BMPs, the Permittees should consider revising their ordinances, codes and building and landscape design standards. The Permittees shall promote green infrastructure/LID BMP implementation and identify the applicable LID principles in the project specific WQMP:

   a. Landscape designs that promote water retention and evapotranspiration such as 1 foot depth of compost/top soil in commercial and residential areas on top of 1 foot of decompacted subsoil, concave landscape grading to allow runoff from impervious surfaces, and water conservation by selecting native plants, weather-based irrigation controllers, etc.

   b. Allow permeable surface designs in low traffic roads and parking lots, where feasible. This may require land use/building code amendment.

   c. Allow natural drainage systems for street construction and catchments (with no drainage pipes), and allow grassy swales and ditches where feasible.

   d. Require parking lots to drain to landscaped areas to provide treatment, retention, or infiltration, where feasible.

   e. Reduce curb requirements, where feasible, where adequate drainage, conveyance, treatment and storage are available.

   f. Amend where feasible and practicable, land use/building codes to allow streets with no curbs and parking lots with no stop blocks to allow storm water to drain into landscaped areas.

   g. Require, where feasible, rainwater harvesting and use.

   h. Consider building narrow streets, alternatives to minimum parking requirements, etc.

   i. Consider vegetated landscape as an integral element of streets, parking lots, playground and buildings as a storm water treatment and retention system.

   j. Consider and facilitate application of landform grading techniques[80] and revegetation as an alternative to traditional approaches, particularly in areas susceptible to erosion and sediment loss such as hillside development projects,

[80] http://www.epa.gov/region3/mtntop/pdf/Appendixes/Appendix%20D%20Aquatic/Aquatic%2OEcosystem%20Enhanc.%20Symp/Proceedings/Support%20Info/Schor/Landform.pdf

k. Consider other site design BMPs identified in the WQMP Guidance and Template and not included above.

2. Consistent with the requirements of AB 1881, each Permittee is mandated to update its landscape ordinance. The bill requires the local agencies to adopt the State Model Water Efficient Landscape Ordinance[81] or prepare one that is "at least as effective" as the State Model by January 2010. The proposed state model ordinance applies to landscape requiring a building or landscape permit, plan check or design review. Each Permittee shall provide the Regional Board a copy of its report to Department of Water Resources (DWR).

3. To reduce pollutants in urban runoff, address hydromodification, and manage storm water as a resource to the maximum extent practicable, WQMPs shall specify preferential use of site design BMPs that incorporate LID techniques in the following manner (from highest to the lowest priority): (1) Preventative measures (these are mostly non-structural measures, e.g., preservation of natural features to a level consistent with the maximum extent practicable standard; minirnization of runoff through clustering, reducing impervious areas, etc.) and (2) Mitigative measures (these are structural measures, such as, infiltration, harvesting and use, bio-treatment, etc.). The mitigative or structural site design BMPs shall also be prioritized (from highest to lowest priority): (1) Infiltration BMPs (examples include permeable pavement with infiltration beds, dry wells, infiltration trenches, surface and sub-surface infiltration basins. The Permittees should work with local groundwater management agencies to ensure that infiltration Treatment Control BMPs are designed appropriately; (2) BMPs that harvest and use (e.g., cisterns and rain barrels); and (3) Vegetated BMPs that promote evapotranspiration including bioretention, biofiltration and bio-treatment.

4. The Perrnittees shall reflect in the Water Quality Management Plan Guidance and Template and require each priority development project to infiltrate, harvest and use, evapotranspire, or bio-treat[82] the 85th percentile storm event ("design capture volume"), as specified in Section XI.D. 6 above. Any portion of the design capture volume that is not infiltrated, harvested, used, evapotranspired or bio-treated[83] onsite by LID BMPs shall be treated and discharged in accordance with the requirements set forth in Section XI.E.10 and/or Section XI.G, below.

5. Within 18 months of adoption of this Order, the Permittees shall review and update the Water Quality Management Plan Guidance and Template to incorporate LID principles (where feasible) and to address the impact of urbanization on downstream hydrology. At a minimum, the following elements shall be included during the update:

   a. Site Design BMPs:

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[81] http://www.water.ca.gov/wateruseefficiency/landscapeordinance/

[82] A properly engineered and maintained bio-treatment system may be considered only if infiltration, harvesting and use and evapotranspiration cannot be feasibly implemented at a project site (feasibility criteria will be established in the WQMP [Section XI.E.7]. Specific design, operation and maintenance criteria for bio-treatment systems shall be part of the model WQMP that will be produced by the permittees.

[83] For all references to bio-treat/bio-treatment, see footnote 82.

i. Review and update the menu of site design BMPs to include any LID BMP that is currently not listed.

ii. Include as a reference for design and installation of LID BMPs the *LID Guidance Manual for Southern California* developed by the Southern California Coastal Water Research Project upon its completion.

iii. Techniques or specifications to minimize soil compaction in areas designated for site design BMPs, especially infiltration.

iv. Review and update design, installation and test specifications for retention BMPs to prevent unwanted ponding.

v. Evaluate the use of a credit system[84] for using site design BMPs.

vi. Develop in-lieu programs for projects where implementation may not be feasible.

b. Source Control BMPs:

i. Review and update the menu of source control BMPs.

ii. Include design and installation standards for each structural source control BMP.

c. Treatment Control BMPs:

i. Update the list of treatment control BMPs, including an evaluation of their effectiveness based on national, statewide or regional studies.

ii. Prioritize treatment control BMPs based on their effectiveness in pollutant removal and require project proponents to select the most appropriate BMPs.

iii. Include design and installation standards for each treatment control BMP.

d. Hydrologic Conditions of Concern (HCOC):

i. The Permittees shall continue to ensure, consistent with the MEP standard, through their review and approval of project-specific WQMPs that new development and significant re-development projects:

a) do not cause a hydrologic condition of concern (HCOC), or

b) otherwise, demonstrate that the project does not have the potential to cause significant adverse impacts on downstream natural channels and habitat integrity, alone or in conjunction with the impacts of other projects likely to be implemented in the same drainage area.

ii. A development/redevelopment project does not cause a HCOC if it causes no adverse downstream impacts on the physical structure, aquatic, and riparian habitat and any of the following conditions is met: and any of the following conditions is met:

[84]See sample credit calculation spreadsheet in Appendix 2 of the adopted statewide construction permit,. http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

a) The project disturbs less than one acre and is not part of a common plan of development.

b) The post-development site hydrology (including runoff volume, velocity, duration, time of concentration[85],) is not significantly different from pre-development hydrology for a 2- year return frequency storm. A difference of 5% or less is considered insignificant.

c) All downstream conveyance channels that will receive runoff from the project are engineered, hardened and regularly maintained to ensure design flow capacity, and no sensitive stream habitat areas will be affected. This exemption is only applicable to conveyance channels that have received regulatory approvals prior to June 1, 2004, including CEQA review and approvals by US Army Corps of Engineers, Regional Board, and California Department of Fish and Game.

iii. Where flow reduction strategies are established as part of TMDL compliance plans, decreases in flow loading from pre-development conditions are allowed and encouraged where necessary to protect or restore designated beneficial uses.

iv. If a project causes a HCOC, and a Watershed Action Plan has not been approved, the WQMP shall specify one of the following:

a) Verify the project's potential to cause significant adverse impacts by conducting a further evaluation of the projects impact on stream geomorphology and/or aquatic habitat. This evaluation should include consideration of pre- and post-development hydrograph volumes, time of concentration and peak discharge velocities for a 2 year storm event, consideration of sediment budgets, and a sediment transport analysis. If this evaluation confirms the project's potential to cause significant adverse downstream impacts on downstream natural channels and habitat integrity, alone or in conjunction with impacts of other projects, then the project shall satisfy items b), c), d), e), or f), below. If the evaluation indicates minimal impact on stream channels and habitats, no further action is required.

b) Require additional onsite or offsite mitigation to reduce potential erosion or impacts to aquatic habitats by using LID BMPs, where feasible, or other control measures.

c) Require in-stream controls[86] to mitigate the impacts on downstream natural channels and habitat integrity. The project proponent should first consider site design controls and on-site controls prior to proposing in-stream controls; in-stream controls must not adversely impact beneficial uses or

[85]Time of concentration is defined as the time after the beginning of rainfall when all portions of the drainage basin are contributing simultaneously to flow at the outlet.

[86] In-stream measures involve modifying the receiving stream channel slope and geometry so that the stream can convey the new flow regime without increasing the potential for erosion and aggradation. In-stream measures are intended to improve long-term channel stability and prevent erosion by reducing the erosive forces imposed on the channel boundary.

result in sustained degradation of water quality of the receiving waters and shall require all necessary regulatory approvals[87].

d) Mitigate the HCOC through implementation of the approved Watershed Action Plan.

e) If site conditions do not permit items b), c), or d) above, the alternatives and in-lieu programs discussed in the LIP, may be considered.

6. The WQMP shall specify methods for determining time of concentration.

7. A feasibility analysis that includes technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID.

   i. The feasibility analysis shall include a groundwater protection assessment to determine if structural infiltration BMPs are appropriate for the site

8. Integrate Watershed Action Plan and TMDL Implementation Plans into project-specific WQMPs in affected watersheds.

9. Within 18 months of adoption of this Oder, a copy of the updated WQMP Guidance and Template shall be submitted for review and approval by the Executive Officer. The Permittees shall implement the updated WQMP Guidance and Template within 90 days of approval. If the Executive Officer has not approved the WQMP Guidance and Template within 18 months of adoption of this Order, either the Permittees shall require implementation of LID BMPs, or determine infeasibility of LID BMPs for each project through a project-specific analysis, each of which shall be submitted to the Executive Officer, at least 30 days prior to Permittee approval. Such feasibility determinations shall be certified by a Professional Civil Engineer registered in the State of California, and will be documented in the project WQMP, which shall be approved by the Permittee prior to submittal to the Executive Officer. Within 30 days of submittal to the Executive Officer, the Permittee will be notified if the Executive Officer intends to take any action. Once the updated WQMP Guidance and Template has been approved by the Executive Officer, the submittal of feasibility determinations to the Executive Officer is no longer required.

10. If site conditions do not permit infiltration, harvesting and use, and/or evapotranspiration, and/or bio-treatment of the design capture volume at the project site as close to the source as possible, the alternatives a), b), and c), below, and the credits and in-lieu programs discussed under Section G, below, may be considered and implemented:

    a. Implement LID principles to the MEP at the project site close to the point of storm water generation and infiltrate and/or harvest and re-use at least the design capture volume through designated infiltration/treatment areas elsewhere within the project site.

[87] In-stream control projects require a Streambed Alteration Agreement from the California Department of Fish & Game, a CWA section 404 permit from the U.S. Army Corps of Engineers, and a section 401 certification from the Water Board. Early discussions with these agencies on the acceptability of an in-stream modification are necessary to avoid project delays or redesign.

b. Implement LID on a sub-regional basis. For example, at a 100 unit high density housing unit with a small strip mall and a school: connect all roof drains to vegetated areas (if there are any vegetated areas, otherwise storm water storage and use may be considered or else divert to the local storm water conveyance system, to be conveyed to the local treatment system), construct a storm water infiltration gallery below the school playground to infiltrate and/or harvest and re-use the design capture volume.

c. Implement LID on a regional basis. For example, several developments could propose a regional system to address storm water runoff from all the participating developments.

d. For alternatives a), b), and c) above, the pervious areas to which the runoff from the impervious areas are connected should have the capacity to infiltrate, harvest and use, evapotranspire and/or bio-treat at least the design capture volume from the entire tributary area.

F. Road Projects

1. Within 24 months of adoption of this Order, the Principal Permittee, in cooperation with the Co-Permittees, shall develop standard design and post-development BMP guidance to be incorporated into projects for public streets, roads, highways, and freeway improvements to reduce the discharge of pollutants from the projects to the MEP. The draft guidance shall be submitted to the Executive Officer for review and approval and shall meet the performance standards for site design/LID BMPs, source control and treatment control BMPs as well as the HCOC criteria. The guidance and BMPs shall address any paved surface used for transportation of automobiles, trucks, motorcycles, and other vehicles, and excludes routine road maintenance activities where the surface footprint is not increased. The guidance shall incorporate principles contained in the USEPA guidance, "Managing Wet Weather with Green Infrastructure: Green Streets" to the maximum extent practicable and at a minimum shall include the following:

   a. Guidance specific to new road projects;
   b. Guidance specific to projects for existing roads;
   c. Size or impervious area criteria that trigger project coverage;
   d. Preference for green infrastructure approaches wherever feasible;
   e. Criteria for design and BMP feasibility analyses on a project –specific basis.

2. Within six months of approval by the Executive Officer, the Permittees shall implement the standard design and post-development plan for all municipal road projects.

3. Pending approval of the standard design and post-development BMP Guidance, Permittees shall require site-specific WQMPs for streets, roads and highway projects consistent with Section XI.D.4 of this Order.

G. Alternatives and In-Lieu Programs

1. If a preferred BMP is not technically feasible, other BMPs should be implemented to mitigate the project impacts, or if the cost of BMP implementation greatly outweighs the pollution control benefits, the Permittees may grant a waiver of the BMPs. All waivers, along with waiver justification documentation, must be submitted to the Executive Officer at least 30 days prior to Permittee approval of the WQMP. Only those projects that have completed a feasibility analysis as specified in the WQMP Guidance and Template (see Section XI.E.7) and approved by the Executive Officer shall be considered for alternatives and in-lieu programs. If a waiver is granted, the Permittees shall ensure that project proponents participate in one of the in-lieu programs discussed in this section.
2. The Permittees may collectively or individually propose to establish an urban runoff fund to be used for urban water quality improvement projects within the same watershed that is funded by contributions from developers granted waivers. The contributions should be at least equivalent to the cost savings for waived projects and and the urban runoff fund shall be expended for projects that provide at least an equivalent amount of water quality improvement (there shall be no net impact on water quality due to a waived project) . If a waiver is granted and an urban runoff fund is established, the annual report for the year should include the following information with respect to the urban runoff fund:
   a. Total amount deposited into the fund and the party responsible for managing the urban runoff fund;
   b. Projects funded or proposed to be funded with monies from the urban runoff fund;
   c. Party or parties responsible for design, construction, operation and maintenance of urban runoff funded projects; and
   d. Current status and a schedule for project completion.
3. The obligation to install structural site design and/or treatment control BMPs at a new development is met if, for a common plan of development, BMPs are constructed with the requisite capacity to serve the entire common project, even if certain phases of the common project may not have BMP capacity located on that phase in accordance with the requirements specified above. The goal of the WQMP is to develop and implement practicable programs and policies to minimize the effects of urbanization on site hydrology, urban runoff flow rates, velocities, duration and time of concentration and pollutant loads. This goal may be achieved through watershed-based structural treatment controls, in combination with site-specific BMPs. All treatment control BMPs should be located as close as possible to the pollutant sources, should not be located within Waters of the U.S., and pollutant removal should be accomplished prior to discharge to waters of the US. Regional treatment control BMPs shall be operational prior to occupation of any of the priority project sites tributary to the regional treatment BMP.
4. The Permittees may establish a water quality credit system for alternatives to LID and hydromodification requirements specified above. The following types of projects may be considered for the credit system:

a. Redevelopment projects that reduce the overall impervious area
b. Brownfield redevelopment
c. High density developments (>7 units per acre)
d. Mixed use and transit-oriented development (within ½ mile of transit)
e. Dedication of undeveloped portions of the project site to parks, preservation areas and other pervious uses
f. Regional treatment systems with a capacity to treat flows from all upstream developments
g. Offsite mitigation within the same watershed (see E.5.d.iv above)
h. City Center area
i. Historic Districts and Historic Preservation areas
j. Live-work developments
k. In-fill projects

5. The water quality credit system should not result in a net impact on water quality.
6. A summary of waivers of LID, Hydromodification and Treatment Control BMPs, along with any water quality credit granted, in-lieu projects or urban runoff fund contribution required by each Permittee shall be included in the annual report.

H. Approval of WQMP

Within 18 months of adoption of this Order, each Permittee shall develop and implement standard procedures and tools, and include in its LIP the following:

1. A WQMP review checklist that incorporates the required elements of the WQMP and a clear process for consultation early in the planning process with the Permittee's appropriate departments and sections. This review process shall involve the Permittee's Planning and Engineering Departments during the preliminary and final WQMP review to adequately incorporate project-specific water quality measures and watershed protection principles in their CEQA analysis.
2. Tools or procedures to incorporate project conditions of approval, including proper funding and maintenance and operation of all structural BMPs. The parties responsible for the long-term maintenance and operation of the BMPs upon project close-out and a funding mechanism for operation and maintenance shall be identified prior to approval of the WQMP.
3. A procedure to ensure that appropriate easements and ownerships are recorded/included in appropriate documents that provides the Permittee the authority for post-construction BMP operation and maintenance (also see J.1, below).
4. A final project close-out procedure and checklist to ensure that post-construction BMPs (site design, structural source control and treatment control BMPs) have been

built as per the approved WQMPs or other conditions of approval and are fully functional prior to issuance of certificates of occupancy (also see I.1 and I.2, below).

5. A procedure to work cooperatively with the local vector control district to address any vector problems associated with the water quality control systems. If not properly designed and maintained, some of the BMPs implemented to treat urban runoff could create a habitat for vectors (e.g., mosquitoes and rodents) and become a nuisance. The WQMP review, approval, and closure processes shall include consultation and collaboration with the local vector control districts on BMP design, installation, and operation and maintenance to prevent or minimize vector issues. If vector or nuisance problems are identified during inspections, the local vector control district should be notified.
6. Staff involved with WQMP review and approval shall be trained in accordance with Section XVI, Training Requirements.

I. Field Verification of BMPs

1. The Permittees' project close-out procedures shall include field verification that site design, source control and treatment control BMPs are designed, constructed and functional in accordance with the approved WQMP. Documentation of the field verification, including the WDID number, if applicable, information on the type, location and maintenance responsibility of the BMPs shall be sent to the Regional Board office by regular mail or electronic mail.
2. In addition, post-construction BMPs shall be inspected, prior to the rainy season, within three years after project completion and every three years thereafter. The Permittees shall verify, through visual observation, that the BMPs are properly maintained, operating, and are functional. Results of the inspections shall be reported in the Annual Report.

J. Change of Ownership and Recordation

1. The Permittees shall establish a mechanism to track changes in ownership and responsibility for the operation and maintenance of post-construction BMPs to ensure that they are properly recorded in public records at the County and/or City and the information is conveyed to all appropriate parties when there is a change in project or site ownership.
2. The Permittees shall maintain a database to track all structural treatment control BMPs, including the location of BMPs, parties responsible for construction, operation and maintenance.

K. Operation and Maintenance of Post-Construction BMPs

1. The Permittees shall ensure, to the MEP, that all post-construction BMPs continue to operate as designed and implemented with control measures necessary to effectively minimize the creation of nuisance or pollution associated with vectors, such as mosquitoes, rodents, flies, etc. WQMPs shall identify the responsible party for maintenance, including vector minimization and control measures, and funding

source(s) for operation and maintenance of all site design and structural treatment control systems. Permittees shall, through conditions of approval and during inspections, ensure proper maintenance and operation of all permanent structural post-construction BMPs installed in new developments. Design of these structures shall allow adequate access for maintenance.

2. Within twelve months of adoption of this Order, the Permittees shall develop a database to track operation and maintenance of post-construction BMPs. The database should include available BMP information such as the type of BMP design, location of BMPs (latitude and longitude), date of construction, party responsible for maintenance, maintenance frequency, source of funding for operation and maintenance, maintenance verification, and any problems identified during inspection including any vector or nuisance problems. A copy of this database shall be submitted with the annual report.

L. Pre-Approved Projects

1. The above provisions shall be implemented in a manner consistent with the maximum extent practicable standard for all priority projects 90 days from the date of approval of the updated Water Quality Management Plan Guidance and Template as per Section XI.E.5.
2. The above provisions for LID and hydrologic conditions of concern are not applicable to projects that have an approved WQMP prior to the date of adoption of the revised WQMP Guideline and Template (Section XI.D.2). The Regional Board recognizes that full implementation may not be feasible for certain projects which have received tentative tract or parcel map or other approvals prior to the approval of the updated WQMP.

XII. PUBLIC EDUCATION AND OUTREACH

A. The Permittees shall continue to implement the public education efforts already underway as described in the 2006 ROWD/MSWMP and shall implement the most effective elements of the comprehensive public and business education strategy upon completion of the risk-prioritization strategy to this program element. Each year the Permittees shall review their public education and outreach efforts and revise their activities to adapt to the needs identified in the annual reassessment of program priorities with particular emphasis on addressing the most critical behaviors that cause storm water pollution problems. Any changes to the on-going public education program must be described in the annual report.

B. Consistent with the MEP standard, each Permittee shall implement applicable elements of the public education and outreach program measurably increase public knowledge regarding the storm drain system and the impacts of urban runoff on receiving water quality.

C. When feasible and effective, the Permittees shall participate in joint outreach programs with other agencies including, but not limited to the Santa Ana Watershed Project

Authority, Caltrans, and other county and municipal storm water programs to ensure that a consistent message on storm water pollution prevention is disseminated to the public.

D. The Permittees shall facilitate implementation of BMPs listed in the Storm Water Management Plan and/or the Water Quality Management Plan for restaurants, automotive service centers, gasoline stations and other similar facilities by distributing BMP brochures or other fact sheets to these facilities during inspections and/or through other means.

E. Within 12 months from the date of adoption of this Order, the Permittees shall develop and maintain BMP guidance for the control of those potentially polluting activities identified during the previous permit cycle, which are not otherwise regulated by any agency, including guidelines for the household use of fertilizers, pesticides, herbicides and other chemicals, and guidance for mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting. These guidance documents shall be distributed to the public, trade associations, etc., through participation in community events, trade association meetings and/or by mail.

F. The Permittees shall ensure that appropriate educational materials, including the BMP brochures, are provided to all new industrial and commercial enterprises in their jurisdiction at the time building and construction permits (or occupancy permits) are issued and/or at the time business licenses are issued.

G. The Permittees shall continue to maintain a hotline telephone number and website to allow the public to report illegal dumping from residential, industrial, construction or commercial sites into public streets, storm drains and other waterbodies. The hotline number and website address for reporting storm water pollution problems shall be promoted in an appropriate outreach effort. The Permittees shall further develop and maintain public education materials to encourage the public to report illegal dumping and unauthorized, non-storm water discharges from residential, industrial, construction and commercial sites into public streets, storm drains and to surface waterbodies and their tributaries; clogged storm drains; faded or missing catch basin stencils and general storm water and BMP information. Hotline and web site information shall be included in the public and business education program and shall be listed in the governmental pages of all regional phone books and on the Permittees' website.

XIII. PERMITTEE FACILITIES AND ACTIVITIES

A. Each Permittee shall inventory its fixed facilities, field operations, and drainage facilities, and shall conduct inspections of these facilities on an annual basis to ensure that these facilities and activities do not contribute pollutants to receiving waters, consistent with the MEP standard. At a minimum, the following municipal facilities, that are owned and/or operated by the Permittees, shall be inspected. Records of these facilities and inspection findings shall be maintained in a database:

1. Public streets, roads (including rural roads) and highways within its jurisdiction;

2. Parking facilities;
3. Fire fighting training facilities;
4. Flood management projects and flood control structures;
5. Areas or facilities and activities discharging directly to environmentally sensitive areas such as 303(d) listed waterbodies or those with a RARE beneficial use designation;
6. Publicly owned treatment works (including water and wastewater treatment plants)
   a. Sanitary sewage collection systems shall be adequately maintained to minimize overflows, leaks, or other failures (also see requirements in Section IX, above), but need not be inspected annually unless deemed to be necessary;
7. Solid waste transfer facilities;
8. Land application[88] sites;
9. Corporate yards including maintenance and storage yards for materials, waste, equipment and vehicles; and
10. Household hazardous waste collection facilities.
11. Municipal airfields.
12. Parks and recreation facilities.
13. Special event venues following special events (festivals, sporting events).
14. Power washing.
15. Other municipal areas and activities that the Permittee determines to be a potential source of pollutants.

B. The Permittees may develop a risk-based scoring system to prioritize Permittee facilities and activities to determine the frequency and scope of inspections, as an alternative to XIII.A, above. If proposed, the scoring system shall consider factors including, but not limited to: the hazardous nature of materials used on site; potential for erosion and pollutant discharges, particularly such materials as pre-production plastic (nurdles) or pollutants for which the receiving water is impaired; site size and location including proximity to receiving water, history of spills and leaks; use of pollution control and prevention measures; and compliance history. The risk-based scoring system shall include a criterion to identify the facilities as high, medium or low risk and shall be submitted to the Executive Officer for approval. The electronic database submitted with the annual report (see X.A.2, above) shall include the risk-based scores for each facility. The facility and/or activity scores must be reviewed and updated annually, if necessary.

C. At least 80% of the inlets, open channels, and basins shall be inspected at least once during each reporting year and cleaned, if necessary, with 100% of the facilities inspected in a two-year period, using the BMP fact sheet developed by the Management Committee. This information shall be included in the annual report.

D. Each Permittee shall clean its drainage facilities where the inspection reveals that the sediment/storage volume is 25% full or greater, or where there is evidence of illegal discharge, or if accumulated sediment or debris impairs the hydraulic capacity of the facility.

[88] Examples are compost application, animal/dairy manure application, and biosolids application

E. The Permittees' shall evaluate, annually, the inspection and cleanout frequency of drainage facilities, including catch basins, referred to in Section B and C, above. This evaluation shall consider the data generated by historic and ongoing inspections and cleanout of these facilities, and the IC/ID program (Section VIII). The evaluation shall be based on a prioritized list of drainage facilities considering factors such as: proximity to receiving waters, receiving water beneficial uses and impairments of beneficial uses, historical pollutant types and loads from past inspections/cleanings and the presence of downstream regional facilities that would remove the types of pollutants found in the drainage facility. Using this list, the Permittees shall revise their inspection and clean out schedules and frequency and provide justification for any proposed clean out frequency that is less than once a year. This information shall be included in the annual report.

F. Each Permittee shall implement control measures necessary to minimize infiltration of seepage from sanitary sewers to the storm drain systems through routine preventive maintenance of the storm drain system. The Permittees who are also owners and/or operators of sewage collection systems shall also implement a routine maintenance program for the sewage collection systems in accordance with the SSO Order. Each Permittee shall cooperate and coordinate with the appropriate sewage collection agency to swiftly respond to and contain any sewage spills. This control measure and coordination with the sewering agency shall be documented in the LIP.

G. The Permittees shall continue to train its employees in integrated pest management, and pesticide and fertilizer applications.

H. Successful implementation of the provisions in this Order will require the cooperation of many different departments within each Permittee's jurisdiction (e.g., Fire Department, Department of Environmental Health, Planning Department, Transportation Department, Parks and Recreation, Building and Safety, Code Enforcement, etc.) As such, these Permittee departments, programs, or organizations are expected to actively participate in implementing this Order. Other public agency organizations having programs/activities that have an impact on storm water quality are listed in Attachment 3. The Permittees shall ensure that all necessary Permittee departments within their jurisdiction implement their respective requirements as specified in the LIP.

I. Each Permittee shall annually evaluate the information provided to field staff during their maintenance activities to direct public outreach efforts and determine the need for revision of existing maintenance procedures or schedules. The results of this evaluation shall be provided in the annual report.

J. Each Permittee shall include its procedures, schedules, and tools necessary to implement the requirements of this section in its LIP. The LIP shall state the positions responsible for performing and reporting completion of each task and the training requirements for that position.

XIV. MUNICIPAL CONSTRUCTION PROJECTS

A. This Order authorizes the discharge of storm water runoff from construction projects that may result in land disturbance of one (1) acre or more (or less than one acre, if it is part of a larger common plan of development or sale which is one acre or more) that are

under ownership and/or direct responsibility of any of the Permittees. All Permittee construction activities shall be in accordance with the ROWD and MSWMP.

B. Municipal construction projects shall be in compliance with the latest version of the State's General Permit for Stormwater Discharges Associated with Construction Activities except that an NOI need not be filed with the State Board.

C. Prior to commencement of construction activities, the Permittees shall notify the Executive Officer of the Regional Board of the proposed construction project by submitting a Notice of Intent (NOI), or Permit Registration Documents (PRDs) (web-based) as provided in Attachment 7, and a location map depicting the project location. The filing and annual fees for these NOIs/PRDs are waived for the Permittees.

D. Upon completion of the construction project, the Permittee shall notify the Executive Officer or its designee by submitting: (1) a Notice of Termination (NOT), provided in Attachment 8; (2) photographs of the completed project; (3) a site map depicting the project location and the locations of structural post-construction BMPs, including the latitude and longitude, if appropriate; and (4) copies of the final field verification report. A database of post-construction BMPs for which the Permittees are responsible for shall be developed and referenced in the LIP.

E. The Permittees shall develop and implement a WQMP, if applicable, a storm water pollution prevention plan (SWPPP), a monitoring program that is specific for the construction project prior to the commencement of any of the construction activities, and any other reports or plans required under the General Construction Activity Storm Water Permit. The SWPPP and the WQMP shall be kept at the construction site and released to the public and/or Regional Board staff upon request.

F. The Permittees shall give advance notice to the Executive Officer of the Regional Board of any planned changes in the construction activity, which may result in non-compliance with the latest version of the State's General Construction Activity Storm Water Permit.

G. Emergency Permittee public works projects required to protect public health and safety are exempted from compliance with the requirements of this subsection until the emergency ends, at which time they need to comply with the requirements of this section.

H. All other terms and conditions of the latest version of the State's General Construction Activity Storm Water Permit shall be applicable.

XV. PERMITTEES DE-MINIMUS DISCHARGES

A. The Permittees are authorized to discharge de-minimus types of discharges listed under the latest adopted version of the Regional Board's General De Minimus Discharge Permit, currently Order No. R8-2009-0003. The de-minimus discharges from Permittee owned and/or operated facilities and/or activities shall be in compliance with Order No. R8-2009-0003 except that the Permittees need not pay the filing fee.

B. The Permittees shall notify the Executive Officer of the proposed de-minimus types of discharges at least 15 days prior to start of the discharge, by submitting a NOI and supporting documents, as provided in Attachment 9.

C. For existing de-minimus dischargers (authorized to discharge under Order No. R8-2009-003 prior to the adoption date of this Order), discharges will continue to be regulated under the terms and conditions of Order No. R8-2003-003 until a new discharge authorization is issued, provided that the discharger submits, no later than June 10, 2010, an updated NOI, a copy of the current Monitoring & Reporting Program previously issued to the discharger, and proposed treatment modifications (if any). If no application for continued discharges are submitted by that date, the discharger shall do one of the following:

i. Cease discharge and submit a letter informing the Regional Board that coverage under Order R8-2009-0003 is no longer needed; or

ii. Apply for new discharge authorization as a new de-minimus discharger, under this Order.

XVI. TRAINING PROGRAM FOR STORM WATER MANAGERS, PLANNERS, INSPECTORS AND MUNICIPAL CONTRACTORS

A. Within 24 months from the date of adoption of this Order, the Principal Permittee, in coordination with the Co-Permittees, will update their existing training program to incorporate new or revised program elements related to the development of the LID program, revised WQMP, and establishment of LIPs for each Permittee. The updated training program includes a training schedule, curriculum content, and defined expertise and competencies for storm water managers, inspectors, maintenance staff, those involved in the review and approval of WQMPs, public works employees, community planners and for those preparing and/or reviewing CEQA documentation and for municipal contractors working on Permittee projects.

1. Within 36 months, the Permittees will update training program elements to incorporate new or enhanced stormwater program elements due for completion within 36 months of permit adoption.

2. By 48 months, the Permittees will have a completely revised training program that includes any enhanced or new program elements not previously addressed, including the WAP.

B. The curriculum content should include: federal, state and local water quality laws and regulations as they apply to construction and grading activities, industrial and commercial activities; the potential effects of construction, industrial and commercial activities and urbanization on water quality; implementation and maintenance of erosion and sediment control BMPs and pollution prevention measures; the proper use and maintenance of erosion and sediment controls; the enforcement protocols and methods established in the MSWMP, LIP, WQMP, including LID Principles and Hydrologic Conditions of Concern, the CASQA Construction Stormwater Guidance Manual, Enforcement Response Guide and Illicit Discharge/Illegal Connection Training Program. The training program should address vector control issues related to storm water pollution control BMPs

C. The training modules for each category of trainees (managers, inspectors, planners, engineers, contractors, public works crew, etc.) should define the required competencies,

outline the curriculum, and include a testing procedure at the end of the training program and proof of completion of training (Certificate of Completion).

D. At least on an annual basis, the Principal Permittee shall provide and document training to applicable public agency staff on the updated Municipal Activities and Pollution Prevention Strategy (MAPPS), and any other applicable guidance and procedures developed by the Permittees to address Permittee activities in fixed facilities as well as field operations, including conveyance system maintenance. Each Permittee shall document training for its staff related to jurisdiction-specific responsibility, procedures and implementation protocols established in its LIP. The field program training should include Model Integrated Pest Management, pesticide and fertilizer guidelines. Appropriate staff from each municipality shall attend at least three of these training sessions during the term of this Order. The training sessions may be conducted in classrooms or using videos, DVDs, or other multimedia with appropriate documentation and a final test to verify that the material has been properly reviewed and understood. In instances where applicable municipal operations are performed by contract staff, each Permittee shall require evidence that contract staff have received a level of training equivalent to that listed above.

E. The Principal Permittee shall provide and document training for public employees and interested consultants that incorporates at a minimum, the requirements in this Order related to new development and significant re-development and 401 certifications, and model environmental review (CEQA review) for preparation of environmental documents.

F. The Principal Permittee shall provide training information to municipal contractors to assist the contractors in training their staff. In instances where applicable municipal operations are performed by contract staff, the Permittees shall require evidence that contract staff have received a level of training equivalent to that listed above.

G. The Principal Permittee shall either notify designated Regional Board staff regarding training events via e-mail or submit course content in advance of training sessions.

H. Each Permittee shall adequately train any of its staff involved with storm water related projects and the implementation of this Order within six months from being assigned these duties and on an annual basis thereafter, prior to the rainy season.

I. The LIP shall specify the training requirements for Permittee staff and contractor involved in implementing the requirements of this Order. Each Permittee shall maintain a written record of all training provided to its storm water and related program staff.

XVII. NOTIFICATION REQUIREMENTS

A. Within 24 hours of discovery, the Permittees shall provide oral or email notification to the Executive Officer of noncompliant sites within its jurisdiction that are determined to pose a threat to human health or the environment (e.g., an oil spill that could impact wild life, a hazardous substance spill where residents are evacuated, reportable quantities of hazardous substance spills defined in 40 CFR 117 & 302, etc.). Following oral notification, a written report must be submitted to the Executive Officer within 10 days, detailing the nature of the non-compliance, any corrective action taken by the site/facility owner, other relevant information (e.g., past history of non-compliance, environmental damage resulting from the non-compliance, site/facility owner responsiveness) and the

type of enforcement action that will be carried out by the Permittee. Further, incidences of noncompliance shall be recorded along with the information noted in the written report and the final outcome/enforcement for the incident in the appropriate database.

B. Sewage spill notification shall be consistent with the timelines specified in the SSO Order.

C. All reports submitted by the Permittees as per the requirements in this Order for the approval of the Executive Officer shall be publicly noticed and made available on the Regional Board's website, or through other means, for public review and comments. The Executive Officer shall consider all comments received prior to approval of the reports. Any unresolved issues shall be scheduled for a public hearing at a Regional Board meeting after proper public notice.

D. As specified in Section X.A.7, the Permittees shall deem facilities operating without a proper permit to be in significant non-compliance. These facilities shall be reported within 14 calendar days to the Regional Board by electronic mail or other written means. Permittees' notifications of facilities' failure to obtain required permits under the Construction Activities Storm Water General Permit (Construction Permit), Industrial Activities Storm Water General Permit (Industrial Permit), including Requirements to file a Notice of Intent or No Exposure Certification, Notice of Non-applicability, and/or 401 Certification must include, at a minimum, the following documentation:

1. Name of the facility;
2. Operator of the facility;
3. Owner of the facility;
4. Construction/Commercial/industrial activity being conducted at the facility that is subject to the Construction//Industrial General Permit, or 401 Certification; and
5. Records of communication with the facility operator regarding the violation, including an inspection report.

XVIII. PROGRAM MANAGEMENT ASSESSMENT / MSWMP REVIEW

A. Upon the effective date of this Order, the Permittees shall start implementing the 2007 MSWMP and modify it to be consistent with the requirements of this Order and the schedules contained herein. If major modifications to the 2007 MSWMP not addressed in this Order are determined to be necessary, the Permittees shall prepare and submit MSWMP modifications to the Executive Officer for review and approval. Such modifications may include regional and watershed-specific requirements and/or waste load allocations developed and approved pursuant to the TMDL process.

B. By October 1 of each year, the Permittees shall evaluate the MSWMP to determine the need for any revisions in order to reduce pollutants in MS4 discharges to the maximum extent practicable. In addition, the first annual review after adoption of this Order shall include the following:

1. Review of the formal training needs of municipal employees;

2. Review of coordination meeting/training for the designated NPDES inspectors.; and

3. Propose any changes to assess program effectiveness on an area-wide and jurisdictional basis. Permittees may utilize the CASQA Guidance[89] for developing these assessment measures at the six outcome levels. The assessment measures must target both water quality outcomes and the results of municipal enforcement activities.

C. The annual report shall include the findings of this review and a schedule to address necessary revisions, or a copy of the amended MSWMP with the proposed changes. Replacement pages are acceptable if modifications are not extensive. Annual reports shall also be submitted in electronic format.

D. The Management Committee will continue to meet at least 8 times a year to discuss issues related to permit implementation and regional and statewide issues. Each Permittee's designated representative or a designated alternate should attend not less than 7 of 8 scheduled meetings.

XIX. FISCAL RESOURCES

A. Each Permittee shall exercise its full authority to secure the resources necessary to meet the requirements of this Order. This Order may be revised to adjust time schedules to accommodate prioritization of available resources.

B. The Permittees shall prepare and submit a financial summary to the Executive Officer. The financial summary shall be submitted with the annual report each year and shall, at a minimum, include the following:

1. Each Permittee's expenditures for the previous fiscal year,
2. Each Permittee's budget for the current fiscal year,
3. A description of the source of funds, and
4. Each Permittee's estimated budget for the next fiscal year.

XX. PROVISIONS

A. All reports submitted by the Permittees as per the requirements in this Order for the approval of the Executive Officer shall be publicly noticed and made available on the Regional Board's website, or through other means, for public review and comments. The Executive Officer shall consider all comments received prior to approval of the reports. Any unresolved significant issues shall be scheduled for a public hearing at a Regional Board meeting prior to approval by the Executive Officer.

B. Permittees shall demonstrate compliance with all the requirements in this Order and specifically with Section III. Discharge Limitations, and Section IV. Receiving Water Limitations, through timely implementation of their MSWMP and any modifications, revisions, or amendments developed pursuant to this Order approved by the Executive Officer or determined by the Permittees to be necessary to meet the requirements of this Order. The MSWMP, including any approved amendments thereto is hereby made an enforceable component of this Order.

[89] CASQA, May 2007. Municipal Stormwater Program Effectiveness Assessment Guidance. January 29, 2010 (Final)

C. The Permittees shall, at a minimum, implement all elements of the MSWMP and its components. Where the dates are different from the corresponding dates in this Order, the dates in this Order shall prevail. Any proposed revisions to the MSWMP shall be submitted with the Annual Report to the Executive Officer of the Regional Board for review and approval. All approved revisions to the MSWMP shall be implemented as per the time schedules approved by the Executive Officer. In addition to those specific controls and actions required by: (1) the terms of this Order and (2) the MSWMP and its components, each Permittee shall implement additional controls, if any are necessary, to reduce the discharge of pollutants in storm water to the maximum extent practicable as required by this Order.

D. Certain BMPs implemented or required by the Permittees for urban runoff management may create habitat for vectors (e.g., mosquitoes and rodents) if not properly designed and maintained. Close collaboration and cooperative effort between the Permittees and local vector control districts and the State Department of Health Services during the development and implementation of urban runoff management programs are necessary to minimize potential vector habitat and public health impacts resulting from vector breeding. Nothing in this permit is intended to prohibit inspection or abatement of vectors by the State or local vector control agencies in accordance with the respective Health and Safety Code.

E. The Permittees shall comply with Monitoring and Reporting Program No. R8-2010-0036 and any revisions thereto, which are hereby made a part of this Order. The Executive Officer is authorized to revise the Monitoring and Reporting Program to allow the Permittees to participate in regional, statewide, national or other monitoring programs in lieu of or in addition to Monitoring and Reporting Program No. R8-2010-0036.

F. Upon approval by the Executive Officer or the Regional Board, all plans, reports and subsequent amendments required by this Order shall be implemented and shall become an enforceable part of this Order. Prior to approval by the Executive Officer, these plans, reports and amendments shall not be considered as an enforceable part of this Order.

G. The Permittees shall report to the Executive Officer of the Regional Board:

1. Any enforcement actions and discharges of storm or non-storm water, known to the Permittees, which may have an impact on human health or the environment, and

2. Any suspected or reported activities on federal, state, or other entity's land or facilities, where the Permittees do not have any jurisdiction, and where the suspected or reported activities may be contributing pollutants to Waters of the U.S.

H. The permit application and special NPDES program requirements are contained in 40 CFR 122.21 (a), (b), (d)(2), (f), (p); 122.41 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l); and 122.42 (c), and are incorporated into this Order by reference.

XXI. PERMIT MODIFICATION

A. Following appropriate public notice, and in accordance with 40 CFR 122.41(f), this Order may be modified, revoked or reissued prior to its expiration date for the following reasons:

1. To address significant changes in conditions identified in the technical reports required by the Regional Board which were unknown at the time of the issuance of this Order;
2. To incorporate applicable requirements of statewide water quality control plans adopted by the State Water Resources Control Board or any amendments to the Basin Plan approved by the Regional Board, the State Board and, if necessary, by the Office of Administrative Law and the USEPA;
3. To comply with any applicable requirements, guidelines, or regulations issued or approved under the Clean Water Act, if the requirements, guidelines, or regulations contain different conditions or additional requirements than those included in this Order; or,
4. To incorporate any requirements imposed upon the Permittees through the TMDL process.

B. The filing of a request by the Permittees for modification, revocation and re-issuance, or termination or a notification of planned changes or anticipated noncompliance does not stay any conditions of this Order.

XXII. PERMIT EXPIRATION AND RENEWAL

A. This Order expires on January 29, 2015 and the Permittees must file a Report of Waste Discharge (permit renewal application) no later than 180 days in advance of such expiration date as application for issuance of new waste discharge requirements. The Report of Waste Discharge shall, at a minimum, include the following:

1. A program effectiveness analysis, including the effectiveness of the overall urban and storm water runoff management program in achieving water quality standards in receiving waters.
2. Any proposed revisions to the urban and storm water runoff management program based on the findings of the program effectiveness analysis (this could be included in a revised MSWMP). Revisions to the program elements should be consistent with the risk-based approach proposed in the 2006 Report of Waste Discharge.
3. Changes in land use and/or population including map updates.
4. Any significant changes to the storm drain systems, outfalls, detention or retention basins or dams, and other controls including map updates of the storm drain systems.
5. Any new or revised program elements and compliance schedule(s) necessary to comply with Section VI of this Order.

B. All permit applications (Report of Waste Discharge), annual reports and other information submitted under this Order shall be signed by either a principal executive officer or a ranking elected official (40 CFR 122.22(a)(3)) or a duly authorized representative as per 40 CFR 122.22(b).

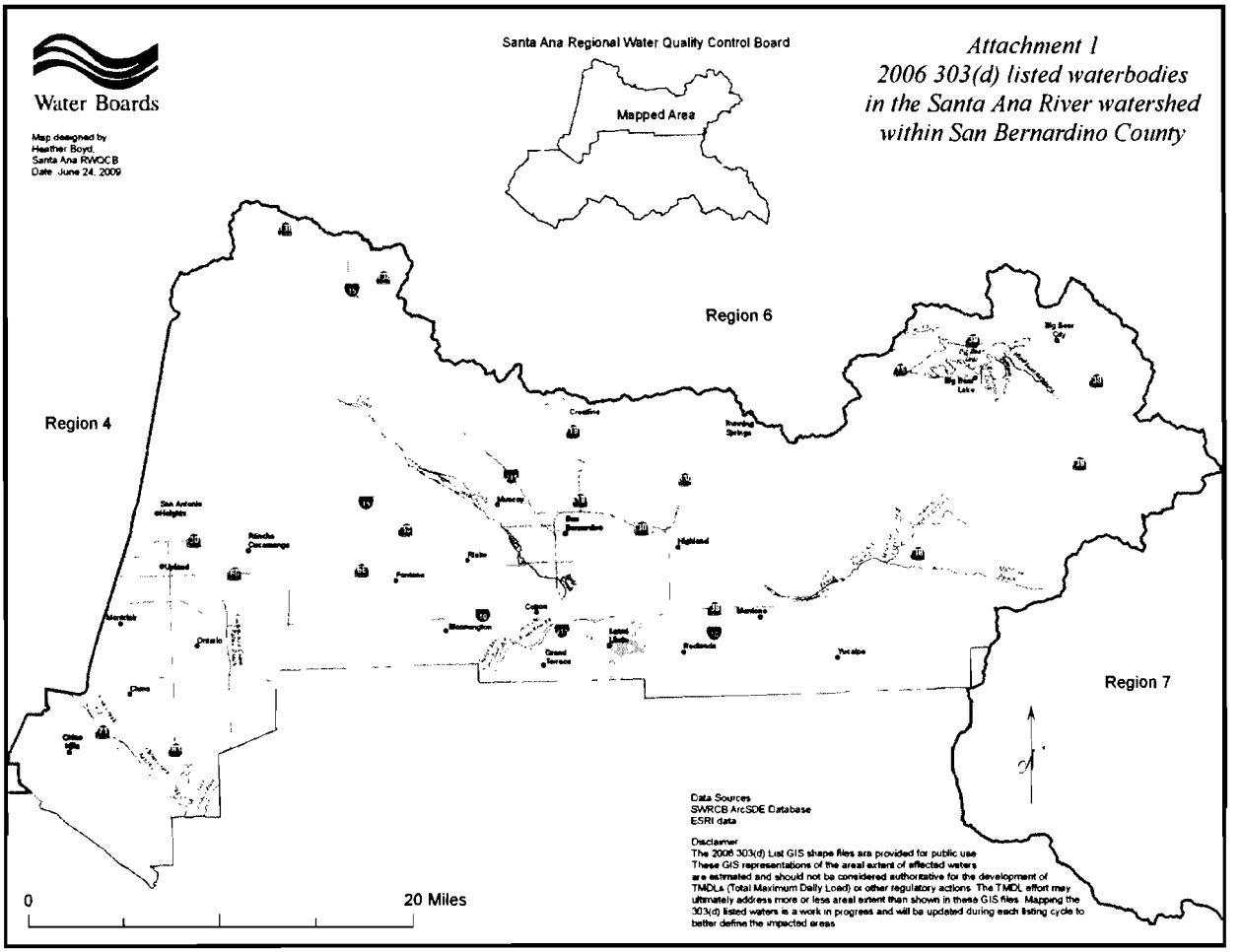
C. This Order shall serve as an NPDES Permit pursuant to Section 402 (p) of the Clean Water Act, or amendments thereto, and shall become effective ten days after the date of its adoption provided the Regional Administrator of the USEPA has no objections. If the

Regional Administrator objects to its issuance, the Permit shall not become effective until such objection is withdrawn.

I, Gerard Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on January 29, 2010.

Gerard J. Thibeault
Executive Officer

Attachment 1: San Bernardino County Project Area



Attachment 2: Inland Surface Streams

A. Santa Ana River

Santa Ana River, Reaches 4, 5, and 6

B. San Bernardino Mountain Streams

Mill Creek Drainage

- Mill Creek, Reaches 1 and 2
- Mountain Home Creek
- Mountain Home Creek, East Fork
- Monkey Face Creek
- Alger Creek
- Falls Creek
- Vivian Creek
- High Creek
- Other Tributaries: Lost, Oak Cove, Green, Skinner, Momyer and Glen Martin Creeks, and other Tributaries to these Creeks

Bear Creek Drainage

- Bear Creek
- Siberia Creek
- Slide Creek
- All Other Tributaries to these Creeks

Big Bear Lake Tributaries

- North Creek
- Metcalf Creek
- Grout Creek
- Rathbone (Rathbun) Creek
- Summit Creek
- Other Tributaries to Big Bear Lake: Johnson, Minnelusa, Polique, and Red Ant Creeks, and other Tributaries to these Creeks

Baldwin Lake Drainage

- Shay Creek
- Other Tributaries to Baldwin Lake: Sawmill, Green, and Caribou Canyons and other Tributaries to these Creeks.

C. Other Streams Draining to Santa Ana River (Mountain Reaches)

- Cajon Creek
- City Creek
- Devil Canyon Creek
- East Twin and Strawberry Creeks
- Waterman Canyon Creek
- Fish Creek
- Forsee Creek
- Plunge Creek
- Barton Creek

Bailey Canyon Creek
Kimbark Canyon, East Fork Kimbark Canyon, Ames Canyon and West Fork Cable Canyon Creeks
Valley Reaches of Above Streams
Other Tributaries (Mountain Reach): Alder, Badger Canyon, Bledsoe Gulch, Borea Canyon, Breakneck, Cable Canyon, Cienega Seca, Cold, Converse, Coon, Crystal, Deer, Elder, Fredalba, Frog, Government, Hamilton, Heart Bar, Hemlock, Keller, Kilpecker, Little Mill, Little Sand Canyon, Lost, Meyer Canyon, Mile, Monroe Canyon, Oak, Rattlesnake, Round Cienega, Sand, Schneider, Staircase, Warm Springs Canyon and Wild Horse Creeks, and other tributary to these Creeks

D. San Gabriel Mountain Streams (Mountain Reaches)

San Antonio Creek
Lytle Creek (South, Middle, and North Forks) and Coldwater Canyon Creek
Day and East Etiwanda Creeks
Valley Reaches of Above Streams
Cucamonga Creek (Mountain Reach)
Cucamonga Creek (Valley Reach)
Other Tributaries (Mountain Reaches): San Sevaine, Deer, Duncan Canyon, Henderson Canyon, Stoddard Canyon, Icehouse Canyon, Cascade Canyon, Cedar, Falling Rock, Kerkhoff and Cherry Creeks, and other tributaries to these Creeks.

E. San Timoteo Area Streams

San Timoteo Creek, Reaches 1 and 2
Oak Glen, Potato Canyon and Birch Creeks
Yucaipa Creek

F. Prado Area Streams

Chino Creek

G. Lakes and Reservoirs

Baldwin Lake
Big Bear Lake
Jenks Lake
Prado Park Lakes

Attachment 3: List of Other Entities with the Potential to Discharge Pollutants to the San Bernardino County Storm Water Conveyance System

A. Government Agencies

U.S. Army Corps of Engineers
U.S. Department of Agriculture - Forest Services, San Bernardino County National Forest
California Department of Transportation (Cal Trans)
California Department of Parks and Recreation - Chino Hills State Park
Inland Valley Development Agency, San Bernardino International Trade Center and Airport

B. Hospitals

Bear Valley Community Hospital
Chino Community Hospital
Doctors Hospital
Kaiser Foundation Hospital
Loma Linda Community Hospital
Loma Linda University Medical Center
Mountains Community Hospital
Ontario Community Hospital
Patton State Hospital
U.S. Department of Veterans Affair - Jerry L. Pettis Memorial Veterans Medical Center
Redlands Community Hospital
St. Bernardino Medical Center
San Antonio Community Hospital
San Bernardino Community Hospital
San Bernardino County Hospital

C. Railroads

AT&SF Railway Company
Union Pacific Railroad Company
BNSF Railway Company

D. School Districts

Alta Loma Elementary School District
Bear Valley Unified School District
Central Elementary School District
Chaffey Joint Union High School District
Chino Valley Unified School District
Colton Joint Unified School District
Cucamonga Elementary School District
Etiwanda Elementary School District
Fontana Unified School District
Mountain View Elementary School District

Mt. Baldy joint Elementary School District
Ontario-Montclair Elementary School District
Rialto Unified School District
Rim of the World Unified School District
Redlands Unified School District
San Bernardino City Unified School District
Upland Unified School District
Yucaipa Joint Unified School District

E. Universities and Colleges

California State University - California State University San Bernardino
San Bernardino Community College District - Chaffey College Campus
San Bernardino Community College District - Crafton Hills College Campus
San Bernardino Community College District - San Bernardino Valley College Campus
University of Redlands
Loma Linda University

F. Water Districts

Big Bear Municipal Water District
Bear Valley Water District
Inland Empire Utilities Agency
Cucamonga Valley Water District
East Valley Water District
Monte Vista Water District
San Bernardino Valley Municipal Water District
San Bernardino Valley Water Conservation District
West San Bernardino County Water District
Yucaipa Valley Water District

G. Transportation

Omnitrans
Metrolink (Fontana, Montclair, Ontario, Rancho Cucamonga, Rialto, San Bernardino)
Ontario International Airport (LA/ONT)
Redlands Municipal Airport
Rialto Municipal Airport
Chino Airport
Cable Airport

H. Other Potential Dischargers

United States Postal Service
California National Guard
Southern California Edison

Attachment 4: Glossary

Basin Plan – Water Quality Control Plan developed by the Regional Board for the Santa Ana River Watershed.

Beneficial Uses – The uses of water necessary for the survival or well being of man, plants, and wildlife. These uses of water serve to promote the tangible and intangible economic, social, and environmental goals. "Beneficial Uses" that may be protected against include, but are not limited to: domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves. Existing beneficial uses are uses that were attained in the surface or ground water on or after November 28, 1975; and potential beneficial uses are uses that would probably develop in future years through the implementation of various control measures. "Beneficial Uses" are equivalent to "Designated Uses" under federal law. [California Water Code Section 13050(f)]. Beneficial Uses for the Receiving Waters are identified in the Basin Plan.

Best Available Technology (BAT) – BAT is the acronym for best available technology economically achievable. BAT is the technology-based standard established by congress in CWA section 402(p)(3)(A) for industrial dischargers of storm water. Technology-based standards establish the level of pollutant reductions that dischargers must achieve, typically by treatment or by a combination of treatment and best management practices, or BMPs. For example, secondary treatment (or the removal of 85% suspended solids and BOD) is the BAT for suspended solid and BOD removal from a sewage treatment plant. BAT generally emphasizes treatment methods first and pollution prevention and source control BMPs secondarily.

The best economically achievable technology that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants is determined in accordance with regulations issued by the Environmental Protection Agency Administrator. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the permitting authority deems appropriate.

Best Conventional Technology (BCT) – BCT is an acronym for Best Conventional Technology. BCT is the treatment techniques, processes and procedure innovations, and operating methods that eliminate or reduce chemical, physical, and biological pollutant constituents.

Best Management Practices – Best Management Practices (BMPs) are defined in 40 CFR 122.2 as schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. In the case of municipal storm water permits, BMPs are typically used in place of numeric effluent limits.

Bioaccumulate – The progressive accumulation of contaminants in the tissues of organisms through any route including respiration, ingestion, or direct contact with contaminated water, sediment, pore water, or dredged material to a higher concentration than in the surrounding environment. Bioaccumulation occurs with exposure and is independent of the tropic level.

Bioassessment - The use of biological community information to evaluate the biological integrity of a water body and its watershed. With respect to aquatic ecosystems, bioassessment is the collection and analysis of samples of the benthic macroinvertebrate community together with physical/habitat quality measurements associated with the sampling site and the watershed to evaluate the biological condition (i.e. biological integrity) of a water body.

Biological Integrity – Defined in Karr J.R. and D.R. Dudley. 1981. Ecological perspective on water quality goals. Environmental Management 5:55-68 as: "A balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of natural habitat of the region." Also referred to as ecosystem health.

CalTrans - California Department of Transportation

CEQA – California Environmental Quality Act (Section 21000 et seq. of the California Public Resources Code).

Clean Water Act Section 402(p) – [33 USC 1342(p)] is the federal statute requiring municipal and industrial dischargers to obtain NPDES permits for their discharges of storm water.

Clean Water Act Section 303(d) Listed Water Body – is an impaired water body in which water quality does not meet applicable water quality standards and/or is not expected to meet water quality standards, even after the application of technology-based pollution controls required by the CWA. The discharge of urban runoff to these water bodies by the Co-permittees is significant because these discharges can cause or contribute to violations of applicable water quality standards.

Construction Site – Any project, including projects requiring coverage under the General Construction Permit, that involves soil disturbing activities including, but not limited to, clearing, grading, disturbances to ground such as stockpiling, and excavation

Contamination – As defined in the Porter-Cologne Water Quality Control Act, contamination is "an impairment of the quality of waters of the State by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease." 'Contamination' includes any equivalent effect resulting from the disposal of waste whether or not Waters of the U.S. are affected.

Criteria - The numeric values and the narrative standards that represent contaminant concentrations that are not to be exceeded in the receiving environmental media (surface water, ground water, sediment) to protect beneficial uses.

CWA – Federal Clean Water Act

CWC – California Water Code

Debris – Debris is defined as the remains of anything destroyed or broken, or accumulated loose fragments of rock.

Development Projects - New development or redevelopment with land disturbing activities; structural development, including construction or installation of a building or structure, the creation of impervious surfaces, public agency projects, and land subdivision.

Dry Season – June 1 through September 30 of each year, unless specified otherwise in an approved TMDL Implementation Plan.

Effluent Limitations – Means any restriction on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into Waters of the United States, waters of the "contiguous zone," or the ocean. (40 CFR §122.2)

Environmentally Sensitive Areas (ESAs) - Areas that include but are not limited to all Clean Water Act Section 303(d) impaired water bodies; areas designated as Areas of Special Biological Significance by the State Water Resources Control Board (Water Quality Control Plan for the Santa Ana River Basin (1994) and amendments); water bodies designated with the RARE beneficial use by the State Water Resources Control Board (Water Quality Control Plan for the Santa Ana River Basin (1994) and amendments); areas designated as preserves or their equivalent under the Natural Communities Conservation Program (Multiple Species Habitat Conservation Plan, MSHCP) within the Cities and County of San Bernardino; and any other equivalent environmentally sensitive areas which have been identified by the Co-Permittees.

Erosion – The process whereby material (such as sediment) is detached and entrained in water or air and can be transported to a different location. Chemical erosion involves materials that are dissolved and removed and transported.

GIS - Geographical Information Systems

Grading – The cutting and/or filling of the land surface to a desired slope or elevation.

Green Infrastructure - Generally refers to technologically feasible and cost-effective systems and practices that use or mimic natural processes to infiltrate, evapotranspirate, or use stormwater or runoff on the site where it is generated. Green infrastructure is used interchangeably with low impact development (LID). See LID.

Hazardous Material – Any substance that poses a threat to human health or the environment due to its toxicity, corrosiveness, ignitability, explosive nature or chemical reactivity. These also include materials named by the U.S. EPA to be reported if a designated quantity of the material is spilled into the waters of the United States or emitted into the environment.

HCOC – Hydrologic Condition of Concern – Condition when a proposed hydrologic change is deemed to have the potential to cause significant impacts on downstream channels and aquatic habitats, alone or in conjunction with impacts of other projects.

Hydromodification – the "alteration of the hydrologic characteristics of coastal and non-coastal waters, which in turn could cause degradation of water resources"[90](USEPA, 2007).

[90] United States Environmental Protection Agency. 2007. National Management Measures to Control Nonpoint Source Pollution from Hydromodification. EPA-841-B-07-002.

The change in the natural watershed hydrologic processes and runoff characteristics (i.e., interception, infiltration, overland flow, interflow and groundwater flow) caused by urbanization or other land use changes that may result in increased stream flows and sediment transport.

IC/ID – Illicit Connection/Illegal Discharge

Illicit Connection – Illicit Connection means any connection to the MS4 that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations.

Illicit Discharge – Any discharge to a municipal separate storm sewer that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non-storm water discharges except discharges pursuant to an NPDES permit, discharges that are identified in Section V, Effluent Limitations and Discharge Specifications, of this Order, and discharges authorized by the Regional Board.

Impaired Waterbody – Section 303(b) of the CWA requires each of California's Regional Water Quality Control Boards to routinely monitor and assess the quality of waters of their respective regions. If this assessment indicates that Beneficial Uses are not met, then that waterbody must be listed under Section 303(d) of the CWA as an Impaired Waterbody.

Isopluvial - A line on a map drawn through geographical points having the same pluvial (rain, precipitation) index.

Land Disturbance – The clearing, grading, excavation, stockpiling, or other construction activity that results in the possible mobilization of soils or other Pollutants into the MS4. This specifically does not include routine maintenance activity to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. This also does not include emergency construction activities required to protect public health and safety. The Permittees should first confirm with Regional Board staff if they believe that a particular routine maintenance activity is exempt under this definition from the General Construction Activity Storm Water Permit or other Orders issued by the Regional Board.

Load Allocations (LA) – Distribution or assignment of TMDL Pollutant loads to entities or sources for existing and future nonpoint sources, including background loads.

Local Implementation Plan - Document describing an individual Permittee's implementation procedures for compliance with the MS4 Permit, including ordinances, databases, plans, and reporting materials.

Low Impact Development (LID) – A storm water management and land development strategy that combines a hydrologically functional site design with pollution prevention measures to compensate for land development impacts on hydrology and water quality. LID techniques mimic the site predevelopment site hydrology by using site design techniques that store, infiltrate, evapotranspire, bio-filter or detain runoff close to its source

MEP (Maximum Extent Practicable) - Is not defined in the CWA; it refers to management practices, control techniques, and system design and engineering methods for the control of pollutants taking into account considerations of synergistic, additive, and competing factors, including, but not limited to pollutant removal effectiveness, regulatory compliance, gravity of the problem, public acceptance, social benefits, cost and technological feasibility.

MEP is the technology-based standard established by Congress in CWA section 402(p)(3)(B)(iii) that operators of MS4s must meet. Technology-based standards establish the level of pollutant reductions that dischargers must achieve, typically by treatment or by a combination of source control and treatment control BMPs. MEP generally emphasizes pollution prevention and source control BMPs primarily (as the first line of defense) in combination with treatment methods serving as a backup (additional line of defense). MEP considers economics and is generally, but not necessarily, less stringent than BAT. A definition for MEP is not provided either in the statute or in the regulations. Instead, the definition of MEP is dynamic and will be defined by the following process over time: municipalities propose their definition of MEP by way of their urban runoff management programs. Their total collective and individual activities conducted pursuant to the urban runoff management programs becomes their proposal for MEP as it applies both to their overall effort, as well as to specific activities (e.g., MEP for street sweeping, or MEP for MS4 maintenance). In the absence of a proposal acceptable to the Regional Board, the Regional Board defines MEP.

Municipal Storm Water Conveyance System – (See Municipal Separate Storm Sewer System or MS4).

Municipal Separate Storm Sewer System (MS4) – MS4 is an acronym for Municipal Separate Storm Sewer System. A Municipal Separate Storm Sewer System is a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, natural drainage features or channels, modified natural channels, man-made channels, or storm drains): (i) Owned or operated by a State, city town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes; (ii) Designated or used for collecting of conveying storm water; (iii) Which is not a combined sewer; (iv) Which is not part of the Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

National Pollution Discharge Elimination System (NPDES) – A national program under Section 402 of the Clean Water Act for regulation of discharges of pollutants from point sources to waters of the United States. Discharges are illegal unless authorized by an NPDES permit.

NOI [Notice of Intent] – A NOI is an application for coverage under the General Stormwater Permits.

Non-Point Source Pollution (NPS) – Non point source refers to diffuse, widespread sources of pollution. These sources may be large or small, but are generally numerous throughout a watershed. Non Point Sources include but are not limited to urban, agricultural, or industrial areas, roads, highways, construction sites, communities served by septic systems, recreational boating activities, timber harvesting, mining, livestock grazing, as well as physical changes to stream channels, and habitat degradation. NPS pollution can occur year round any time rainfall, snowmelt, irrigation, or any other source of water runs over land or through the ground, picks up pollutants from these numerous, diffuse sources and deposits them into rivers, lakes, and coastal waters or introduces them into ground water.

Non-Storm Water – Non-storm water consists of all discharges to and from a storm water conveyance system that do not originate from precipitation events (i.e., all discharges from a

conveyance system other than storm water). Non-storm water includes illicit discharges, non-prohibited discharges, and NPDES permitted discharges.

NOT - Notice of Termination – Formal notice to the Regional Board of intent to terminate water discharge for projects covered under a General Stormwater Permit.

Nuisance – As defined in the Porter-Cologne Water Quality Control Act a nuisance is "anything which meets all of the following requirements: 1) Is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. 2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. 3) Occurs during, or as a result of, the treatment or disposal of wastes."

Numeric Effluent Limitations – A quantitative limitation on pollutant concentrations or levels to protect beneficial uses and water quality objectives of a water body.

Nurdles – A plastic pellet (typically less than 5 mm diameter) also known as pre-production plastic pellet or plastic resin pellet.

Open Space - Any parcel or area of land or water that is essentially unimproved or devoted to an open-space use for the purposes of (1) the preservation of natural resources, (2) the managed production of resources, (3) outdoor recreation, or (4) public health and safety. [Riverside County General Plan, adopted October 7, 2003. Technical Appendix A , Glossary]

Order – Order No. R8-2010-0036 (NPDES No. CAS618036)

Outfall - Means a Point Source as defined by 40 CFR 122.2 a, the point where a municipal separate storm sewer discharges to Waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, 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 CFR 122.26 (b)(9)]

PAH (Polycyclic aromatic hydrocarbon) – are hydrocarbons that consist of fused aromatic rings. PAHs occur in oil, coal, and tar deposits, and are produced as byproducts of fuel burning (whether fossil fuel or biomass). PAHs are persistent, bioaccumulative, and toxic (PBT) pollutants. Though exposure usually occurs by breathing contaminated air, other sources include industrial processes, transportation, energy production and use, and disposal activities.

PCBs - Polychlorinated biphenyls. Due to PCB's toxicity and classification as persistent organic pollutants, PCB production was banned by the United States Congress in 1976 and by the Stockholm Convention on Persistent Organic Pollutants in 2001.

Party – Defined as an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof. [40 CFR 122.2]

Permittees – Co-permittees and the Principal Permittee

Person – A person is defined as an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof. [40 CFR122.2].

Point Source – Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operations, landfill leachate collection systems, vessel, or other

floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Pollutant – Any agent that may cause or contribute to the degradation of water quality such that a condition of pollution or contamination is created or aggravated. It includes any type of industrial, municipal, and agricultural waste discharged into water. The term "pollutant" is defined in section 502(6) of the Clean Water Act as follows: "The term 'pollutant' means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." It has also been interpreted to include water characteristics such as toxicity or acidity.

Pollutants of Concern – A list of potential pollutants to be analyzed for in the Monitoring and Reporting Program. This list shall include: TSS, total inorganic nitrogen, total phosphorus, soluble reactive phosphorus, acute toxicity, fecal coliform, total coliform, pH, and chemicals/potential Pollutants expected to be present on the project site. In developing this list, consideration should be given to the chemicals and potential Pollutants available for storm water to pick-up or transport to Receiving Waters, all Pollutants for which a waterbody within the Permit Area that has been listed as impaired under CWA Section 303(d)), the category of development and the type of Pollutants associated with that development category. It also refers to pollutants for which water bodies are listed as impaired under CWA section 303(d), pollutants associated with the land use type of a development, and/or pollutants commonly associated with urban runoff. Pollutants commonly associated with urban runoff include total suspended solids; sediment; pathogens (e.g., bacteria, viruses, protozoa); heavy metals (e.g., copper, lead, zinc, and cadmium); petroleum products and polynuclear aromatic hydrocarbons; synthetic organics (e.g., pesticides, herbicides, and PCBs); nutrients (e.g., nitrogen and phosphorus fertilizers); oxygen-demanding substances (decaying vegetation, animal waste, and anthropogenic litter).

Pollution – As defined in the Porter-Cologne Water Quality Control Act, pollution is "the alteration of the quality of the Waters of the U.S. by waste, to a degree that unreasonably affects either of the following: 1) The waters for beneficial uses; or 2) Facilities that serve these beneficial uses." Pollution may include contamination.

Pollution Prevention – Pollution prevention is defined as practices and processes that reduce or eliminate the generation of pollutants, in contrast to source control, treatment, or disposal.

Post-Construction BMPs – A subset of BMPs including structural and non-structural controls which detain, retain, filter, or educate to prevent the release of pollutants to surface waters during the final functional life of development.

POTW [Publicly Owned Treatment Works] – Wastewater treatment facilities owned by a public agency.

Principal Permittee – San Bernardino County Flood Control District

Priority Development Projects - New development and redevelopment project categories listed in Section XI.D.4 of Order No. R8-2010-0036.

Rainy Season – October 1 through May 31st of each year.

Receiving Waters – Waters of the United States within the Permit area.

Receiving Water Limitations – Waste discharge requirements issued by the SARWQCB typically include both: (1) "Effluent Limitations" (or "Discharge Limitations") that specify the technology-based or water-quality-based effluent limitations; and (2) "Receiving Water Limitations" that specify the water quality objectives in the Basin Plan as well as any other limitations necessary to attain those objectives. In summary, the "Receiving Water Limitations" provision is the provision used to implement the requirement of CWA section 301(b)(1)(C) that NPDES permits must include any more stringent limitations necessary to meet water quality standards.

Redevelopment - The creation, addition, and or replacement of impervious surface on an already developed site. Examples include the expansion of a building footprint, road widening, the addition to or replacement of a structure, and creation or addition of impervious surfaces. Replacement of impervious surfaces includes any activity that is not part of a routine maintenance activity where impervious material(s) are removed, exposing underlying soil during construction. Redevelopment does not include trenching and resurfacing associated with utility work; resurfacing and reconfiguring surface parking lots and existing roadways; new sidewalk construction, pedestrian ramps, or bike lane on existing roads; and routine replacement of damaged pavement, such as pothole repair.

Sediment – Soil, sand, and minerals washed from land into water. Sediment resulting from anthropogenic sources (i.e. human induced land disturbance activities) is considered a pollutant. This Order regulates only the discharges of sediment from anthropogenic sources and does not regulate naturally occurring sources of sediment. Sediment can destroy fish-nesting areas, clog animal habitats, and cloud waters so that sunlight does not reach aquatic plants.

SIC [Standard Industrial Classification] – Four digit industry code, as defined by the US Department of Labor, Occupational Safety and Health Administration. The SIC Code is used to identify if a facility requires coverage under the General Industrial Activities Storm Water Permit.

Significant Redevelopment –The addition or creation of 5,000, or more, square feet of impervious surface on an existing developed site. This includes, but is not limited to, construction of additional buildings and/or structures, extension of the existing footprint of a building, construction of impervious or compacted soil parking lots. Significant Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, the original purpose of the constructed facility or emergency actions required to protect public health and safety.

Site Design BMPs – Any project design feature that reduces the creation or severity of potential pollutant sources or reduces the alteration of the project site's hydrology. Redevelopment projects that are undertaken to remove pollutant sources (such as existing surface parking lots and other impervious surfaces) or to reduce the need for new roads and other impervious surfaces (as compared to conventional or low-density new development) by incorporating higher densities and/or mixed land uses into the project design, are also considered site design BMPs.

Small Municipal Separate Storm Sewer System (Small MS4)[91] – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that are:

(i) Owned or operated by the United States, a State, city, town, boroughs, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

(ii) Not defined as "large" or "medium" municipal separate storm sewer systems

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings. (40 CFR §122.26(b)(16))

Source Control BMPs – In general, activities or programs to educate the public or provide low cost non-physical solutions, as well as facility design or practices aimed to limit the contact between Pollutant sources and storm water or authorized Non-Storm Water. Examples include: activity schedules, prohibitions of practices, street sweeping, facility maintenance, detection and elimination of IC/IDs, and other non-structural measures. Facility design (structural) examples include providing attached lids to trash containers, canopies for fueling islands, secondary containment, or roof or awning over material and trash storage areas to prevent direct contact between water and Pollutants.

Southern California Stormwater Monitoring Coalition (SMC)

State Board – California State Water Resources Control Board

Storm Water – Per 40 CFR 122.26(b)(13), means storm water runoff, snowmelt runoff and surface runoff and drainage.

Storm Water General Permits – General Permit-Industrial (State Board Order No. 97-03 DWQ, NPDES No. CAS000001), General Permit-Construction (State Board Order No. 99-08 DWQ, NPDES No. CAS000002), and General Permit-Small Linear Underground Projects (State Board Order No. 2003-0007-DWQ, NPDES No. CAS000005).

Structural BMPs – Physical facilities or controls that may include secondary containment, treatment measures, (e.g. first flush diversion, detention/retention basins, and oil/grease separators), run-off controls (e.g., grass swales, infiltration trenches/basins, etc.), and engineering and design modification of existing structures.

SWAMP (Surface Water Ambient Monitoring Program)

SWPPP [Storm Water Pollution Prevention Plan] – Plan to minimize and manage Pollutants to minimize Pollution from entering the MS4, identifying all potential sources of Pollution and describing planned practices to reduce Pollutants from discharging off the site.

[91] State Water Resources Control Board (SWRCB) Water Quality Order No. 2003-005-DWQ, Waste Discharge Requirements for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (General Permit)

TDS – Total dissolved solids.

Time of concentration - the time that it takes for storm runoff to travel from the most hydraulically remote point of the watershed to the outlet.

Total Maximum Daily Load (TMDL) – The TMDL is the maximum amount of a pollutant that can be discharged into a water body from all sources (point and non-point) and still maintain water quality standards. Under Clean Water Act Section 303(d), TMDLs must be developed for all water bodies that do not meet water quality standards after application of technology-based controls.

TMDL Implementation Plan -- Component of a TMDL that describes actions, including monitoring, needed to reduce Pollutant loadings and a timeline for implementation. TMDL Implementation Plans can include a monitoring or modeling plan and milestones for measuring progress, plans for revising the TMDL if progress toward cleaning up the waters is not made, and the date by which Water Quality Standards will be met (USEPA Final TMDL Rule: Fulfilling the Goals of the CWA, EPA 841-F-00-008, July 2000).

Toxicity – Adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies.

Treatment Control BMPs – Any engineered system designed and constructed to remove pollutants from urban runoff. Pollutant removal is achieved by simple gravity settling of particulate pollutants, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process.

TSS – Total suspended solids.

Urban Runoff – Urban runoff is defined as all flows in a storm water conveyance system and consists of the following components: (1) storm water (wet weather flows) and (2) authorized non-storm water discharges (See Section V of the Order) (dry weather flows).

USEPA – United States Environmental Protection Agency

Waste – As defined in California Water Code Section 13050(d), "waste includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal."

Article 2 of CCR Title 23, Chapter 15 (Chapter 15) contains a waste classification system which applies to solid and semi-solid waste which cannot be discharged directly or indirectly to water of the state and which therefore must be discharged to land for treatment, storage, or disposal in accordance with Chapter 15. There are four classifications of waste (listed in order of highest to lowest threat to water quality): hazardous waste, designated waste, nonhazardous solid waste, and inert waste.

Waste Discharge Requirements – As defined in Section 13374 of the California Water Code, the term "Waste Discharge Requirements" is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act, as amended. The Regional Board usually reserves reference to the term "permit" to Waste Discharge Requirements for discharges to surface Waters of the U.S.

Waste Load Allocations (WLA) – Maximum quantity pollutants a discharger of waste is allowed to release into a particular waterway, as set by a regulatory authority. Discharge limits usually are required for each specific water quality criterion being, or expected to be, violated. Distribution or assignment of TMDL Pollutant loads to entities or sources for existing and future point sources.

Water Quality Assessment – Assessment conducted to evaluate the condition of non-storm water and storm water discharges, and the water bodies which receive these discharges.

Water Quality-Based Effluent Limits (WQBEL) - A value determined by selecting the most stringent of the effluent limits calculated using all applicable water quality criteria (e.g., aquatic life, human health, and wildlife) for a specific point source to a specific receiving water for a given pollutant.

Water Quality Criteria - comprised of numeric and narrative criteria. Numeric criteria are scientifically derived ambient concentrations developed by EPA or states for various pollutants of concern to protect human health and aquatic life. Narrative criteria are statements that describe the desired water quality goal.

Water Quality Objective – The limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area. [California Water Code Section 13050(h)]

Water Quality Standards – are defined as the beneficial uses (e.g., swimming, fishing, municipal drinking water supply, etc.,) of water and the water quality objectives necessary to protect those uses.

Waters of the United States – Waters of the United States can be broadly defined as navigable surface waters and all tributary surface waters to navigable surface waters. Groundwater is not considered to be a Waters of the United States.

As defined in 40 CFR 122.2, the Waters of the U.S. are defined as: (a) All waters, which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (b) All interstate waters, including interstate "wetlands;" (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes; (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (3) Which are used or could be used for industrial purposes by industries in interstate commerce; (d) All impoundments of waters otherwise defined as waters of the United States under this definition: (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition; (f) The territorial seas; and (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.

Watershed – That geographical area which drains to a specified point on a water course, usually a confluence of streams or rivers (also known as drainage area, catchment, or river basin).

WDID [Waste Discharge Identification] – Identification number provided by the State when a Notice of Intent is filed.

WQMP – Water Quality Management Plan. A plan developed to mitigate the impacts of urban runoff from Priority Development Projects.

Wet Season – October 1 through May 31st of each year, except where specifically defined otherwise in an approved TMDL Implementation Plan.

Attachment 5: MONITORING AND REPORTING PROGRAM NO. R8-2010-0036
NPDES NO. CAS618036
FOR
THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, THE COUNTY OF SAN BERNARDINO, AND THE INCORPORATED CITIES OF SAN BERNARDINO COUNTY WITHIN THE SANTA ANA REGION

AREA-WIDE URBAN AND STORM WATER RUNOFF

Attachment 6: Fact Sheet

Attachment 7: Notice of Intent Municipal Construction Activity

Attachment 8: Notice of Termination Municipal Construction Activity

Attachment 9: Notice of Intent for Municipal De-Minimus Discharges

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

RECEIVING WATERS AND URBAN RUNOFF MONITORING AND REPORTING PROGRAM NO. R8-2010-0036
NPDES NO. CAS618036
FOR
THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, THE COUNTY OF SAN BERNARDINO, AND THE INCORPORATED CITIES OF SAN BERNARDINO COUNTY WITHIN THE SANTA ANA REGION
AREA-WIDE URBAN STORM WATER RUNOFF MANAGEMENT PROGRAM

I. GENERAL

A. Revisions of the monitoring and reporting program are appropriate to ensure that the Permittees are in compliance with requirements and provisions contained in this Order. Revisions may be made under the direction of the Executive Officer at any time during the term of this Order, and may include redistribution of monitoring resources to address TMDL needs, a reduction or increase in the number of parameters to be monitored, the frequency of monitoring, or the number and size of samples collected.

B. The Permittees identified a priority list of pollutants of concern in the watershed based on the findings of water quality monitoring efforts conducted during previous permit terms. These pollutants and their order of priority from high to low were: (1) high priority – bacteria; (2) medium priority - metals (zinc, copper, lead); and (3) low priority - nutrients, TSS and COD. This priority ranking provides the basis for a risk-based approach to stormwater management to direct resources to the most important water quality monitoring activities.

C. All sample collection, handling, storage, and analysis shall be in accordance with 40 CFR Part 136 (latest edition) "*Guidelines Establishing Test Procedures for the Analysis of Pollutants*," promulgated by the USEPA, the guidance being developed by the State Board pursuant to Water Code Section 133383.5, or other methods which are more sensitive than those specified in 40 CFR 136 and approved by the Executive Officer, or methods documented in the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP).

D. The Executive Officer is authorized to allow the Permittees to participate in statewide, national, or other monitoring programs in lieu of or in addition to this monitoring program. In addition, the Permittees are authorized to complement their urban runoff monitoring data with data from other monitoring sources, provided the monitoring conditions and sources are similar to those in the permitted area.

E. There are two types of monitoring programs that will be referenced and described in this Monitoring and Reporting Program (MRP):

1. An Integrated Watershed Monitoring Program (IWMP) that is to be developed under this MRP. The existing core storm water monitoring program (Core Monitoring) is an integral part of the IWMP. The Core Monitoring program shall be implemented until the new IWMP developed under this order is approved by the Executive Officer; and
2. Regional monitoring efforts where the Permittees participate or make monetary contributions, including TMDL-related monitoring.

F. The Permittees must coordinate monitoring efforts with other entities discharging into the Middle Santa Ana River Watershed and the Big Bear Lake Watershed. Ideally, all monitoring efforts should conform to the same quality assurance, data management, validation, and verification standards, therefore a single coordinated watershed Quality Assurance Program Plan (QAPP) should be used for all monitoring efforts. A previously developed QAPP may be used if an appropriate document exists, such as the Middle Santa Ana River Pathogen TMDL – BMP Implementation QAPP, otherwise a QAPP must be developed for this purpose. The Permittees should cooperate, as appropriate, with other MS4 Permittees (including those in Orange County and Riverside County) in the development of the QAPP, regional monitoring efforts, creation and maintenance of databases, and special studies.

G. 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)]

H. All chemical, bacteriological, and toxicity analyses shall be conducted at a laboratory certified for such analyses by an appropriate governmental regulatory agency.

I. For priority toxic pollutants that are identified in the California Toxics Rule (CTR) (65 Fed. Reg. 31682), 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) shall be used for all analyses, unless otherwise specified.

J. The selected water quality monitoring parameters should have a direct relationship to the designated beneficial uses in the receiving waters being monitored.

K. Metals analyses shall be performed on filtered samples in order to obtain concentration of the metals in the dissolved fraction. The detection limits for the metals analyses shall be low enough to allow for a direct comparison to the metal's criteria in the California Toxics Rule.

L. To the extent practicable, all monitoring data and monitoring locations should be integrated into the San Bernardino County GIS database system.

II. OBJECTIVES

A. Objectives: The overall goal of these monitoring programs is to provide data to support the development of an effective watershed and key environmental resources management program that focuses resources on the priority list of pollutants of concern, as defined by the risk-based analysis described in Section I, above, and Finding II.E.22 of Order No. R8-2010-0036. The following are the major objectives:

1. To provide data to support the development of an effective municipal urban runoff pollutant source control program.
2. To determine water quality status, trends, and pollutants of concern associated with urban runoff and their impact on the beneficial uses of the receiving waters. This includes determining current conditions in the receiving waters including the extent and magnitude of any impairments, and relative urban runoff contribution to the impairment.
3. To assist in identifying the sources of the priority list of pollutants of concern in urban runoff to the maximum extent practicable (e.g., including, but not limited to atmospheric deposition, contaminated sediments, other non-point sources, etc.)
4. To characterize pollutants associated with urban runoff and to assess the influence of urban land uses on receiving water quality
5. To evaluate the effectiveness of existing urban runoff water quality management programs, including an estimate of pollutant reductions achieved by the treatment and source control BMPs implemented by the Permittees.
6. To detect illegal discharges and illicit connections to the MS4s so they can be responded to or eliminated.
7. To identify those waters, which without additional action to control pollution from urban storm water discharges, cannot reasonably be expected to attain or maintain applicable water quality objectives in the Basin Plan.
8. To identify and prioritize the most significant water quality problems resulting from urban runoff. Order No. R8-2010-0036 establishes new program monitoring priorities through the development and implementation of a risk-based, outcome-oriented, compliance-focused program. Monitoring and sampling data shall be used to identify and prioritize the most significant water quality problems in receiving waters.
9. To evaluate costs and benefits of proposed municipal storm water quality control programs to the stakeholders, including the public.

B. The Regional Board recognizes that program modifications may be necessary to attain these objectives. The Executive Officer is hereby authorized to evaluate and to determine adequate progress toward meeting each objective and to make any modifications to the monitoring and reporting program.

III. QUALITY ASSURANCE PROGRAM PLAN (QAPP)

A. Except for TMDL monitoring where TMDL specific quality assurance plans[1,2] have been developed or will be developed, the Permittees shall submit to the Executive Officer of the Regional Board for review and approval a quality assurance/quality control plan that has been developed by qualified professionals with experience in US EPA's and California's SWAMP QAPP guidelines.

B. The QAPP shall and address all elements for the SWAMP QAPP guidelines. Data collection, field and laboratory protocol, measurements, and analysis shall be compatible with SWAMP Quality Assurance Management Plan (QAMP[3]) and with Procedures for Conducting Routine Field Measurement.

C. Where procedures are not otherwise specified in this MRP, sampling, analysis and quality assurance/quality control must be conducted in accordance with the QAMP for SWAMP.

D. For priority toxic pollutants, if the Permittees can demonstrate that a particular ML (Minimum Level) 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 Principal Permittee must submit documentation from the laboratory to the Regional Water Board Executive Officer for approval prior to utilizing a ML that is not consistent with the MLs in the SIP.

E. The indicators of water quality selected for monitoring shall be representative of the beneficial uses in the receiving water bodies in the permittees jurisdiction.

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[1] SAWPA, Quality Assurance Project Plan for the Middle Santa Ana River Pathogen TMDL-BMP Implementation Project, April 3, 2008

[2] Big Bear Municipal Water District, Integrated Total Maximum Daily Load Implementation Program for Big Bear Lake, Quality Assurance Project Plan, April 24, 2006

[3] See State Board's SWAMP at http://www.swrcb.ca.gov/water_issues/programs/swamp/qamp.shtml

IV. INTEGRATED WATERSHED MONITORING PROGRAM (IWMP)

A. GENERAL

1. Within 12 months of adoption of this Order, the Principal Permittee, in coordination with the Co-Permittees shall review, revise as needed, and submit an Integrated Watershed Monitoring Plan (IWMP) for review and approval by the Executive Officer. At a minimum, the IWMP shall include the essential elements specified below. The IWMP shall identify all the monitoring programs, along with implementation and reporting schedules that are conducted or participated in to fulfill the monitoring objectives of this Order. The approved IWMP shall be implemented within six months of approval by the Executive Officer. In the interim, the Permittees shall continue to implement the Core Monitoring program approved under the third-term permit and any additional monitoring required under this Order.

B. COMPONENTS OF AN INTEGRATED WATERSHED MONITORING PROGRAM:

The IWMP shall, at a minimum, include the following components:

1. **EXISTING CORE MONITORING** - The current municipal stormwater monitoring for San Bernardino County until it is modified by the IWMP. This consists of receiving water monitoring and monitoring within the MS4s (See Figure 1).

   a. Receiving Water Monitoring:

      Permittees shall select a number of representative receiving water locations within their jurisdiction. These locations should be close to MS4 discharge points and should include locations where chronic and/or persistent water quality problems have been identified. The objective of receiving water monitoring is to determine if urban runoff is causing or contributing to violations of water quality standards in the receiving waters.

   b. Monitoring within MS4s:

      Permittees shall select a number of representative locations (representative of flow, duration, pollutant loads, etc.) within storm water conveyance systems within their jurisdiction. The objective of this monitoring element is to determine the pollutant loads from the MS4s and to determine their trend. This monitoring requirement maybe combined with the mass emissions monitoring described in 2, below.

2. URBAN DISCHARGE MASS EMISSIONS MONITORING:

   a. Representative outfall locations shall be identified and monitored to achieve the following objectives:

i. To estimate the total mass emissions of pollutants of concern from the MS4 to receiving waters.

ii. To assess trends in mass emissions associated with urban storm water runoff from the MS4s over time and evaluate potential correlations between any trends in mass emission and land use and population changes.

iii. To determine if the MS4 is contributing to exceedances of water quality standards, by comparing outfall and receiving water results to: (1) Basin Plan Water quality Objectives (WQOs); (2) EPA storm water benchmarks contained in the EPA Multi-Sector Industrial Storm Water Permit; (3) California Toxic Rule (CTR); and (4) other MS4 discharge monitoring data.

b. At least two samples shall be collected from the monitoring locations identified in a, above, during dry weather conditions and one sample from the first storm event of the rainy season (October 1 to May 31) and two more samples during subsequent storm events. The mass emissions monitoring locations shall be monitored for:

i. The flow in cubic feet per second (cfs) (the flow may be estimated);

ii. The samples from the first storm event and one of the dry weather samples shall be analyzed for the entire suite of priority pollutants. All samples must be analyzed for E. coli, nutrients (nitrates and nitrites, potassium, and phosphorous), metals, pH, TSS, TOC, organophosphorus pesticides/herbicides, and any other constituents that are known to have contributed to impairment of local receiving waters by inclusion on the 303(d) list. Dry weather samples shall be also analyzed for total petroleum hydrocarbons (EPA Method 8015M - direct injection) and oil and grease.

iii. A mass loading model shall be used to calculate the mass loadings and to the extent practicable the data shall be integrated into the San Bernardino County GIS database system.

3. ILLEGAL DISCHARGE/ILLICIT CONNECTION MONITORING

a. The Permittees shall review and update their dry and wet weather reconnaissance strategies to identify and eliminate illegal discharges and illicit connections using the Guidance Manual for Illicit Discharge, Detection, and Elimination developed by the Center for Watershed Protection[4] or any other equivalent program. The Permittees should identify appropriate monitoring locations, such as geographic areas with a high density of industries associated with gross pollution (e.g. electroplating industries, auto dismantlers) and/or locations subject to maximum sediment loss (e.g. hillside new developments).

[4] USEPA (Illicit Discharge Detection and Elimination - A Guidance Manual for Program Development and Technical Assessments) by the Center for Watershed Protection and Robert Pitt, University of Alabama, October 2004, updated 2005).

b. The dry weather monitoring for nitrogen and total dissolved solids shall be included as part of the illegal discharge/illicit connection monitoring program. In light of the recently adopted Nitrogen-TDS objectives for certain management zones, the Permittees shall, within 18 months of Permit adoption, submit a plan to determine baseline concentration of these constituents in dry weather runoff, if any, from significant outfall locations (36 inches or larger in diameter).

4. HYDROMODIFICATION MONITORING PLAN (HMP)

This Order requires development and implementation of a Hydromodification Monitoring Plan as part of the Watershed Action Plan (WAP) to evaluate hydromodification impacts for the drainage channels deemed most susceptible to degradation, and, where applicable the effectiveness of BMPs in preventing or reducing impacts from hydromodification within the permitted area. (Some or all of the following requirements may be satisfied by the Permittees participation in the "Development of Tools for Hydromodification Assessment and Management' Project" undertaken by the SMC and coordinated by SCCWRP).

a. The Order requires the Permittees to develop a WAP within 12 months of Permit adoption (phase 1) and 12 months following approval of phase 1 (phase 2). The WAP should identify vulnerable streams and possible control measures to minimize hydrologic changes and tools to measure any impacts on geomorphology and aquatic resources.

b. The HMP shall include:

   i. Protocols for ongoing monitoring to assess drainage channels deemed most susceptible to degradation, and to assess the effectiveness in preventing or reducing impacts from hydromodification within the permitted area.

   ii. Models to predict the effects of urbanization on stream stability within the permitted area.

5. SOURCE IDENTIFICATION AND SPECIAL STUDIES

a. The ROWD identified a priority list of pollutants of concern in the watershed based on the findings of water quality monitoring efforts. These pollutants and their order of priority from high to low were: (1) high - bacteria, (2) medium - metals (zinc, copper, lead), (3) low - nutrients (nitrate as nitrogen, total phosphorus), TSS and COD. During the Permit term, the Permittees shall assess each of the pollutants considered a concern (except bacteria, which is already being addressed by a TMDL) and prepare a strategic plan for addressing each pollutant. For some pollutants such as the metals, special studies for the development of site-specific objectives or total recoverable/ dissolved translators may be necessary.

b. During the third-term permit, a Pollutant Source Investigation and Control Plan[5] was developed and implemented to investigate elevated pollutant concentrations of coliform bacteria, zinc, copper and lead at Site 5. This Order requires continued implementation of the plan, including annual reporting and BMP effectiveness evaluation for the Site 5 drainage area.

V. REGIONAL WATERSHED MONITORING

A. Regional watershed monitoring refers to the collaboration among many agencies in and around southern California in addition to municipal stormwater agencies that are interested in watershed to regional scale monitoring. Regional monitoring can be used to assess the cumulative results of anthropogenic and natural effects on the environment and provides opportunities for comparison of the different stormwater agencies' monitoring to determine the breadth and depth of human impacts and natural variability found throughout southern California's watersheds. See Section V.B.3 below for Regional Bioassessment monitoring,

1. Some of these regional monitoring programs include the Statewide Ambient Monitoring Program (SWAMP), State Wetland's Recovery Project, USEPA Environmental Monitoring and Assessment Program (EMAP), and US Geological Survey's National Water Quality Assessment Program (NAWQA).
2. A number of regional organizations continue work in the Santa Ana River Watershed area, including the SWQSTF, SMC, SCCWRP, and universities. Participation in water-related studies or planning efforts, which may include monitoring, provides valuable information for the area-wide monitoring program. The Permittees shall participate in these regional efforts including the following:
   a. TMDL Monitoring
   b. Low Impact Development BMP Monitoring
   c. Regional Bioassessment Monitoring (SCCWRP Technical Report 539)

B. **Regional Monitoring Plans**

1. TMDL/WLA MONITORING

The Permittees shall continue to participate in TMDL monitoring programs to determine compliance with the waste load allocations (WLAs). The compliance schedules for the approved TMDLs within the permitted area are beyond the five-year permit term. This Order requires Permittees to conduct monitoring to determine the effectiveness of the BMPs implemented in reducing pollutant loads and eventually to attain WLAs by the deadlines specified in the TMDL implementation plans.

[5] 2005-2006, 2006-2007, 2007-2008 Annual Reports

Since the compliance dates for the TMDLs in this Order are outside the five-year term of this Order, the Permittees are required to monitor and report effectiveness of the BMPs specified in the TMDL Implementation Plans and this Order with respect to pollutant reduction goal(s) as one measure of progress towards attainment of WLAs in accordance with the compliance schedules specified in the TMDL Implementation Plans. If water quality standards in the impaired receiving waters are met through implementation of appropriate control measures, this would constitute compliance with the WLAs.

a. MSAR Bacteria TMDL/WLA Monitoring Plan (Figures 2 & 3)

i. On June 14, 2007, the TMDL task force members submitted a source evaluation plan and a monitoring plan. The Regional Board approved these plans on June 29, 2007, Resolution No. R8-2007-0046. A revised monitoring plan and an urban bacterial indicator source evaluation plan were approved by the Regional Board on April 18, 2008, Resolution No. R8-2008-0044 (See Figures 2 and 3). The MSAR Permittees within the MSAR watershed shall continue to conduct monitoring and source evaluations in accordance with the approved plans and report the findings in accordance with the schedules specified in the approved plans or as updated by subsequent Regional Board approved revisions.

ii. In conformance with Task 3 of the TMDL Implementation Plan contained in Resolution R8-2005-0001, the Permittees shall individually, or in conjunction with the MSAR TMDL Task Force, prepare a triennial report summarizing the data collected for the preceding 3 year period and evaluating compliance with the WLAs. The first report shall be due February 15, 2010.

iii. The Pemittees shall conduct monitoring and reporting consistent with Section V.D. of this Order to evaluate the effectiveness of the BMPs implemented in the watershed and determine their progress towards attaining compliance with the interim WQBELs, and final BMP-based WQBELS, if approved, or the final numeric WQBELS/WLAs.

b. Big Bear Lake Watershed Wide Nutrient Monitoring Plan (Figure 4)

i. For each year of in-lake nutrient and water quality monitoring under the approved plans[6], the results shall be summarized in an annual report and submitted to the Executive Officer. The Big Bear Lake Nutrient TMDL annual report is due to the Executive Officer by February 15th of each year.

ii. Currently, the Big Bear Lake MS4 Permittees are meeting the WLAs. In the future, continued compliance with the phosphorus WLA will be determined by watershed modeling. By March 31, 2010, the Big Bear Lake MS4 Permittees shall submit a final watershed modeling plan that is ready to be

[6] The 2006 Integrated TMDL Implementation Program for Big Bear Lake QAPP applies to the existing monitoring plans: Big Bear Lake Monitoring Plan, Tributary Monitoring Plan, East End Nutrient/Sediment Removal Monitoring Plan, and Bacteria Monitoring Plan

implemented and that details how the WLA will be determined and evaluated in future years. Upon approval by the Executive Officer, this watershed modeling plan shall be used to determine compliance with the WLA. The Big Bear Lake MS4 Permittees shall select a watershed model that best fits the conditions they are modeling and document the basis for that selection. Data collected under the approved watershed monitoring program shall be evaluated by the Big Bear Lake MS4 Permittees to determine if it falls within the range of dry hydrological conditions as specified in the Nutrient TMDL. The Big Bear Lake MS4 Permittees shall utilize data collected from the monitoring locations specified in the watershed monitoring program approved on May 22, 2009, as well as any other data that are deemed necessary to calibrate and validate the watershed model. The Big Bear Lake MS4 Permittees will document the basis for the selection of the model, the data evaluation and selection process, and the model calibration/validation process. The Big Bear Lake MS4 Permittees or the Big Bear TMDL Task Force, shall provide the results of the first model update by February 15, 2011, and every three years thereafter.

iii. An iterative approach is appropriate to demonstrate compliance with the phosphorus WLA in drainage areas tributary to Big Bear Lake.

iv. If watershed modeling determines exceedances of the phosphorus WLA, despite implementation of the lake management plan and the MSWMP and other requirements of this Order, the Big Bear Lake MS4 Permittees shall comply with the following procedure:

1. Each Big Bear Lake MS4 Permittee[7] upstream of the monitoring locations shall evaluate and characterize discharges from its significant outfall locations.
2. The Big Bear Lake MS4 Permittees[8] shall submit a report with proposed actions to the Executive Officer that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce pollutants that are causing or contributing to the exceedances of the WLA.
3. The report may be incorporated into the storm water annual report.

2. LOW IMPACT DEVELOPMENT (LID) BMP MONITORING

The Principal Permittee shall continue to participate in data collection and monitoring to assess the effectiveness of LID techniques in semi-arid climate as part of the SMC project titled, "Quantifying the Effectiveness of Site Design/ Low Impact Development Best Management Practices in Southern California".

[7] This task may be completed by the Big Bear TMDL Task Force.
[8] This task may be completed by the Big Bear TMDL Task Force.

3. REGIONAL BIOASSESSMENT MONITORING (SCCWRP TECHNICAL REPORT 539[9])

The Principal Permittee, on behalf of the co-Permittees, participates (through a memorandum of understanding and cooperative agreements) with the 16 member agencies of the Storm Water Monitoring Coalition (SMC) Bioassessment Working Group to conduct bioassessments on a regional basis. The Principal Permittee in coordination with SCCWRP shall ensure that a sufficient number of monitoring stations are selected for this program from locations within the permitted area.

a. The objectives of the Regional Watershed Monitoring Program overseen by the State Board's Storm Water Ambient Monitoring Program (SWAMP) and the Storm Water Monitoring Coalition (SMC) and coordinated by the Southern California Coastal Water Research Project (SCCWRP) are:
   i. To assess the current status of streams in Southern California.
   ii. To identify major stressors to aquatic life.
   iii. To monitor the trend in water quality in Southern California streams.

b. The Principal Permittee, in collaboration with the SMC, shall conduct sampling, analysis, and reporting of specified instream biological and habitat data within the 5-year permit cycle according to the protocols specified in the SCCWRP Tech Report No. 539.

c. The bioassessment shall provide information about the biological integrity of receiving waters. Baseline and trend monitoring information on the biotic and geomorphological condition of the receiving waters shall be used to evaluate the effectiveness of the storm water pollution control measures.

d. The sampling sites in each watershed unit were determined according to distribution or abundance of the three land uses: urban, agriculture, or open. Within the San Bernardino County permitted area (considered as 1.5 watershed unit), the Principal Permittee, shall ensure the collection of at least 9 samples/year.

e. Sampling events shall be conducted between 4 to 12 weeks following the last significant rainfall. No sampling shall occur within 72 hours of any measurable rainfall. The default index period will be from May 15 to July 15.

f. For long-term trend monitoring, the Principal Permittee shall ensure the collection of a minimum of one sample per year during the dry weather index period from Station ID WW-S1, Santa Ana River Reach 3 at the MWD crossing. Additional samples may be collected to improve data quality for trend analysis.

[9] "The Regional Monitoring of Southern California's Watershed SMC Bioassessment Working Group", SCCWRP, Technical Report No. 539, December 2007

At a minimum, water chemistry and aquatic toxicity should be used as indicators for trend analysis.

g. The SCCWRP Technical Report No. 539 specifies six indicators as assessment tools, including aquatic toxicity using *Ceriodaphnia dubia*, water flea. The aquatic toxicity studies shall be conducted using USEPA approved methods. If conductivity is too high for survival of control organisms, then *Hyalella spp*, freshwater amphipod, may be used as a test species.

VI. RECORD KEEPING REQUIREMENTS

A. All monitoring activities shall meet the following requirements :

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity [40 CFR 122.41(j)(1)]. Samples and measurements taken to meet the requirements of this permit shall be representative of the volume and nature of the monitored discharge, including representative sampling of any unusual discharge or discharge condition, including bypasses, upsets, and maintenance-related conditions affecting effluent quality in the case of storm channels and flow quality in the case of streams and lakes. Representative sampling also includes development of a testable hypothesis, appropriate site selection, applicable and accepted sampling methodologies, laboratory methods, and frequency of sampling.

2. The Permittees shall retain records of all monitoring information, including all calibration and maintenance of monitoring instrumentation, copies of all reports prepared as per this MRP and records of all data used to complete the Report of Waste Discharge and annual reports for a period of at least five 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)].

3. 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.

4. Calculations for all effluent limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this MRP [40 CFR 122.41(l)(4)(iii)].

5. 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)].

VII. PROGRAM EFFECTIVENESS ASSESSMENT AND REPORTING

A. All progress reports and proposed strategies and plans required by this order shall be signed by the Principal Permittee, and copies shall be submitted to the Executive Officer under penalty of perjury.

B. The Principal Permittee has been monitoring urban runoff and receiving waters since the first MS4 permit term. It is recognized that some of the objectives noted in Section II may not have been fully attained during the previous MS4 permit terms. With the first annual report due after adoption of this Order, the Principal Permittee must submit an evaluation of the progress achieved to date and propose modifications to the monitoring program to achieve full compliance with the objectives of this monitoring program, discussed in Section II.

C. The Permittees shall be responsible for the timely submittal to the Principal Permittee of all required information/materials needed to comply with this Order. All such submittals shall be signed by a duly authorized representative of the Permittee under penalty of perjury.

D. The data transmittals to the Regional Board shall be in the form developed by the Storm Water Monitoring Coalition (SMC) and approved by the State Water Resources Control Board in the document entitled "Standardized Data Exchange Formats". This document was developed in order to provide a standard format for all data transfer so that data can be universally shared and evaluated from various programs.

E. The Permittees shall submit an annual progress report to the Executive Officer and to the Regional Administrator of the USEPA, Region 9, no later than November 15th, of each year. This progress report may be submitted in a mutually agreeable electronic format. At a minimum, annual progress report shall include the following:

1. A review of the status of program implementation and compliance (or non-compliance) with the schedules contained in this Order;

2. An assessment of the effectiveness of control measures established under the illicit discharge elimination program and the Municipal Storm Water Management Plan (MSWMP). The effectiveness may be measured in terms of how successful the program has been in eliminating illicit/illegal discharges and reducing pollutant loads in storm water discharges;

3. As assessment of control measures and their effectiveness in addressing pollutants causing or contributing to an exceedance of water quality objectives in receiving waters that are on the 303(d) list of impaired waters. The effectiveness evaluation shall consider changes in land use and population on the quality of receiving waters and the impact of development on sediment loading within receiving waters and recommend necessary changes to program implementation and monitoring needs.

4. The annual report shall include an overall program assessment. The Permittees are encouraged to use the program assessment methodology described in the 2006 ROWD. The Permittees should determine, to the extent practicable, water quality improvements and pollutant load reductions resulting from implementation of various program elements. The Permittees may also use the "Municipal Storm Water Program Effectiveness Assessment Guidance" developed by the California Storm Water Quality Association in May 2007 as guidance for assessing program effectiveness at various outcome levels. The assessment should include each program element required under this Order, the expected outcome, and the measures used to assess the outcome. The Permittees may propose any other methodology for program assessment using measurable targeted outcomes.

5. The annual report shall include a status report on the development and implementation of the Hydromodification Monitoring Program developed as part of the WAP.

6. Each Permittee shall develop, update, implement, and review its local implementation plan (LIP) to address program modifications and improvements identified during the program assessment.

7. A summary and analysis of monitoring results from the previous year and any changes to the monitoring program for the following year;

8. A financial summary report as described in Section XIX.B of this order; including:
    a. Each Permittee's expenditures for the previous fiscal year;
    b. Each Permittee's budget for the current fiscal year;
    c. A description of the source of funds.

9. A draft workplan which describes the proposed implementation of the LIPs, and MSWMPs for next fiscal year. The workplan shall include clearly defined tasks, responsibilities, and schedules for implementation of the storm water program and each Permittee's action plans for the next fiscal year;

10. Major changes to any of the previously submitted plans/policies; and

11. An assessment of the Permittees compliance status with the Receiving Water Limitations, Section VI of the Order, including any proposed modifications to the MSWMP and WQMP if the Receiving Water Limitations are not fully achieved.

VIII. REPORTING SCHEDULE

All reports required by this Order shall be submitted to the Executive Officer in accordance with the following schedule:

Reporting Schedule (Order R8-2010-0036)			
Permit No.	**ITEM**	**COMPLETION TIME AFTER PERMIT ADOPTION OR FREQ.**	**REPORT DUE DATE**
III.A.1.n	Principal Permittee shall coordinate a review of areawide documents to determine the need for update or revisions	within 18 months of adoption of this Order	
III.A.1.0	Principal Permittee shall develop and implement a model Local Implementation Plan (LIP) each program element as described per the MSWMP	within 6 months of adoption of this Order	
III.A.2.a	Principal Permittee shall develop and implement a Principal Permittee-specific LIP, based on the areawide model LIP	within 18 months of adoption of this Order	
III.B.1	Permittees to develop and implement a Permittee-specific LIP for its jurisdiction. The LIP shall describe the Permittee's legal authority, its ordinances, policies and standard operating procedures; identify departments and personnel for each task and needed tools and resources.	within 18 months of adoption of this Order	
III.B.2.e	Each Permittee shall review and revise its MS4 facility maps	As needed	Annually
III.C	Permittees shall evaluate the storm water management structure and the Implementation Agreement and determine the need for any revision	As needed	Annually
V.D.1.a.ii	MSAR Permittees shall submit MSAR reports of watershed-wide monitoring program for wet and dry season respectively	May 31 and Dec 31	Starting in 2010, annually thereafter
V.D.1.a.iii	MSAR Permittees shall submit MSAR comprehensive reports	Feb 15	Starting in 2010 and every three years thereafter
V.D.1.a.iv	MSAR Permittees shall submit MSAR semi-annual reports	January 31 & July 31	Annually
V.D.1.a.v	MSAR Permittees shall revise MSWMP in accordance with MSAR-TMDL Implementation program	Nov 15, 2010	Annual report

Reporting Schedule (Order R8-2010-0036) Continued			
Permit No.	**ITEM**	**COMPLETION TIME AFTER PERMIT ADOPTION OR FREQ.**	**REPORT DUE DATE**
V.D.1.a.vi	MSAR Permittees shall revise the WQMP in accordance with MSAR-TMDL implementation program	Nov 15 of every year	Annual report
V.D.1.a.vii	MSAR Permittees shall amend the LID in accordance with the revised MSWMP/WQMP	Within 90 days after RB approves revisions	Nov 15 of each year
V.D.2.b.ii	MSAR Permittees shall prepare for approval the draft CBRP to achieve compliance for Dry Weather Conditions	December 31, 2010	
V.D.2.b.ii	MSAR Permittees shall submit Final version of CBRP	90 days after receiving comments from the Regional Board	
V.D.4.e	Big Bear Lake MS4 Permittees shall submit a plan of various in-lake treatment technologies	No later than February 26, 2010	
V.D.4.f	Big Bear Lake MS4 Permittees shall submit for approval a plan and schedule for updating the existing Big Bear Lake watershed nutrient model and the Big Bear Lake in-lake nutrient model	No later than March 31, 2010	
V.D.4.g	Big Bear Lake MS4 Permittees shall submit for approval a proposed plan and schedule for in-lake sediment nutrient reduction for Big Bear Lake	No later than April 15, 2010	
V.D.4.i	The Big Bear Lake-Lake Management Plan shall be reviewed and revised as necessary at least once every three years	As necessary, at least once every 3 years	
V.D.4.j	Big Bear Lake MS4 Permittees shall submit annual report summarizing data from water quality monitoring programs and evaluating compliance (Big Bear Lake TMDL)	February 15, 2010	Annually
V.D.2.b.ii	MSAR Permittees shall prepare for approval the draft CBRP to achieve compliance for Dry Weather Conditions	December 31, 2010	
V.D.4.k	Big Bear Lake MS4 Permittees shall submit final watershed modeling plan to be implemented (Big Bear Lake TMDL)	March 31, 2010	
V.D.4.k	Big Bear Lake MS4 Permittees shall provide results of the first model update	February 15, 2011	
V.D.4.l	Big Bear Lake MS4 Permittees shall revise MSWMP, WQMP, LIP as necessary	November 15	Annual report
V.D.4.m.2	Big Bear Lake MS4 Permittees shall submit report to EO describing BMPs to reduce sources of phosphorous	November 15	Annual report

Reporting Schedule (Order R8-2010-0036) Continued			
Permit No.	**ITEM**	**COMPLETION TIME AFTER PERMIT ADOPTION OR FREQ.**	**REPORT DUE DATE**
V.D.4.n	Revise LIP to incorporate requirements from TMDL implementation	As needed	As necessary
V.D.5.a	City of Big Bear Lake shall continues to implement Phase 2 monitoring program	on-going	on-going
VI.D	If there is discharge causing or contributing to exceedance, Permittees shall notify either by phone or by e-mail and, thereafter submit a report satisfying D.a to D.e	Within 30 calendar days	
VI.E	Permittees shall submit any modifications, if required by the Executive Officer	Within 30 calendar days of notification	
VI.F	Permittees shall revise the storm water management programs (MSWMP and LIP) and monitoring program to incorporate the additional BMPs that will be implemented	Within 60 calendar days following EO approval	
VII.D	Permittees shall promulgate ordinances that would specify control measures for known pathogen or bacterial sources such as animal wastes if those types of sources are present within their jurisdiction.	Within 3 years of Order adoption	
VII.F	The Permittees shall notify owners of other MS4 systems outside the Permittees' jurisdiction, regarding the regulatory requirements for control of pollutants in MS4 discharges and provide copy to the Regional Board.	Annually	
VII.G	The Permittees shall review water quality ordinances and evaluate effectiveness	Annually	Annual Report
VII.J	The Permittees shall submit a certification statement signed by legal counsel, that the Permittee has obtained all necessary legal authority	Within one (1) year of Order adoption	
VII.K	The Permittees shall review adequacy of ordinances, implementation and enforcement response procedures with respect to the above items.	Annually	Annual Report
VIII.A	The Permittees shall develop pro-active IC/ID Program		Annual Report
IX.F	Permittees with septic systems in their jurisdiction shall develop an inventory of septic systems within its jurisdiction and establish a program to ensure that failure rates are minimized	Within two years of Order adoption	
X.A.3	The Permittees shall update database and inventory system containing inspections, facilities	at least once/year	Annually

Reporting Schedule (Order R8-2010-0036) Continued			
Permit No.	**ITEM**	**COMPLETION TIME AFTER PERMIT ADOPTION OR FREQ.**	**REPORT DUE DATE**
X.A.4	The Permittees shall Develop risk-based, compliance focused strategy for inspection of construction, industrial, and municipal facilities	within 18 months of Order adoption	
X.A.12	The Permittees shall Document, evaluate and report the effectiveness of enforcement procedures in achieving prompt and timely compliance.	annually	Annual Report
X.D.6	The Permittees shall Principal Permittee shall notify all mobile businesses operating within the County concerning the minimum source control and pollution prevention measures	Within 36 months of adoption of this Order	
X.D.7	The Principal Permittee, in coordination with the Permittees shall develop an enforcement strategy to address mobile businesses	Within 36 months of adoption of this Order	
X.E.1	Each Permittee shall develop and implement a residential program to reduce the discharge of pollutants from residential facilities to the MS4s to the maximum extent practicable	Within 36 months of adoption of this Order	
X.E.7	The Permittees shall evaluate residential program effectiveness	First annual report after adoption of Order	Annual report
XI.B.3.a	The Principal Permittee shall develop a Watershed Action Plan, Phase 1	Within 12 months of adoption of this Order	
XI.B.3.b	The Principal Permittee shall develop a Watershed Action Plan, Phase 2	Within 12 months of approval of Exec, Officer of Phase 1 report.	

Reporting Schedule (Order R8-2010-0036) Continued			
Permit No.	**ITEM**	**COMPLETION TIME AFTER PERMIT ADOPTION OR FREQ.**	**REPORT DUE DATE**
XI.B.4	The Permittees shall review the watershed protection principles and policies in the General Plan or related documents (such as Development Standards & Project Guidance, Zoning Codes, Conditions of Approval,) to determine consistency with the Watershed Action Plan.	Within three years of Order adoption	Annual Report
XI.B.4	The Permittees shall report the above findings and schedule of revisions	Annually	Annual Report
XI.C.4	Each Permittee shall incorporate the results of the above information into its LIP and its project approval process.	Within 24 months of adoption of this Order	
XI.D.2	The Principal Permittee shall coordinate the revision of the WQMP Guidance and Template to include new elements required under this Order.	Within 18 months of adoption of this Order	
XI.E.1	Each Permittee shall identify barriers to implementing LID	Within 18 months of adoption of this Order	
XI.E.2	Each Permittee shall provide Regional Board a copy of its report to DWR on its updated landscaped ordinance.	Simultaneous with notification to DWR	
XI.E.5	The Permittees shall review and update the Water Quality Management Plan Guidance and Template to incorporate LID principles	Within 18 months of adoption of this Order	
XI.E.9	The Permittees shall submit a copy of the updated Water Quality Management Plan Guidance and Template for review and approval by the Executive Officer.	Within 18 months of adoption of this Order	
XI.F.1	The Permittees shall develop standard design and PCBMP guidance for municipal road projects	Within 24 months of adoption of this Order	
XI.G.1	Permittees may grant waiver of BMPs with justification documents to the EO	Within 30 days prior to Permittee approval	

Reporting Schedule (Order R8-2010-0036) Continued			
Permit No.	**ITEM**	**COMPLETION TIME AFTER PERMIT ADOPTION OR FREQ.**	**REPORT DUE DATE**
XI.H.1 & H.4	The Permittees shall develop and implement standard procedures and tools, such as WQMP checklist, project close-put procedures, and include in the LIP.	Within 18 months of adoption of this Order	
XI.I.2	The Permittees shall conduct follow-up inspection of the post-construction BMPs	Prior to the rainy season within 3 years	Every 3 years thereafter.
XI.J	The Permittees shall establish mechanism to track project ownership		Annual Report
XI.K.2	The Permittees shall develop a database to track operation and maintenance of post-construction BMPs.	Within 12 months of adoption of this Order	
XII.E	The Permittees shall develop and maintain BMP guidance for the control of those potentially polluting activities including guidelines for the household use of fertilizers, pesticides, herbicides and other chemicals, and guidance for mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting.	Within 12 months of adoption of this Order	
XIII.E	The Permittees shall evaluate,the inspection and cleanout frequency of drainage facilities,	Annually	Annual report
XV.B	The Permittees shall notify the EO of proposed de-minimus type of discharges by submitting a NOI	At least 15 days before de-minimus discharge	
XVI.A.1 & A,2	The Principal Permittee shall update, revise and develop a training program including a training schedule, curriculum content, and defined expertise and competencies for storm water managers, inspectors, maintenance crew, municipal contractors, those involved in the review and approval of WQMPs, and those preparing and/or reviewing CEQA documentation	Within 24-48 months of adoption of this Order	

Reporting Schedule (Order R8-2010-0036) Continued			
Permit No.	**ITEM**	**COMPLETION TIME AFTER PERMIT ADOPTION OR FREQ.**	**REPORT DUE DATE**
XVI.D	The Principal Permittee shall provide and document training to applicable public agency staff on the updated Municipal Activities and Pollution Prevention Strategy (MAPPPS). and any other applicable guidance and procedures	Annually	Annual Report
XVI.H	Each Permittee shall adequately train any of its staff involved with storm water related projects and the implementation of this Order	Within 6 months after assignment then annually prior to rainy season	Annual report
XVIII.B	Permittees shall evaluate the MSWMP to determine the need for any revisions in Order to reduce pollutants in MS4 discharges to the maximum extent practicable.	Annual Report	October 1
XIX.B	Permittees shall prepare and submit a financial summary to the Executive Officer of the Regional Board	Annually	
XXII.A	Permittees shall prepare and submit ROWD permit renewal application		No later than 180 days of Permit expiration
MRP IV. A	Permittees shall review, revise as needed, and submit the Integrated Watershed Monitoring Plan (IWMP) for review and approval by the Executive Officer.	Within 12 months of adoption of this Order	
MRP IV.B.3.b	Permittees shall submit a plan to determine baseline concentrations of N/TDS	Within 18 months of Order adoption	
MRP V. B.1.a.ii	Permittees shall revise the MSWMP to incorporate a plan and a schedule to achieve necessary triennial bacterial source reduction for meeting the phosphorus indicator WLAs	February 15, 2010	Annual Report

Date: 1-29-10

Ordered by

Gerard J. Thibeault
Executive Officer

Figure 1: Current Stormwater Core Monitoring Stations (Sites 2, 3, 5, 8, and 10)

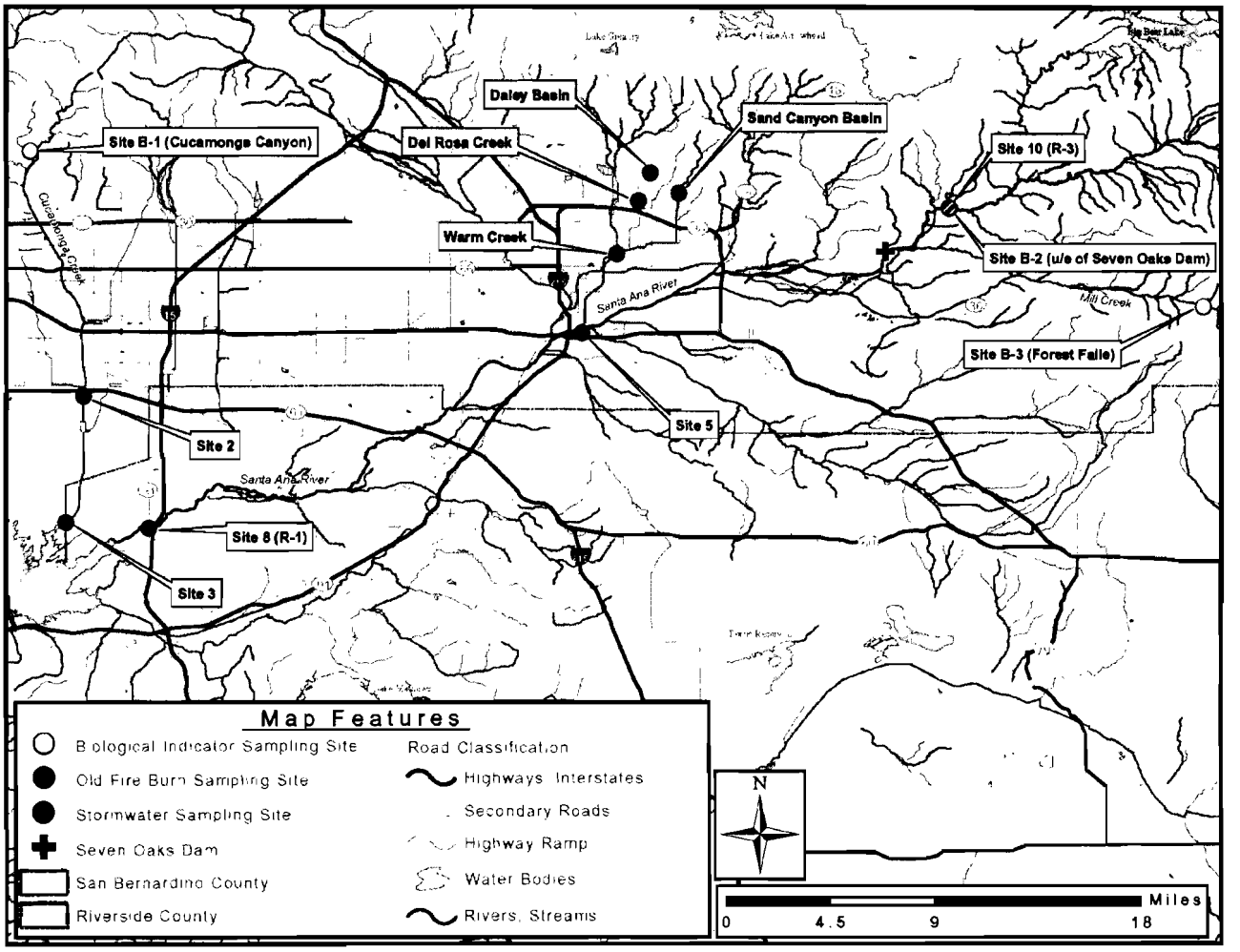


Figure 2: MSAR TMDL Watershed-wide Monitoring Locations

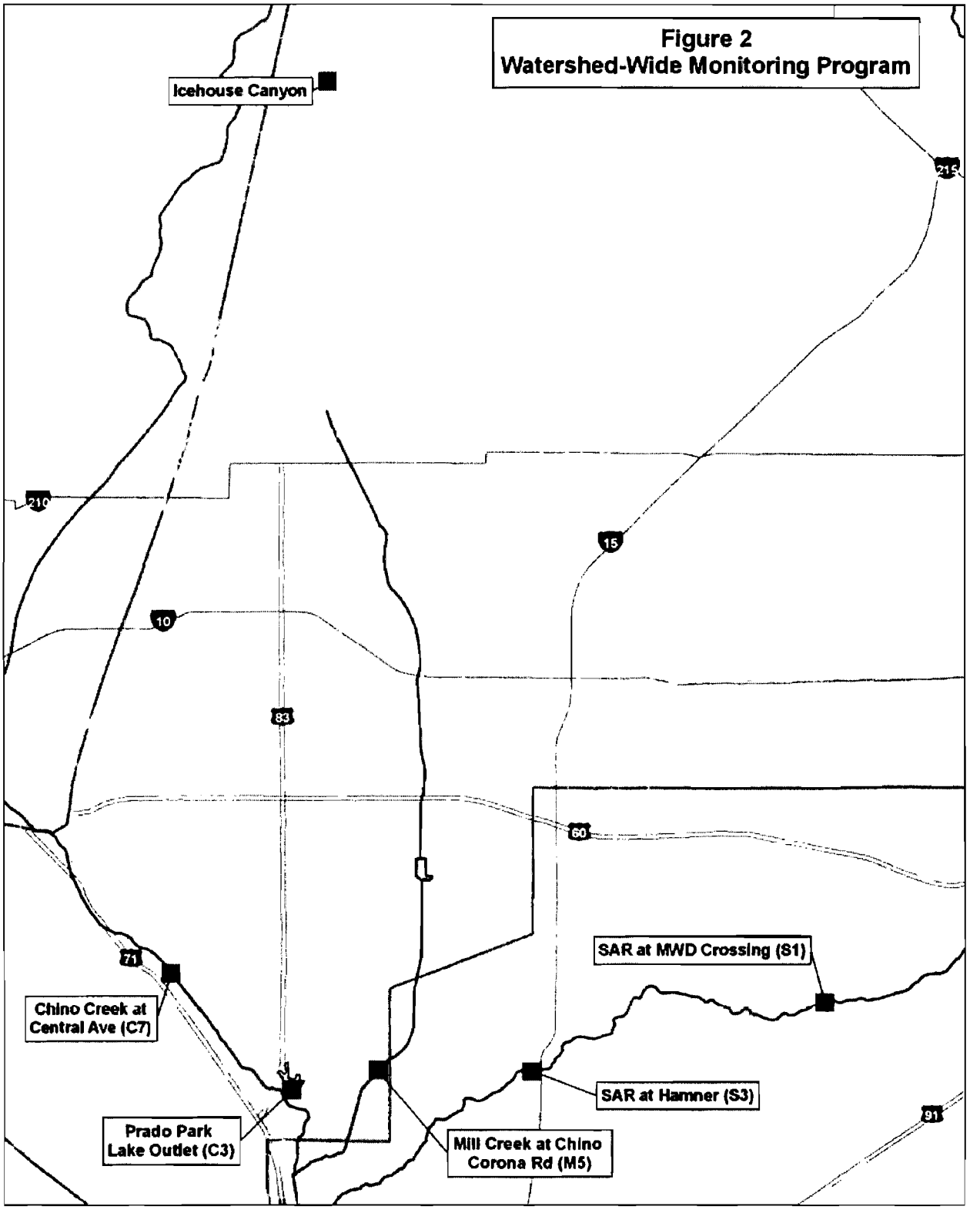


Figure 3: MSAR TMDL USEP Monitoring Locations

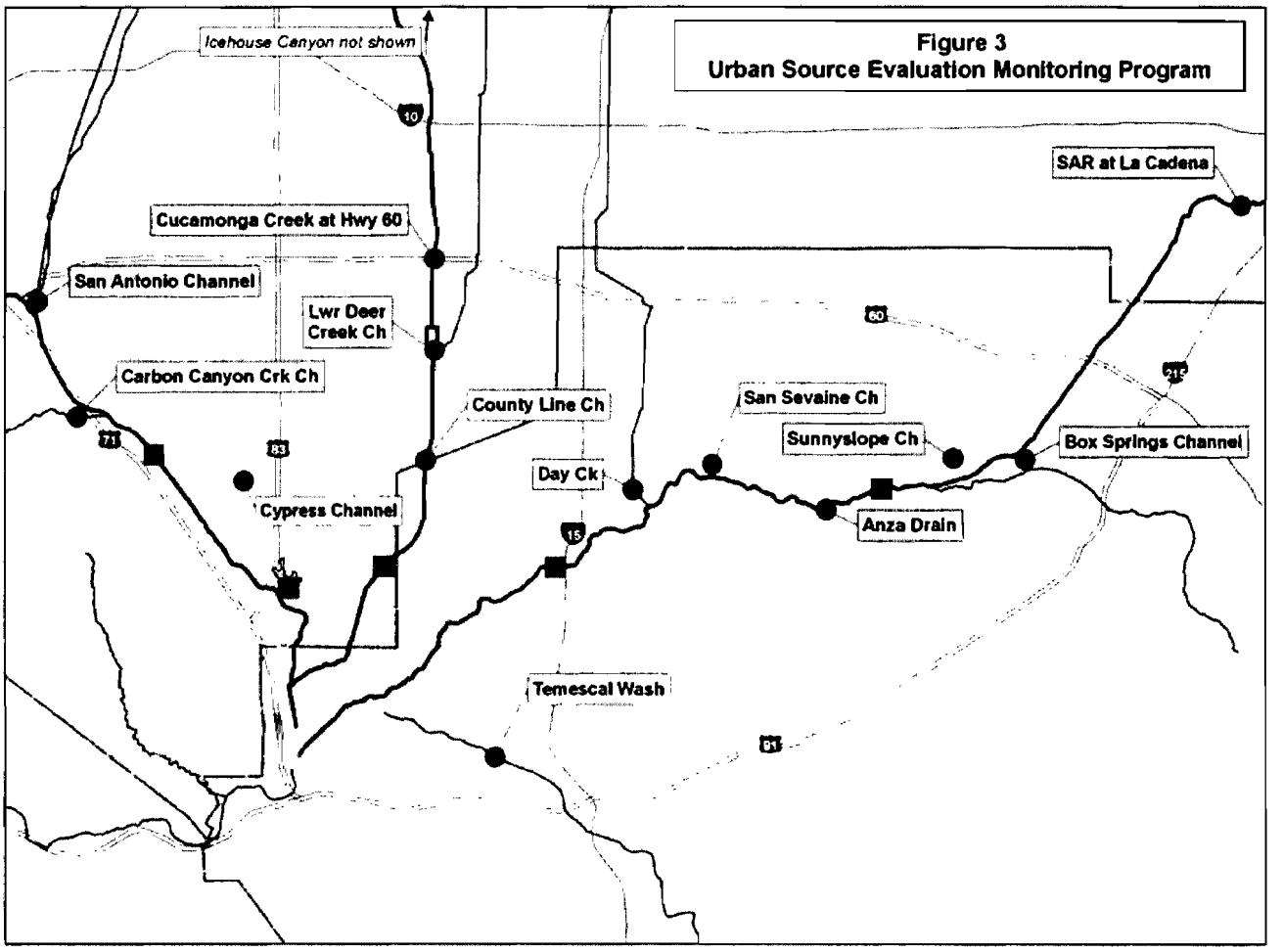
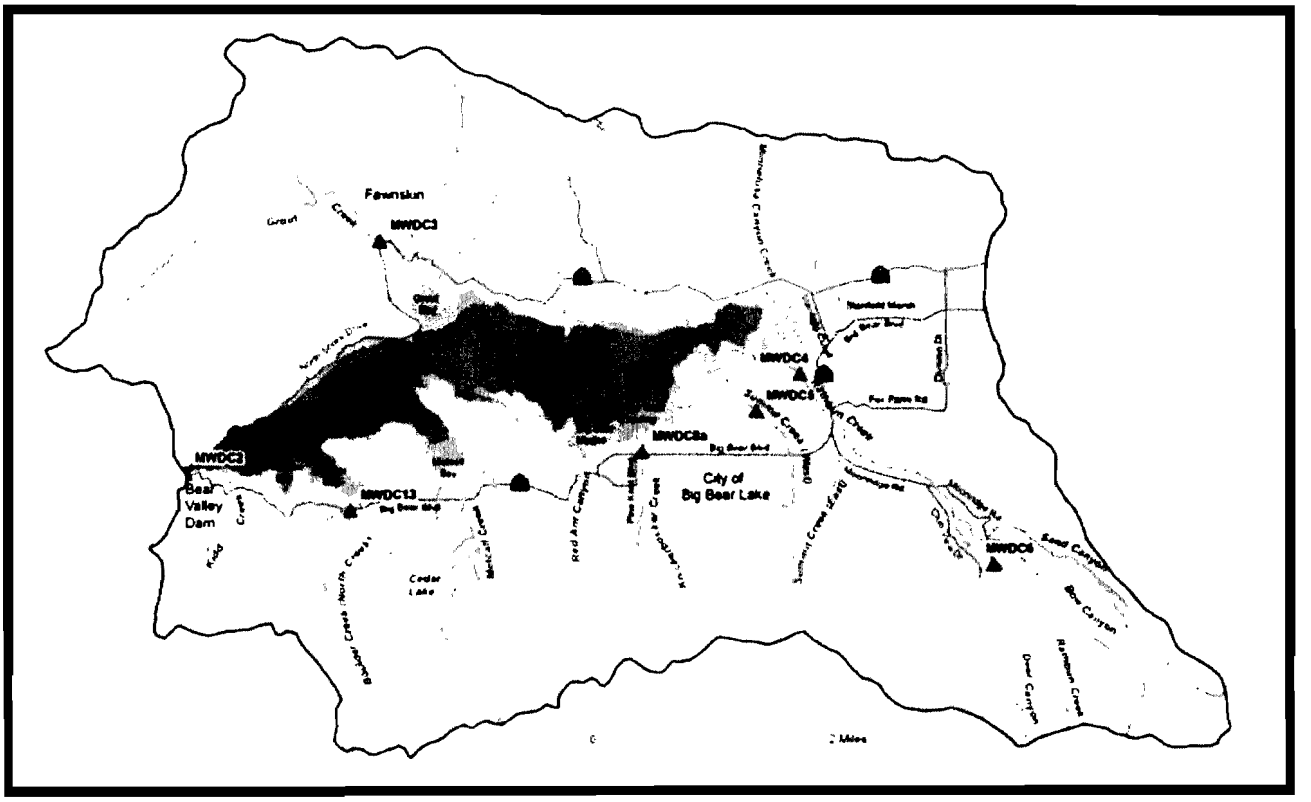


Figure 4: Big Bear Lake Nutrient TMDL Watershed-Wide Monitoring Locations



State of California

California Regional Water Quality Control Board

Santa Ana Region

3737 Main Street, Suite 500

Riverside, CA 92501- 3348

FACT SHEET

January 29, 2010

ITEM: 10

SUBJECT: Waste Discharge Requirements for the San Bernardino County Flood Control District (SBCFCD), the County of San Bernardino, and the Incorporated Cities of San Bernardino County within the Santa Ana Region, Area-wide Urban Storm Water Runoff Management Program, San Bernardino County, Order No. R8-2010-0036 (NPDES No. CAS618036)

I. INTRODUCTION

The 1972 Clean Water Act (CWA) established the National Pollutant Discharge Elimination System (NPDES) permit program to regulate the discharge of pollutants from point sources to waters of the United States (U.S.). Since then, considerable strides have been made in reducing conventional forms of pollution, such as from sewage treatment plants and industrial facilities, through the implementation of the NPDES program and other federal, state and local programs. The adverse effects from some of the persistent toxic pollutants (DDT[1], PCB[2], TBT[3]) were addressed through manufacturing and use restrictions and through cleanup of contaminated sites. On the other hand, pollution from land runoff (including pollutants from atmospheric deposition, urban, suburban and agricultural sources) was largely unregulated until the 1987 CWA amendments. As a result, diffuse sources, including urban storm water runoff, now contribute a larger portion of many kinds of pollutants than the more thoroughly regulated sewage treatment plants and industrial facilities. The 1987 CWA amendments established a framework for regulating urban storm water runoff. Pursuant to these amendments, the Santa Ana Regional Water Quality Control Board (Regional Board) started regulating municipal storm water runoff in 1990.

It is also critical to manage non-point sources, such as runoff from agricultural sources, in order to effectively prevent or remedy water quality impairment. In 2000, the State Water Resources Control Board and the California Coastal Commission developed a

[1] DDT: Dichlorodiphenyltrichloroethane
[2] PCB: Polychlorinated biphenyl
[3] TBT: Tributyltin

Non-Point Source Pollution Control Program. This program was approved by the USEPA and NOAA[4] and is being implemented by a number of agencies.

The attached pages contain information concerning an application for renewal of waste discharge requirements and an NPDES permit. Order No. R8-2010-0036, NPDES No. CAS618036, prescribes waste discharge requirements for urban storm water runoff[5] from the cities and the unincorporated areas in San Bernardino County within the jurisdiction of the Regional Board. As defined by 40 CFR 122.26(b)(13), storm water includes storm water runoff, snowmelt runoff, surface runoff and drainage. "Storm water" is defined as urban runoff and snowmelt runoff consisting only of those discharges which originate from precipitation events. Storm water is that portion of precipitation that flows across a surface to the storm drain system or receiving waters.

Urban runoff is defined as all flows in a storm water conveyance system and consists of the following components: (1) storm water (wet weather flows) and (2) non-storm water (authorized under Section V of the Order, dry weather flows).

On October 26, 2006, the San Bernardino County Flood Control District (SBCFCD, the Principal Permittee) and the County of San Bernardino, in cooperation with the cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa (Co-Permittees, hereinafter collectively referred to as Permittees or Dischargers), submitted a Report of Waste Discharge (ROWD)) for renewal of their area-wide NPDES storm water permit. The permit renewal application was submitted in accordance with the requirements specified in the previous NPDES storm water permit (Order No. R8-2002-0012). The permit application also follows guidance provided by Regional Board and State Water Resources Control Board (State Board) staff, and the United States Environmental Protection Agency (USEPA). Order No. R8-2002-0012 expired on April 27, 2007 and was administratively extended in accordance with 40 CFR Part 122.6 and Title 23, Division 3, Chapter 9, §2235.4 of the California Code of Regulations.

Order No. R8-2010-0036 regulates discharges of stormwater and urban runoff[6] from the upper Santa Ana watershed to waters of the U.S.

II. REGULATORY BACKGROUND/CLEAN WATER ACT REQUIREMENTS

As storm water flows over streets, parking lots, construction sites, and industrial, commercial, residential, and municipal areas, it can mobilize pollutants from these areas and transport them to waters of the U.S. If appropriate pollution control measures are not implemented, urban runoff may contain elevated levels of pathogens (bacteria, viruses, protozoa), sediment, trash, fertilizers (nutrients, mostly nitrogen and phosphorus compounds), oxygen-demanding substances (decaying and/or decomposable matter), pesticides (e.g., DDT, chlordane, diazinon, chlorpyrifos, etc.)

[4] NOAA:National Oceanic and Atmospheric Administration

[5] Urban Storm Water Runoff includes authorized non-storm water as per Section V of the Order and storm water runoff, collectively referred to as urban runoff (also see glossary).

[6] For purposes of this Order, urban runoff includes storm water and authorized non-storm water discharges as per Section V of the Order.

heavy metals (cadmium, copper, chromium, lead, zinc, etc.), and petroleum products (oil & grease, PAHs[7], petroleum hydrocarbons, etc.). If not properly managed and controlled, urbanization can change the stream hydrology and increase pollutant loading to receiving waters. In general, as a watershed undergoes urbanization, pervious surface area decreases, runoff volume and velocities increase, riparian habitats and wetland habitats decrease, the frequency and severity of flooding may increase, and pollutant loading increases. Most of these impacts are due to human activities that occur during and/or after urbanization. The pollutants and hydrologic changes can cause declines in aquatic resources, cause toxicity to marine organisms, and impact human health and the environment.

If not properly controlled, urban runoff could be a significant source of pollutants in waters of the U.S. Table 1 includes a list of pollutants and their sources, and some of the adverse environmental consequences resulting from urbanization.

The Permittees in San Bernardino County conducted urban runoff monitoring and determined that for a number of constituents (e.g., bacteria, copper, lead, nutrients), urban runoff quality exceeded the Basin Plan objectives, CTR criteria, and/or USEPA's storm water benchmarks. The permit renewal application submitted by the Permittees (2006 ROWD) ranked bacterial contamination as the highest priority urban runoff problem[8] within the permitted area.

(Left intentionally blank)

[7] PAHs (Polycyclic aromatic hydrocarbons) – a hydrocarbon containing two or more aromatic rings. PAHs are persistent, bioaccumulative, and toxic pollutant. PAHs occur in oil, coal, and tar deposits, and are produced as byproducts of fuel burning. Sources include industrial processes, transportation, energy production and disposal activities.

[8] 2006 Report of Waste Discharge (ROWD)

Table 1[9]. Pollutants/Impacts of Urbanization on Waters of the U.S.

Pollutants	Sources	Effects and Trends
Toxins (e.g., biocides, PCBs, trace metals, heavy metals)	Industrial and municipal wastewaters; runoff from farms, forests, urban areas, and landfills; erosion of contaminated soils and sediments; vessels; atmospheric deposition	Poison and cause disease and reproductive failure; fat-soluble toxins may bioconcentrate, particularly in birds and mammals, and pose human health risks. Inputs into U.S. waters have declined, but remaining inputs and contaminated sediments in urban and industrial areas pose threats to living resources.
Pesticides (DDT, diazinon, chlorpyrifos)	Urban runoff; residential, commercial, industrial, and farm use; agricultural runoff	Legacy pesticides (DDT, chlordane, dieldrin) have been banned; still persists in the environment; some of the other pesticide uses have been curtailed or restricted.
Biostimulants (organic wastes, plant nutrients)	Sewage and industrial wastes; runoff from farms and urban areas; nitrogen from combustion of fossil fuels	Organic wastes overload bottom habitats and deplete oxygen; nutrient inputs stimulate algal blooms (some harmful), which reduce water clarity, cause loss of seagrass and coral reef, and alter food chains supporting fisheries. While organic waste loadings have decreased, nutrient loadings have increased (NRC, 1993a, 2000a).
Petroleum products (oil, grease, petroleum hydrocarbons, PAHs)	Runoff and atmospheric deposition from land activities; shipping and tanker operations; accidental spills; oil gas production activities; natural seepage; PAHs from internal combustion engines	Petroleum hydrocarbons can affect bottom organisms and larvae; spills affect birds, mammals and aquatic life.
Radioactive isotopes	Atmospheric fallout, industrial and military activities	Bioaccumulation may pose human health risks where contamination is heavy.
Sediments	Erosion from farming, construction activities, forestry, mining, development; river diversions; dredging and mining	Reduce water clarity and change bottom habitats; carry toxins and nutrients; clog fish gills and interfere with respiration in aquatic fauna. Sediment delivery by many rivers has decreased, but sedimentation poses problems in some areas.

[9] Adapted from Boesch, D.F., R.H. Burroughs, J.E. Baker, R.P. Mason, C.L. Rowe, and R.L. Siefert. 2001. Marine Pollution in the United States: Significant Accomplishments, Future Challenges. Pew Oceans Commission, Arlington, Virginia.

Pollutants	Sources	Effects and Trends
Plastics and other debris	Boats, ships, fishing nets, containers, trash, urban runoff	Entangles aquatic life or is ingested; degrades beaches, wetlands and nearshore habitats. Floatables (from trash) are an aesthetic nuisance and can be a substrate for algae and insect vectors.
Pathogens (bacteria, protozoa, viruses)	Sewage, urban runoff, livestock, wildlife, and discharges from boats and cruise ships.	Pose health risks to swimmers and consumers of seafood.
Alien species	Ships and ballast water, fishery stocking, aquarists	Displace native species, introduce new diseases; growing worldwide problem (NRC 1996).

The (CWA) prohibits the discharge of any pollutant to navigable waters from a point source unless an NPDES permit authorizes the discharge. The 1987 amendments to the CWA required municipal separate storm sewer systems (MS4s) and industrial facilities, including construction sites, to obtain NPDES permits for storm water runoff from their facilities. On November 16, 1990, the USEPA promulgated the final Phase I storm water regulations. The storm water regulations are contained in 40 CFR Parts 122, 123 and 124.

This Order does not constitute an unfunded local government mandate subject to subvention under Article XIIIB, Section (6) of the California Constitution for several reasons, including, but not limited to, the following. First, this Order implements federally mandated requirements under federal Clean Water Act section 402, subdivision (p)(3)(B). (33 U.S.C. § 1342(p)(3)(B).) This includes federal requirements to effectively prohibit non-storm water discharges, to reduce the discharge of pollutants to the maximum extent practicable, and to include such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. Federal cases have held these provisions require the development of permits and permit provisions on a case-by-case basis to satisfy federal requirements. (*Natural Resources Defense Council, Inc. v. U.S. E.P.A.* (9th Cir. 1992) 966 F.2d 1292, 1308, fn. 17.) The authority exercised under this Order is not reserved state authority under the Clean Water Act's savings clause (*cf. Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 627-628 [relying on 33 U.S.C. § 1370, which allows a state to develop requirements which are not "less stringent" than federal requirements]), but instead, is part of a federal mandate to develop pollutant reduction requirements for municipal separate storm sewer systems. To this extent, it is entirely federal authority that forms the legal basis to establish the permit provisions. (See, *City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region* (2006) 135 Cal.App.4th 1377, 1389; *Building Industry Ass'n of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 882-883.)

Likewise, the provisions of this Order to implement total maximum daily loads (TMDLs) are federal mandates. The federal Clean Water Act requires TMDLs to be developed for water bodies that do not meet federal water quality standards. (33 U.S.C. § 1313(d).) Once the U.S. Environmental Protection Agency or a state develops a TMDL, federal law requires that permits must contain effluent limitations consistent with the assumptions of any applicable wasteload allocation. (40 C.F.R. § 122.44(d)(1)(vii)(B).)Second, the local agency permittees' obligations under this Order are similar to, and in many respects less stringent than, the obligations of non-governmental dischargers who are issued NPDES permits for storm water discharges. With a few inapplicable exceptions, the Clean Water Act regulates the discharge of pollutants from point sources (33 U.S.C. § 1342) and the Porter-Cologne regulates the discharge of waste (Wat. Code, § 13263), both without regard to the source of the pollutant or waste. As a result, the "costs incurred by local agencies" to protect water quality reflect an overarching regulatory scheme that places similar requirements on governmental and nongovernmental dischargers. (See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57-58 [finding comprehensive workers compensation scheme did not create a cost for local agencies that was subject to state subvention].)

The Clean Water Act and the Porter-Cologne Water Quality Control Act largely regulate storm water with an even hand, but to the extent there is any relaxation of this even-handed regulation, it is in favor of the local agencies. Except for municipal separate storm sewer systems, the Clean Water Act requires point source dischargers, including discharges of storm water associated with industrial or construction activity, to comply strictly with water quality standards. (33 U.S.C. § 1311(b)(1)(C), *Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1164-1165 [noting that industrial storm water discharges must strictly comply with water quality standards].) As discussed in prior State Water Resources Control Board decisions, this Order does not require strict compliance with water quality standards. (SWRCB Order No. WQ 2001-15, p. 7.) The Order, therefore, regulates the discharge of waste in municipal storm water more leniently than the discharge of waste from non-governmental sources.

Third, the local agency permittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order. The fact sheet demonstrates that numerous activities contribute to the pollutant loading in the municipal separate storm sewer system. Local agencies can levy service charges, fees, or assessments on these activities, independent of real property ownership. (See, e.g., *Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 842 [upholding inspection fees associated with renting property].) The ability of a local agency to defray the cost of a program without raising taxes indicates that a program does not entail a cost subject to subvention. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487-488.)

Fourth, the Permittees have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in federal Clean Water Act section 301, subdivision (a) (33 U.S.C. § 1311(a)) and in lieu of numeric restrictions on their discharges. To the extent, the local agencies have voluntarily availed themselves of the permit, the program is not a state mandate. (Accord *County*

of San Diego v. State of California (1997) 15 Cal.4th 68, 107-108.) Likewise, the Permittees have voluntarily sought a program-based municipal storm water permit in lieu of a numeric limits approach. (See *City of Abilene v. U.S. E.P.A.* (5th Cir. 2003) 325 F.3d 657, 662-663 [noting that municipalities can choose between a management permit or a permit with numeric limits].) The local agencies' voluntary decision to file a report of waste discharge proposing a program-based permit is a voluntary decision not subject to subvention. (See *Environmental Defense Center v. USEPA* (9th Cir. 2003) 344 F.3d 832, 845-848.)

Fifth, the local agencies' responsibility for preventing discharges of waste that can create conditions of pollution or nuisance from conveyances that are within their ownership or control under state law predates the enactment of Article XIIIB, Section (6) of the California Constitution.

The areawide NPDES permit for San Bernardino County areas within the Santa Ana Regional Board's jurisdiction is being considered for renewal in accordance with Section 402(p) of the CWA and all requirements applicable to an NPDES permit issued under the issuing authority's discretionary authority. The requirements included in this Order are consistent with the CWA, the federal regulations governing urban storm water discharges, the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan), the CWC, and the State Board's Plans and Policies.

The Basin Plan is the basis for the Regional Board's regulatory programs. The Basin Plan incorporates plans and policies adopted by the State Board by reference. The Basin Plan was developed and is periodically reviewed and updated in accordance with relevant federal and state laws and regulations, including the CWA and the CWC. As required, the Basin Plan designates the beneficial uses of the waters of the Region and specifies water quality objectives intended to protect those uses. (Beneficial uses and water quality objectives, together with an antidegradation policy, comprise federal "water quality standards"). The Basin Plan also specifies an implementation plan, which includes certain discharge prohibitions. In general, the Basin Plan makes no distinctions between wet and dry weather conditions in designating beneficial uses and setting water quality objectives, i.e., the beneficial uses, and correspondingly, the water quality objectives are assumed to apply year-round. (Note: In some cases, beneficial uses for certain surface waters are designated as "I", or intermittent, in recognition of the fact that surface flows (and beneficial uses) may be present only during wet weather.) Most beneficial uses and water quality objectives were established in the 1971, 1975, 1983, and 1995 Basin Plans. The 1995 Basin Plan was updated in February 2008[10]. Amendments to the Basin Plan included new nitrate-nitrogen and total dissolved solids (TDS) objectives for specified management zones and new nitrogen and TDS management strategies applicable to both surface and ground waters and various Total Maximum Daily Loads (TMDLs) and Implementation Plans that had been adopted for several impaired water bodies within the region.

Water Code Section 13241 requires that certain factors must be considered when water quality objectives are established. These factors include economics and the

[10] http://www.waterboards.ca.gov/santaana/water_issues/programs/basin_plan/index.shtml

need for developing housing in the Region. (The latter factor was added to the CWC in 1987).

During the third-term permit (R8-2002-0012) development process, the Permittees raised an issue regarding compliance with Section 13241 of the California Water Code with respect to water quality objectives for wet weather conditions, specifically the cost of achieving compliance during wet weather conditions and the need for developing housing within the Region and its impact on urban storm water runoff. In response to this request, Regional Board staff in collaboration with the permittees in the region has organized a Storm Water Quality Standards Task Force (SWQSTF). The SWQSTF is closely monitoring actual and potential beneficial uses of surface waters within the region. Based on the findings, it is likely that the SWQSTF will recommend changes to the current beneficial use designations and water quality objectives specified in the Basin Plan. This Order may be reopened to incorporate any changes to the water quality standards. In the meantime, the provisions of this Order will result in reasonable further progress towards the attainment of the existing water quality objectives, in accordance with the discretion in the permitting authority recognized by the United States Court of Appeals for the Ninth Circuit in Defenders of Wildlife v Browner, 191 F.3d 1159, 1164 (9th Cir. 1999).

III. BENEFICIAL USES

Storm water flows that are discharged to MS4s within the Santa Ana River Watershed in San Bernardino County are tributary to various water bodies (inland surface streams, lakes and reservoirs) of the state (see Attachment 2 for a list of surface waterbodies within the Permitted area). The beneficial uses of these water bodies include municipal and domestic supply, agricultural supply, industrial service and process supply, groundwater recharge, hydropower generation, water contact recreation, non-contact water recreation, commercial and sportfishing, warm freshwater habitat, cold freshwater habitat, preservation of biological habitats of special significance, wildlife habitat and preservation of rare, threatened or endangered species, spawning, reproduction and development of aquatic habitats and estuarine habitat. The ultimate goal of this Permit and the related urban storm water management program is to protect the beneficial uses of the receiving waters.

IV. PERMITTED AREA

The permitted area is delineated by the Santa Ana-Lahontan Regional Board boundary line on the north and northeast, the Santa Ana-Colorado River Basin Regional Board boundary on the east, the San Bernardino-Riverside County boundary on the south and southeast, the San Bernardino-Orange County boundary on the southwest, and the San Bernardino-Los Angeles County boundary on the west (see Attachment 1). The permittees serve a population of approximately 1.5 million, occupying an area of approximately 620 square miles[11]. For the entire county, the population estimated as of July 1, 2008 is 2.06 million[12]. The latest figures from the San Bernardino County Storm

[11] 2006 Report of waste Discharge.

[12] State of California, Department of Finance, Population Estimates and Components of Change by County, July 1, 2000-2008. Sacramento, California, December 2008

Water Program 2007-2008 Annual Report estimated 378 miles of aboveground channels and 485 miles of underground storm drain channels, for a total of 863 miles in the project area. Approximately seven percent (7%) of the San Bernardino County surface area drains into water bodies within this Regional Board's jurisdiction. Storm water discharges from urbanized areas consist mainly of surface runoff from residential, commercial and industrial developments. In addition, there are storm water discharges from agricultural land uses, including farming and animal feeding operations. However, the CWA specifically excludes discharges composed entirely of return flows from irrigated agriculture and nonpoint source agricultural activities. The concentrated animal feeding operations within the Region are regulated under the Regional Board's General Permit for Dairies, Order No. R8-2007-0001, NPDES No. CAG018001. Areas of the County not addressed or which are excluded under the storm water regulations and areas not under the jurisdiction of the Permittees are excluded from coverage under this permit. These excluded areas and activities include the following:

- Federal lands and state properties, including, but not limited to, military bases, national forests, hospitals, schools, colleges and universities, and highways;
- Native American tribal lands;
- Agricultural lands; and
- Utilities and special districts.

The Regional Board will coordinate with these entities to implement programs that are consistent with the requirements of this Order. The Regional Board, pursuant to 40 CFR 122.26(a), has the discretion and authority to require non-cooperating entities to participate in this Order. The Regional Board may also consider such facilities for coverage under its NPDES permitting scheme pursuant to USEPA Phase II storm water regulations.

To the extent that the Permittees authorize the connection of these discharges into their MS4s, this Order requires the Permittees to provide written notification of WQMP requirements for post-construction BMPs and/or other applicable requirements of this Order. A WQMP approved by the Permittee who owns the MS4 may constitute compliance with the General Construction Permit post-construction requirements[13] for the Permit Area.

V. WATERSHED MANAGEMENT/UPPER SANTA ANA RIVER BASIN

To regulate and control storm water discharges from the San Bernardino County area to the San Bernardino County MS4s, an area-wide approach is expected to be the most effective. The entire storm drain system in San Bernardino County is not controlled by a single entity; San Bernardino County, the SBCFCD, several cities, State Department of Transportation (Caltrans), US Army Corps of Engineers and a number of other entities own, operate, and/or manage the storm drain systems. In addition to the Cities, the

[13]The State General Construction Permit Order No. 2009-009-DWQ Section XIII.

County and the SBCFCD, there are a number of significant contributors of urban storm water runoff to these storm drain systems. These include: large institutions, such as State University facilities, schools, hospitals, etc.; federal facilities, such as Department of Defense facilities; State agencies, such as Caltrans; water and wastewater management agencies, such as San Bernardino Valley Municipal Water District and Inland Empire Utilities Agency; the National Forest Service; state parks, and entertainment centers such as Pharaoh's Lost Kingdom Park in Redlands, Fiesta Village Family Fun Park in Colton, and other motorsports facilities scattered throughout the County. The management and control of the entire flood control system cannot be effectively carried out without the cooperation and efforts of all these entities. Also, it would not be effective to issue a separate storm water permit to each of the entities within the permitted area whose land/facilities drain into the county storm drain systems and ultimately to waters of the U. S. The Regional Board has concluded that the best management option for the San Bernardino County area is to issue an area-wide storm water permit. Some of the MS4s in the project area discharge into MS4s controlled by other entities, such as the County of Riverside, the County of Orange, and the County of Los Angeles.

Cooperation and coordination among all the stakeholders are essential for efficient and economical management of the watershed. Regional Board staff will facilitate coordination of monitoring and management programs among the various stakeholders, where necessary.

An integrated watershed management approach for urban runoff is consistent with the Strategic Plan (2008-2012[14]) for the State and Regional Boards and the draft California Water Plan Update[15]. A watershed wide approach is also necessary for implementation of the load and waste load allocations to be developed under the TMDL process. The MS4 permittees and all the affected entities are required to participate in regional or watershed solutions, where appropriate, instead of project-specific and fragmented solutions.

The pollutants in urban runoff originate from multiple sources, and effective control of these pollutants requires a cooperative effort of all the stakeholders and many regulatory agencies. Every stage of urbanization should be considered in developing appropriate urban runoff pollution control methodologies. The program's success depends upon consideration of pollution control techniques during planning, construction and post-construction operations. At each stage, appropriate pollution prevention measures, proper site design considerations, source control measures, and, if necessary, treatment techniques should be considered. In the 2006 ROWD, the Permittees proposed a watershed approach based on a prioritized risk to beneficial uses.

1. SUB-WATERSHEDS AND MAJOR CHALLENGES

The Santa Ana River Watershed in San Bernardino County can be subdivided into the following sub-watersheds:

[14] State Water Resources Control Board, Strategic Plan Update, 2008-2012, September 2, 2008
[15] http://www.waterplan.water.ca.gov/docs/cwpu2009/1208prd/vol2/UrbanRunoff_PRD_09.pdf

A. *UPPER SANTA ANA RIVER WATERSHED*

The Upper Santa Ana River Watershed includes the upper reaches of the Santa Ana River (Reaches 4, 5 and 6) and its tributaries.

1. Reach 4 of the Santa Ana River: Reach 4 of the Santa Ana River is the portion of the River from Mission Boulevard bridge in Riverside to the San Jacinto fault (Bunker Hill Dike) in San Bernardino. There is perennial flow in this reach of the River, mostly from the upstream discharges of treated municipal wastewater. Much of this reach is also maintained as a flood control facility. This reach of the River is posted to warn against water contact recreation, due to microbial problems. The wastewater discharges from the sewage treatment plants to this reach of the River are tertiary treated and are not expected to be sources of microbial contamination. This reach is identified as an impaired waterbody for pathogens in the 303(d) list, scheduled for TMDL completion in 2019. Lytle Creek and Cajon Creek are tributaries to this reach of the River.

   Other water quality problems along this reach of the River include the buildup of total dissolved solids (TDS, dissolved salts or minerals) and nitrogen, largely in nitrate form. The buildup of TDS and nitrates can impact downstream beneficial uses, including groundwater recharge. The buildup of TDS and nitrate is mostly due to agricultural uses, including dairies and the application of fertilizers, municipal and industrial wastewater discharges, and reuse and recycling operations. A complex set of programs and policies are included in the Basin Plan to address this problem, including a water supply plan, a wastewater management plan, and a groundwater management plan. Other elements of the Basin Plan include the non-point source program and the storm water program. The Basin Plan identifies the Statewide General Permits and the MS4 permits as the regulatory tools for storm water management in the Basin. In light of the recently adopted Nitrogen-TDS objectives for certain management zones, this Order requires the Permittees to determine baseline concentration of these constituents in dry weather runoff, if any, from significant outfall locations. The Order also includes effluent limitations for TDS and nitrates under dry weather conditions.

2. Reach 5 of the Santa Ana River: This reach of the River extends from the San Jacinto Fault in San Bernardino to the Seven Oaks Dam. Most of this reach of the River is maintained as a flood control facility and is dry, except during storm flows and operational releases from the dam. Major tributaries to this reach include San Timoteo Creek, City Creek, Plunge Creek, and Warm Creek. These tributaries are also usually dry, except for the discharge of treated wastewater from Yucaipa Valley Water District to San Timoteo Creek and from the City of Beaumont to Coopers Creek (a tributary to San Timoteo Creek). These wastewater discharges flow for a short distance and percolate into the ground. No major water quality problems have been identified in this stretch of the River or its tributaries.

3. Reach 6 of the Santa Ana River: This reach includes the River upstream of Seven Oaks Dam. Major tributaries include Bear Creek, Forsee Creek, and Rattlesnake Creek. Flows consist mostly of snowmelt and storm water runoff. There are no documented water quality problems in this reach of the river and no listed impairments.

B. CHINO BASIN WATERSHED

The Chino Basin Watershed covers about 405 square miles and lies largely in the southwestern corner of San Bernardino County, and part of western Riverside County. This permit only covers those portions of the watershed that are within San Bernardino County and under the jurisdiction of this Board. Surface drainage is generally southward, from the San Gabriel Mountains toward the Santa Ana River and Prado Flood Control Basin. Major surface waterbodies in the Chino Basin Watershed include:

- San Antonio Creek
- Chino Creek
- Cucamonga Creek
- Day Creek, and
- Deer Creek

Although it was originally developed as an irrigated agricultural area, and then as dairies, the watershed is more recently being steadily urbanized. The municipalities under this permit in the Chino Basin Watershed include Chino, Chino Hills, Fontana, Montclair, Ontario, Rancho Cucamonga, Rialto, and Upland. The Chino-Corona Agricultural Preserve had the highest concentration of dairy animals in the nation until very recently manure and wastewater from dairy operations contain elevated levels of nutrients, salts, and bacteria. The ground and surface water quality in the area have been adversely impacted by bacteria (surface water), nutrients and salts.

The dairies within the Region are regulated under the General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) within the Santa Ana Region (Board's General Dairy Permit), Order No. R8-2007-001, NPDES No. CAG018001. The General Dairy Permit allows discharge of storm water from dairies only for storms exceeding a 24-hour 25-year frequency. Portions of the area lack flood control facilities, and storm runoff from these areas is predominantly carried by flows on and parallel to roadways The San Bernardino and Riverside County Flood Control Districts, in cooperation with local municipalities, have coordinated to construct flood control facilities in the area.

On April 19, 2004, construction began on the project known as County Line Channel (also known as Eastvale San Bernardino Line 2-13) sponsored by San Bernardino County Flood Control District, Riverside County Flood Control

and Water Conservation District, and the City of Ontario. The three-mile-long concrete-lined drainage channel along the Riverside/San Bernardino county line will intercept runoff. Overland surface storm flows from the City of Ontario and County of San Bernardino portions of the watershed is typically collected by roadways and the flows are discharged into the Cucamonga Creek Channel. The project design enables storm water to be captured and channeled into an existing facility with the capacity to contain the 100-year flow and will accommodate major storm drain laterals in the future to prevent commingling of urban runoff with agricultural drainage. In addition to these benefits, the project prevents the degradation of recharged groundwater upstream of the Chino-Corona Preserve. This project has been completed.

To comply with the recently established nitrogen/TDS objectives, groundwater problems (mostly TDS and nitrate) in the Chino Basin Watershed are being addressed through a comprehensive watershed management plan. As part of this plan, desalters are being built to increase the salt removal from the groundwater through a pump and treat system for contaminated groundwater in the southern part of Chino Basin. One desalter (Chino I Desalter) has been operational since August 2000, and a second one, known as the Chino I Expansion/Chino II Desalter Project, was completed in the spring of 2006.

(Also see discussions below regarding TMDLs for the Middle Santa Ana River watershed.)

C. *BIG BEAR LAKE WATERSHED*

The Big Bear Lake watershed is located in the San Bernardino Mountains. Major waterbodies in this watershed include:

- Big Bear Lake
- Baldwin Lake (currently a dry lakebed)
- Stanfield Marsh
- Shay Meadows
- Rathbone (Rathbun) Creek
- Summit Creek
- Grout Creek
- Knickerbocker Creek

Big Bear Lake is a high mountain reservoir occupying a relatively small, east-to-west oriented basin. The basin supports a large number of recreational activities. Lake recreational activities include fishing, swimming, boating and water skiing. Areas adjacent to the lake are used for camping, skiing, hiking, equestrian trails and other outdoor activities. Water in the lake is also used for municipal supplies. A number of water quality problems have been identified for the lake.

The 2006 303(d) list of impaired water bodies (see below) designated the following waterbodies in this sub-watershed as impaired: Big Bear Lake (nutrients, copper and mercury); Grout Creek (metals and nutrients); Knickerbocker Creek (metals and pathogens); Summit Creek (nutrients); and Rathbone Creek (nutrients and siltation). The problem pollutants have been identified by the Regional Board as coming from resource extraction activities, urban runoff, snow skiing facilities, construction and land developments, and non-point sources. In conjunction with local stakeholders, the Big Bear Lake Nutrient TMDL for Dry Hydrologic Conditions has been developed and is being implemented. For other pollutants, work is underway to develop TMDLs.

2. CWA SECTION 303(d) LIST AND TMDLS:

The 2006 water quality assessment conducted by the Regional Board[16] identified a number of waterbodies within the Region as impaired waterbodies, under Section 303(d) of the CWA[17]. These are waterbodies where the designated beneficial uses are not met and the water quality objectives are being exceeded. These waterbodies were placed on the CWA Section 303(d) list of impaired waters. The impaired waterbodies in San Bernardino County within the Santa Ana Regional Board's jurisdiction are listed in Table 2.

Federal regulations require that a total maximum daily load (TMDL) be established for each 303(d) listed waterbody for each of the pollutants causing impairment. The TMDL is the total amount of the problem pollutant that can be discharged while water quality standards in the receiving water are attained, i.e., water quality objectives are met and the beneficial uses are protected. It is the sum of the individual wasteload allocations (WLA) for point sources, load allocations (LA) for non-point sources and natural background sources, with a margin of safety. The TMDLs are the basis for limitations established in waste discharge requirements.

This Order incorporates TMDLs that have been adopted for bacterial indicators in the Middle Santa Ana River Watershed and nutrients (phosphorus) for dry hydrological conditions in Big Bear Lake. On August 26, 2005, the Regional Board adopted Resolution No. R8-2005-001 amending the Basin Plan to incorporate Bacterial Indicator TMDLs for Middle Santa Ana River Watershed Waterbodies. On April 21, 2006, the Regional Board adopted Resolution No. R8-2006-0023 amending the Basin Plan to incorporate a Nutrient TMDL for Dry Hydrological Conditions for Big Bear Lake. A Mercury TMDL for Big Bear Lake is currently under development, and TMDLs are scheduled for development for all pollutants identified in Table 2. The stakeholders in this watershed are collaborating in the development and implementation of the TMDLs.

[16] On April 24, 2009, the Regional Board adopted an Integrated List of Impaired Waters Under Clean Water Act Sections 305(b) and 303(d), Resolution No. R8-2009-0032.

[17] 2006 CWA Section 303(d) list of water quality limited segments (http://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/303dlists2006/epa/r8_06_303d_reqtmdls.pdf)

Federal regulations (40 CFR 122.44(d)(vii)(B)) require that the NPDES permits be consistent with the applicable wasteload allocations in the TMDLs. This Order requires the Permittees to implement BMPs designed to reduce pollutants to achieve applicable wasteload allocations by the compliance dates in the approved TMDLs.

For 303(d) listed waterbodies without a TMDL, the Permittees currently require certain categories of new and significant re-development projects that drain into these impaired waterbodies to treat post-construction runoff with BMPs of medium to high treatment effectiveness. This Order further requires the Permittees to develop BMPs and/or strategies as part of a Watershed Action Plan and continue their participation in the TMDL development.

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Table 2

CLEAN WATER ACT SECTION 303(D) LISTED WATERBODIES & TMDL SCHEDULE[18]

Waterbody	Hydro Unit	Size Affected	Pollutant Stressor	Source	Priority	TMDL Schedule	Permittees
Big Bear Lake	801.710	2970 acres 2970 acres 2970 acres 2970 acres 2970 acres 2970 acres 2970 acres 2970 acres	Copper Mercury[19] Metals Noxious aquatic plants Nutrients Sedimentation/Siltation[20] PCBs (Polychlorinated biphenyls)	Resource Extraction Resource Extraction[21] Resource Extraction Construction/Land development Construction/Land development Snow Skiing Activities Construction/Land development Snow Skiing Activities Unknown	Medium Medium Medium Medium Medium Medium Medium Medium	2007 2007 2007 2006 2006 2006 2019	City of Big Bear Lake County of San Bernardino
Summit Creek	801.710	1 mile	Nutrients	Construction/Land Development	Medium	2008	City of Big Bear Lake, County of San Bernardino
Knickerbocker Creek	801.710	2 miles 2 miles	Metal Pathogens	Unknown Non-point Source Unknown Non-point Source	Medium	01/03 – 01/05 Sole Source	City of Big Bear Lake, County of San Bernardino
Grout Creek	801.720	2 miles 2 miles	Metal Nutrients	Unknown Non-point Source Unknown Non-point Source	Medium	01/02 – 0105 2008	City of Big Bear Lake, County of San Bernardino
Rathbone Creek	801.720	2 miles 2 miles	Nutrients Sedimentation/Siltation	Unknown Non-point Source Snow Skiing Activities	Medium	2008 2006	City of Big Bear Lake, County of San Bernardino
Mountain Home Creek, East Fork	801.700	1 mile	Pathogens	Unknown Non-point Source	Low	2019	County of San Bernardino
Mountain Home Creek	801.580	4 miles	Pathogens	Unknown Non-point Source	Low	2019	County of San Bernardino
Mill Creek (Prado Area)	801.250	4 miles	Nutrients Suspended Solids	Agriculture, Dairies Dairies	Medium Medium	2019 01/00 – 01/05	Ontario, Rancho Cucamonga, Upland, SBCFCD, County of San Bernardino
Mill Creek, Reach 1	801.580	5 miles	Pathogens	Unknown Non-point Source	Low	2019	Redlands, SBCFCD, County of San Bernardino
Mill Creek, Reach 2	801.580.	8 miles	Pathogens	Unknown Non-point Source	Low	2019	SBCFCD, County of San Bernardino
Santa Ana River, Reach 4	801.270	12 miles	Pathogens	Non-point Source	Low	2019	Colton, Rialto, Highland, Grand Terrace, Redlands, City of San Bernardino, SBCFCD, County of San Bernardino
Lytle Creek	801.400	18 miles	Pathogens	Unknown Non-point Source	Low	01/08 – 01/11	City of San Bernardino, SBCFCD, County of San Bernardino
Chino Creek, Reach 1	801.210	2 miles	Nutrients	Agriculture Dairies	Medium	2019	Chino, Chino Hills, SBCFCD, County of San Bernardino
Prado Park Lake	801.210	60 acres	Nutrients	Non-point Source	Low	01/08 – 01/11	Chino, Chino Hills, County of San Bernardino

[18] Based on STATE BOARD 2006 CWA Section 303(d) List of Water Quality Limited Segments, Santa Ana Regional Water Quality Control Board, USEPA Approved June 28, 2007 (http://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/303dlists2006/epa/r8_06_303d_reqtmdls.pdf)

[19] Big Bear Lake is recommended for delisting for copper in the Proposed 2008 303(d)-305(b) Integrated Report

[20] Big Bear Lake is recommended for delisting for sedimentation/siltation in the Proposed 2008 303(d)-305(b) Integrated Report

[21] Resource extraction was removed as a potential source for Mercury in Big Bear Lake and replaced with atmospheric deposition in the Proposed 2008 303(d)-305(b) Integrated Report

VI. FIRST, SECOND AND THIRD-TERM PERMITS; URBAN STORM WATER RUNOFF POLLUTION CONTROL PROGRAMS/POLICIES

Prior to EPA's promulgation of the final storm water regulations, the counties of Orange, Riverside and San Bernardino requested areawide NPDES permits for storm water runoff. On August 29, 1990, the Regional Board issued Order No. 90-136 to the San Bernardino County permittees (first-term permit). In 1996, the Board adopted Order No. 96-32 (second-term permit). On October 25, 2002, the Board adopted Order No. R8-2002-0012 (third-term permit). These permits included the following requirements as outlined in the storm water regulations:

1. Prohibited non-storm water discharges to the MS4s, with certain exceptions.
2. Required the municipalities to develop and implement a Municipal Storm Water Management Plan (MSWMP) to reduce pollutants in urban storm water runoff to the maximum extent practicable (MEP).
3. Required the discharges from the MS4s to implement Best Management Practices (BMPs) to the MEP to meet water quality standards in receiving waters.
4. Required the municipalities to identify and eliminate illicit connections and illegal discharges to the MS4s.
5. Required the municipalities to establish and maintain legal authority to enforce storm water regulations.
6. Required monitoring of dry weather flows, storm flows, and receiving waters and conduct program assessments.
7. Required the permittees to inventory, prioritize and inspect construction sites and industrial and commercial facilities based on threat to water quality.
8. Required the permittees to develop a restaurant inspection program to address practices that may have an impact urban runoff quality such as: oil and grease disposal; trash bin area management; parking lot cleaning; spill clean-up; and maintenance of grease traps and interceptors.
9. Required the permittees to review and approve Water Quality Management Plans for categories of new development and significant redevelopment projects to address the impact of post-development runoff on water quality and hydromodification.
10. Required the permittees to develop a unified response plan to respond to any sewage spills that may have an impact on receiving water quality (Sanitary Sewer Overflow Unified Sewage Response Plan, July 1, 2003).

The following programs and policies have been implemented or are being implemented by the permittees. During the first-term permit, the permittees developed a Drainage Area Management Plan (1993 DAMP). The 1993 DAMP included a number of BMPs

and a very extensive public education program. The monitoring programs for the first and second-term permits included 10 monitoring stations within streams and flood control channels. The number of monitoring stations was later reduced to 5 stations to allow the Permittees to apply resources to a bacterial source monitoring program. The Executive Officer approved a delay in implementing the bioassessment requirement of the third-term permit to allow the development of indices of biological integrity that could be applied to inland waters. Subsequently, a regional bioassessment monitoring program was initiated by the Surface Water Ambient Monitoring Program (SWAMP) to determine the conditions of the receiving water in a more holistic manner. This Order requires the Permittees to participate in the regional bioassessment monitoring program. The findings and conclusions from these monitoring stations and monitoring programs (Riverside County, Orange County and others are participating in this regional effort) have been used to identify problem areas and to re-evaluate the monitoring program and the effectiveness of the BMPs. The future direction of some of these program elements will depend upon the results of the ongoing studies and a holistic approach to watershed management.

Other elements of the MSWMP included identification and elimination of illicit connections and illegal discharges and establishment of adequate legal authority to control pollutants in storm water discharges. The permittees have completed a survey of their storm drain systems to identify illegal/illicit connections and have adopted appropriate ordinances to establish legal authority. Some of the more specific achievements during the previous term permits are as follows:

1. Interagency Agreements and Coordination: The Permittees established a program management structure through an interagency Implementation Agreement and established a Management Committee with designated representatives from each of the Permittees to guide the program. The Permittees reviewed and revised the Implementation Agreement as part of the ROWD.

2. Ordinances, Plans and Policies: The Permittees completed a review of their storm drain ordinances and enforcement procedures for prohibiting discharges to the MS4s and for taking appropriate enforcement actions. The Area-Wide Enforcement Guidelines were subsequently prepared to support enforcement actions and to introduce consistency among the Co-Permittees' enforcement actions. In 2004, the Permittees replaced their Model Guidelines for New Development and Redevelopment with the Water Quality Management Plan Guidance and Template (WQMP), which was approved in 2004 and updated in 2005. The Permittees continue to provide training for appropriate public agency personnel on the Municipal Activities Pollution Prevention Strategy (MAPPS). The goal of this program is to ensure that public agency facilities and associated activities do not become a source of pollutants in storm water runoff. These "facilities" include the Permittees' vehicle and equipment fueling and fleet maintenance yards, corporate yards, hazardous materials storage facilities, material transfer and storage facilities, waste management and storage, fire stations, animal shelters, and municipal swimming pools. The MAPPS lists the

potential pollutants for these facilities and provides a list of BMPs for controlling these pollutants.

3. Municipal Inspections: The Permittees completed the development of the MS4 Solution Database. This database houses the inventory of construction, industrial, and commercial sites/facilities within each Permittee's jurisdiction. The inventory is regularly updated with new information.

   The Permittees developed and distributed BMP guidelines for the control of pollutants from mobile vehicle maintenance, carpet cleaning, commercial landscape maintenance, and pavement cutting activities.

4. HCOC Mapping: In early 2005, the Permittees initiated a a GIS-based mapping program to identify stream channels in the area that could be susceptible to excessive erosion and should be considered in assessing hydrologic conditions of concern (HCOC). Upon completion of this project, it will be integrated into the Watershed Action Plan.

5. Illegal Discharge/Illicit Connections: Litter, Debris and Trash Control: The Permittees completed a general characterization of the trash collected from the permitted area and are using this information to develop BMPs specifically targeting the major sources of trash in urban runoff.

6. Municipal Facilities/Activities: The San Bernardino County Flood Control District completed an assessment of their flood control facilities to evaluate opportunities to configure and/or to reconfigure channel segments to function as pollution control devices and to optimize beneficial uses.

   The Permittees developed and distributed BMP guidelines for the control of household use of fertilizers, pesticides, herbicides, and other chemicals, and pavement cutting activities.

   The Permittees worked with the County Fire Chiefs Association to develop a list of appropriate BMPs to be implemented to reduce pollutants from training activities, fire hydrant/sprinkler testing or flushing, non-emergency fire fighting, and any BMPs that could feasibly be implemented to address flows that occur during emergency firefighting activities.

7. Program Review: The annual reports and the Report of Waste Discharge included an effectiveness assessment of various program elements. Based on the monitoring results and the program effectiveness assessments, the 2006 ROWD recommended a shift to compliance-based outcomes measured primarily by compliance with water quality objectives and TMDL implementation. The ROWD also included an analysis of the impact of urban storm water runoff on the beneficial uses and recommended a risk-based approach to address problems associated with urban storm water runoff.

The requirements specified in this Order are consistent with the approach recommended in the ROWD including the TMDLs adopted by the Regional Board and approved by the State and the USEPA.

8. Public Education: In addition to developing and distributing fact sheets, brochures, and flyers with BMP information to control the discharge of pollutants in urban runoff, the Permittees have utilized a number of other avenues to convey this message to the public. These include: (1) public service announcements utilizing a multi-media approach, such as newspapers, radio, and television; (2) presentations at elementary schools and high school automotive classes; (3) educational displays at libraries and public buildings throughout the permitted area; (4) a point-of-purchase campaign with fact sheets containing information on integrated waste management, proper use of pesticides and fertilizers and integrated pest management programs; (5) a point-of-discharge campaign by warning the public about the dangers of waste disposals into the storm drains by stenciling all storm drain inlets; and (6) a web-site with links to other programs and services offered by the Permittees to combat storm water pollution including a 24-hour hotline to report spills, leaks and any illegal discharges to the MS4s. The Permittees have already met or exceeded the goal of a minimum of 5 million impressions per year by targeting all residents, businesses, commercial and industrial establishments within the Permitted area.

   The Permittees also completed a public awareness survey to determine the effectiveness of their existing public and business education strategy. The permittees participated in joint outreach programs with other entities including, but not limited to,, SAWPA[22], Caltrans, and other municipal storm water programs.

   The most effective programs and public education efforts should be continued to reinforce the importance of public participation and awareness to control pollutants in urban storm water runoff.

   The proposed Order includes additional requirements for an effective residential program as irrigation and nuisance flows from residential areas continue to be significant sources of nutrients, pesticides and other pollutants (from over fertilization or improper use of fertilizers, pesticides and other household chemicals).

9. Public Agency Training: During the second-term permit, the Permittees developed and conducted an 8-hour training program on the Municipal Activities Pollution Prevention Strategy (MAPPS). The MAPPS training program provided a basic storm water training and task-specific education for all targeted Permittee staff. These included key staff involved in sewage system maintenance, storm drain system inspection and maintenance, landscape maintenance, road and street maintenance, and key staff at maintenance and storage facilities.

[22] SAWPA: Santa Ana Watershed Project Authority

The MAPPs training was expanded in the third-term permit to include illegal discharge identification, response, and reporting; industrial/commercial inspection program, new and redevelopment program and public agency activities program. During the third-term permit, the Permittees refined their training program and developed web-based training modules to provide better access to the training program. The online training program is enhanced by various other training efforts, including live presentations and on the job training.

However, Regional Board staff conducted audits of the urban runoff program for each of the Permittees and determined that many of the Permittees' storm water program staff and contract staff were not adequately trained. The fourth-term permit requires the Permittees to develop appropriate curriculum for staff at various levels to make the storm water program more effective.

10. Watershed Activities: The Principal Permittee represented the Permittees in various watershed efforts dedicated to improving water quality, gathering technical information to support the MS4 program, TMDL activities, and regional and sub-regional monitoring programs. (See Section VII, below for a list of these programs.)

    The Permittees worked with other local and State agencies to provide a consistent urban storm water pollution control message to the public. These programs included:

    a. Public Health (Safe Drinking Water Program, Vector Control Program, Housing/Property Improvement Program, and Food Protection Program),

    b. Fire Department - Hazardous Materials Division, (Household Hazardous Waste Program, Emergency Response and Enforcement, Field Services, and Local Oversight Program),

    c. Economic Development / Public Services Group (Flood Control Function, Transportation Function, Waste Management Function, Regional Parks Function, Land Use Services and Code Enforcement Function), and

    d. San Bernardino County Special Districts (Operations Divisions consisting of Street Lighting Districts, Recreation and Parks Districts, Road Districts; Water and Sanitation Division consisting of nine water districts and seven sanitation districts).

    The Regional Board and the Permittees recognize the importance of watershed-based plans to address such complex issues related to the control of pollutants from various sources in urban storm water runoff. The fourth-term Permit includes requirements for the development and implementation of a Watershed Action Plan (see Section VIII, below).

11. Related Activities: The Permittees stabilized a number of flood control channels, constructed a sediment basin, expanded an existing basin, and identified, eliminated or properly documented illicit connections to the MS4s.

12. Water Quality Monitoring: The Permittees continue to monitor water quality at five sites for a variety of constituents. Three of the five sites were outfall locations selected to represent the quality of storm water from the drainage area; two sites serve as receiving water monitoring sites. The Permittees also participate in a number of TMDL-related or other regional or sub-regional monitoring programs. A number of programs related to the monitoring programs were completed during the third-term permit (see Section VII, below). These monitoring programs continue to indicate that urban storm water runoff contains elevated levels of pollutants (see Section VII, below).

    The fourth-term Permit includes additional monitoring requirements consistent with the federal regulations (40 CFR 122.48) and California Water Code Sections 13267 and 13383.

VII. WATER QUALITY ASSESSMENTS

An accurate and quantifiable measurement of the impact of the various elements of the storm water management programs is difficult, due to the temporal and spatial variations in storm water runoff quality, incremental nature of BMP implementation, the lack of comprehensive baseline monitoring data, and the existence of some of the programs and policies prior to initiation of formal storm water management programs. There are generally two accepted methodologies for assessing water quality improvements: (1) conventional monitoring such as chemical-specific water quality monitoring; and (2) programmatic assessments such as monitoring of the amount of household hazardous waste collected and disposed off at appropriate disposal sites, the amount of used oil collected, the amount of debris removed, etc.

Water quality monitoring data submitted to date document a number of exceedances of water quality objectives specified in the Basin Plan, CTR criteria and/or USEPA's storm water benchmarks for fecal coliform bacteria, total suspended solids (TSS), nutrients, COD and metals. Toxicity has also been observed at some of the monitoring locations. The 303(d) list of impaired waterbodies within the Region (see Table 2, above) also indicates that urban runoff is a significant source for these impairments. These findings indicate that urban storm water runoff continues to cause or contribute to water quality impairments.

A comparison of wet weather water quality monitoring data for 2000-2006[23] with that from 1994-1999[24] shows that the median concentrations for most constituents have not changed significantly. Furthermore, monitoring data for the period 1994-2006 indicate that median concentrations of wet weather composite samples at monitoring stations[25]

[23] 2006 ROWD

[24] 2002 ROWD

[25] Drainage at Site 2 (Cucamonga Creek @ Hwy 60) is predominantly urban, influenced by commercial and industrial land uses with some contribution from open space/rural and residential land uses. The predominant land use at Site 3 (Cucamonga Creek @ Hellman) is agricultural, but there is contribution from open space/rural, and discharge from a municipal wastewater treatment plant between Sites 2 and

2, 3, and 5 exceeded the USEPA benchmarks for TSS, COD, NO_3-N, and several metals. With the exception of Site 10 (Santa Ana River upstream of Seven Oaks Dam, tributary to mostly undeveloped areas), coliform bacteria concentrations were far above the Basin Plan water quality objectives. These data support the need for continued monitoring and additional control measures to control the discharge of pollutants from the MS4s.

To understand background indicator bacteria levels in the watershed necessary for the implementation of the MSAR TMDL, the Permittees conducted background indicator bacteria studies. Samples were collected quarterly from August 2000 to June 2006 during dry weather (<0.1 inch precipitation) at three sites (Cucamonga Canyon Site, Seven Oaks Dam Site, and Forest Falls Site) with no direct impact from urban runoff, sanitary sewer systems, or POTW discharge. The Seven Oaks Dam Site is located upstream of the dam and corresponds to stormwater monitoring Site 10. The Forest Falls Site is downstream of forested areas with few permanent campsites. Statistics from samples collected from December 2003 to June 2006, suggested that the Seven Oaks Dam Site (Site 10) had the highest concentrations of enterococcus and fecal streptococcus present, and that Cucamonga Creek Site and the Forest Falls Site have lower concentrations. Due to the predominance of non-detect data, similar determinations cannot be made for total coliform, *E. coli*, or fecal coliform concentrations. However, overall, samples taken at the Forest Falls Site exhibited the lowest concentrations of these types of indicator bacteria[26].

The Principal Permittee conducted an analysis of the receiving water monitoring data collected during the last 15 years for a number of monitoring sites (Sites 2, 3, 8[27], and 10[28]). This analysis indicates that the most significant water quality problem associated with urban storm water runoff is bacterial contamination. The Permittees' monitoring data were then compared to monitoring data available from other sources (NAWQA, RWQCB 305(b) Assessment) to determine beneficial use impacts and pollutants causing the impacts. This analysis was then used to prioritize problem areas and to propose a risk-based approach to address these problems.

Based on the evaluation of monitoring data described above, the 2006 ROWD prioritized the pollutants of concern with regards to storm water management as follow:

a. High Priority: Coliform bacteria
b. Medium Priority: Zinc, copper, lead
c. Low Priority: Nutrients, COD, TSS

During the prior permit terms, there was an increased focus on watershed management initiatives and coordination among the municipal permittees in Orange, Riverside and San

3. Monitoring site 5 (Hunts Lane n/o Hospitality Lane) is within a constructed storm drain system and flow is mostly from commercial and light industrial land uses with some urban contribution.

[26] 2005-2006 Annual Report.

[27] Site 8 station is located in the Santa Ana River (SAR) at Hamner Avenue, runoff is mostly from urban land uses.

[28] Site 10 station is located at SAR, upstream of Seven Oaks Dam, runoff is mostly from open/rural areas.

Bernardino Counties. These efforts resulted in a number of regional monitoring programs and other coordinated program and policy developments. The Principal Permittee continues to be an active participant in the Storm water Quality Standards Task Force (SWQSTF), the Big Bear TMDL and Middle Santa Ana River (MSAR) Bacterial Indicator TMDL, and the Storm Water Monitoring Coalition Studies. In addition to the TMDL implementation and monitoring activities, the Permittees participate in the Regional Integrated Freshwater Bioassessment Monitoring Program and the BMP Effectiveness Project to assess the effectiveness of LID techniques.

The Permittees, as participants in the SMC, have completed several monitoring-related activities, including Comparative Evaluation of Microbial Source Tracking Techniques, Model Monitoring Program Guidance, Peak Flow Study, and Laboratory Inter-Calibration.

It is anticipated that with continued implementation of the MSWMP, the ROWD and the requirements specified in this Order, the goals and objectives of the storm water regulations will be met, including protection of the beneficial uses of all receiving waters.

VIII. FUTURE DIRECTION/2006 ROWD & MSWMP

The NPDES permit renewal application (2006 ROWD) and the areawide Municipal Storm Water Management Program (MSWMP) describe the programs and policies the Permittees are proposing to implement during the fourth-term permit. The 2006 ROWD and MSWMP are the principal guidance documents for urban storm water management programs within San Bernardino County.

During the first three permit cycles, the Permittees focused on characterizing storm water quality and establishing a fundamentally sound program in each of the key areas identified in EPA regulations [40 CFR §122.34(b)]: (1) public education and outreach; (2) public involvement/participation; (3) illicit discharge detection and elimination; (4) construction site storm water runoff control; (5) post-construction storm water management in new development and redevelopment; and (6) pollution prevention/good housekeeping for municipal operations.

The sampling data collected over the years have been used to prioritize the most significant water quality problems in the receiving waters. As indicated in Section VII, above, the highest priority for the storm water program is the reduction of bacterial contamination.

For the fourth-term Permit, the Permittees have proposed to develop and implement a risk-based, outcome-oriented, compliance-focused program and will shift storm water management program from process-based outcomes which were mostly measured through completion of programmatic or administrative tasks. Under the fourth-term Permit, compliance will be determined based on attaining water quality standards and compliance with the wasteload allocations specified in the Total Maximum Daily Loads (TMDLs). Risk-based assessment and management aim to reallocate and reapportion program resources to target pollutants-of-concern that pose the greatest threat to human health or the environment. An outcome-oriented program places much greater

emphasis on demonstrating the effectiveness of various implementation activities. Direct measures (such as changes in water quality, tons of hazardous waste collected, etc.) will be preferred over indirect measures (such as advertising impressions, events attended, etc.). In particular, where TMDLs have been adopted for specific pollutants, the Permittees will shift available resources to be compliance-focused, to achieve compliance with water quality objectives. Program elements will be targeted toward executing the requirements identified in the TMDL implementation plans and pollution reduction goals specified in this Order. The primary goal of a compliance-focused program is to ensure storm water discharges consistently meet the water quality objectives identified in the Basin Plan. A comprehensive water quality monitoring program that is proposed in the fourth-term Permit will be used to evaluate the success of this new initiative.

This Order requires the Permittees to develop and implement comprehensive plans designed to achieve compliance with the wasteload allocations by the dates specified in the approved TMDLS. This Order requires that the results of the water quality monitoring provide the feedback loop to evaluate the effectiveness of the BMPs and programs implemented in the watershed and demonstrate Permittees' progress towards compliance with the wasteload allocations. Other TMDLs planned during the next MS4 Permit term include Big Bear Lake Nutrient TMDL (for all weather conditions), Big Bear Lake Mercury TMDL, Big Bear Lake and Rathbone Creek Sediment TMDL, and Big Bear Lake Watershed Metals TMDLs. The Permittees, within the affected watersheds, are required to participate in the development and implementation of those TMDLS. This Order may be reopened to incorporate any TMDLs_that may_be adopted and approved during the permit term.

An audit of each of the Permittees' storm water management programs during the third-term permit indicated no clear nexus between the watershed protection principles specified in the MSWMP and the WQMP and the Permittees' General Plan or related documents such as Development Standards, Zoning Codes, Conditions of Approval, Project Development Guidance, etc. It appears that aspects of the existing procedures, Development Standards, Ordinances and Municipal Codes may be barriers to implementation of watershed protection principles, especially low impact development techniques. This Order requires the Permittees to review and revise the Permittees' General Plan, Comprehensive or Master Plan, Municipal Codes, Subdivision Ordinances, Project Development Standards, Conditions of Approval or related documents to facilitate implementation of low impact development and other watershed protection principles.

The USEPA has recommended a shift to watershed-based NPDES permitting[29] and a watershed approach[30] to CWA programs, including NPDES programs. The Permittees

[29] EPA: Watershed-based NPDES permitting is a process that emphasizes addressing all stressors within a hydrologically-defined drainage basin, rather than addressing individual pollutant sources on a discharge-by-discharge basis.

[30] EPA (1996a): "The watershed approach is a coordinating framework for environmental management that focuses public and private sector efforts to address the highest priority problems within hydrologically defined geographic areas, taking into consideration both ground and surface water flow."

and the Regional Board also recognize that a watershed-based approach is expected to be effective in controlling pollutants in urban storm water runoff. Consistent with this approach, this Order requires the Permittees to develop, implement and monitor the effectiveness of a Watershed Action Plan that integrates hydromodification and water quality management strategies with land use planning policies, ordinances, and plans within each jurisdiction. A watershed approach considers the diverse pollutant sources and stressors and watershed goals within a defined geographic area (i.e., watershed boundaries) and it has three basic components: (1) *Geographic Focus*: Watersheds are nature's boundaries. They are the land areas that drain to surface waterbodies, and they generally include lakes, rivers, estuaries, wetlands, streams, and the surrounding landscape. Ground water recharge areas are also considered. (2) *Sound Management Techniques Based on Strong Science and Data*: Sound scientific data, tools, and techniques are critical to inform the process. Actions taken include characterizing priority watershed problems and solutions, developing and implementing action plans, and evaluating their effectiveness within the watershed. (3) *Partnerships/Stakeholder Involvement*: Watersheds transcend political, social, and economic boundaries. Therefore, it is important to involve all the affected interests in designing and implementing goals for the watershed. Watershed teams may include representatives from all levels of government, public interest groups, industry, academic institutions, private landowners, concerned citizens, and others.

To promote transparency and consistency within the permitted area, this Order requires each Permittee to develop its own local implementation plan (LIP) that specifies how each program element of the MSWMP and this Order will be implemented within its jurisdiction. The LIP shall specify the Permittee's legal authority and standard operating procedures including but not limited to its ordinances, plans, policies, procedures, personnel, tasks, schedules, checklists, educational materials, forms, maps of drainage areas, maps of wetlands or other environmentally sensitive areas, tools and resources utilized to implement the MSWMP requirements and requirements specified in this Order within its jurisdiction. The LIP shall identify the organizational units and personnel responsible for implementation of each program element, establish internal reporting requirements to ensure and promote accountability, and shall describe an adaptive method of evaluation and assessment of program effectiveness for the purpose of identifying program improvements.

The audits conducted by the Regional Board have also shown a need to improve program effectiveness assessment. This Order specifies quantifiable measures for evaluating program effectiveness.

The above-mentioned strategies for the fourth-term permit build upon and continue the programs and policies developed by the Permittees during the prior term permits as described in Sections VI and VII, above. A combination of these programs and policies and the requirements specified in this Order should improve control of pollutants in storm water runoff from storm water conveyance facilities owned and/or controlled by the permittees.

IX. PERMIT REQUIREMENTS

The legislative history of storm water statutes (1987 CWA Amendments), US EPA regulations (40CFR Parts 122, 123, and 124), and clarifications issued by the State Water Resources Control Board (State Board, Orders No. WQ 91-03 and WQ 92-04) indicate that a non-traditional NPDES permitting strategy was anticipated for regulating urban storm water runoff. Due to economic and technical infeasibility of full-scale end-of-pipe treatments and the complexity of urban storm water runoff quality and quantity, MS4 permits generally include narrative requirements for the implementation of BMPs in place of numeric effluent limits.

The requirements included in this Order are meant to specify those management practices, control techniques and system design and engineering methods that will result in maximum extent practicable (MEP) protection of the beneficial uses of the receiving waters. The State Board (Orders No. WQ 98-01 and WQ 99-05) concluded that MS4s must meet the technology-based MEP standard and water quality standards (water quality objectives and beneficial uses). The U. S. Court of Appeals for the Ninth Circuit subsequently held that strict compliance with water quality standards in MS4 permits is at the discretion of the permitting authority. Any requirements included in the Order that are more stringent than the federal storm water regulations is in accordance with the CWA Section 402(p)(3)(iii), and the California Water Code Section 13377 and are consistent with the Regional Board's interpretation of the requisite MEP standard.

The 2006 Report of Waste Discharge (ROWD) included a discussion of the current status of San Bernardino County's urban storm water management program and the proposed programs and policies for the next five years (fourth-term permit). A separate Municipal Storm Water Management Plan (MSWMP), submitted with the ROWD, defines the storm water programs and activities to be implemented during the fourth permit term and includes by reference a number of related documents such as the Water Quality Management Plan (WQMP). This Order incorporates these documents (2006 ROWD and MSWMP and other related documents).

This Order recognizes the significant progress made by the Permittees during the prior term permits in implementing various elements of the storm water program. This Order also recognizes regional and innovative solutions to such a complex problem, addresses deficiencies of the Permittees' storm water programs observed during the audits conducted by Regional Board staff, considers comments by the USEPA on other draft MS4 Permits and recommendations in the recently published report on Urban Storm Water Management by the National Research Council[31] (NRC) study. This Order specifies quantifiable performance measures to determine compliance and assess the effectiveness of the storm water programs. This Order incorporates an integrated watershed approach in solving water quality and hydromodification impacts resulting from urbanization and aims to promote low impact development techniques as a key element to mitigate impacts from new and redevelopment projects. The proposed permit also includes water quality based effluent limits based on wasteload allocations

[31] National Research Council Report (2008), http://www.nap.edu/catalog.php?record_id=12465

in approved TMDLs. The goal of these programs and policies that are included in this Order is to achieve and maintain water quality standards in the receiving waters.

The major requirements include: 1) Discharge prohibitions; 2) Effluent limitations and discharge specifications, including wasteload allocations for discharges to 303(d) listed waterbodies with adopted TMDLs and Permittees' De Minimus Discharges; 3) Receiving water limitations; 4) Legal authority and enforcement; 5) Prohibition on illicit connections and illegal discharges; 6) Control of sewage spills, sanitary sewer line leaks, septic system failures and portable toilet discharges; 7) Municipal inspection programs; 8) New development, including significant re-development requirements, including quantifiable measures for low impact development implementation and management of hydrologic conditions of concern and a time schedule to develop a watershed approach to address water quality and hydromodification issues; 9) public education and outreach; 10) Municipal facilities/activities; 11) Municipal construction projects; 12) Training program for storm water managers, planners, inspectors, and municipal contractors; and 13) Monitoring and reporting requirements.

These programs and policies are intended to improve urban storm water quality and protect the beneficial uses of receiving waters of the region.

1. DISCHARGE PROHIBITIONS

In accordance with CWA Section 402(p)(3)(B)(ii), this Order prohibits the discharge of non-storm water to the MS4s, with a few exceptions. The specified exceptions are consistent with 40 CFR 122.26(d)(2)(iv)(B)(1). If the permittees or the Executive Officer determines that any of the exempted non-storm water discharges contain pollutants, a separate NPDES permit, a separate Waste Discharge Requirement or coverage under the Regional Board's De Minimus permit will be required.

2. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS, INCLUDING WASTE LOAD ALLOCATIONS FOR DISCHARGES TO 303(D) LISTED WATERBODIES WITH ADOPTED TMDLS

This Order regulates the discharge of urban runoff as per 40 CFR122.26(d)(2)(iv)(B)(1). This Order also regulates de minimus types of discharges from Permittees' facilities and/or operations. The Regional Board regulates some of the "authorized discharges" under the de minimus permit. The Permittees' de minimus discharges are subject to maximum daily concentration limits consistent with the Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG 998001. Permittees' de-minimus discharges covered under this Order include: 1) dewatering wastes from subterranean seepage, except for discharges from utility vaults; 2) discharges resulting from hydrostatic testing of vessels, pipelines, tanks, etc.; 3) discharges resulting from the maintenance of potable water supply pipelines, tanks, reservoirs, etc.; 4) discharges resulting from the disinfection of potable water supply pipelines, tanks, reservoirs, etc.; 5) discharges from potable water supply systems resulting from initial system startup, routine startup, sampling

of influent flow, system failures, pressure releases, etc.; 6) discharges from fire hydrant testing or flushing; 7) swimming pool discharges; 8) discharges resulting from diverted stream flows; and 9) Construction dewatering wastes. This Order specifies procedures for Regional Board notification of Permittees' de-minimus discharges.

NPDES regulations at 40 CFR 122.44(d)(vii)(B) require that NPDES permits be consistent with wasteload allocations approved by the USEPA. Wasteload allocations in adopted TMDLs for the Middle Santa River (MSAR) Watershed Bacterial Indicator, and the Big Bear Lake Nutrient TMDL for Dry Hydrological Conditions are included in this Order as Water Quality-Based Effluent Limitations (WQBELS). However, since the compliance dates of the adopted TMDLs are beyond the expected 5-year duration of this NPDES Permit, the Permittees are required to monitor and report effectiveness of the BMPs specified in the TMDL Implementation Plans and this Order with respect to pollutant reduction goal(s) as one measure of progress towards attainment of WLAs in accordance with the compliance schedules specified in the TMDL Implementation Plans. If water quality standards in the impaired receiving waters are met through implementation of appropriate control measures, the Basin Plan will be amended to revise the TMDLs.

3. RECEIVING WATER LIMITATIONS

Receiving water limitations are included to ensure that discharges from the MS4 systems do not cause or contribute to violations of applicable water quality standards in receiving waters. The compliance strategy for receiving water limitations is consistent with the USEPA and State Board guidance and recognizes the complexity of storm water management.

This Order requires the permittees to meet water quality standards in receiving waters in accordance with USEPA requirements, as specified in State Board Order No. WQ 99-05. If water quality standards are not met through implementation of BMPs, the permittees are required to re-evaluate the programs and policies and propose more effective BMPs. Compliance determination will be based on this iterative BMP implementation/compliance evaluation process.

4. LEGAL AUTHORITY/ENFORCEMENT

The Permittees have adopted a number of ordinances, municipal codes, and other regulations to establish legal authority, control discharges to the MS4s and enforce these regulations as specified in 40 CFR 122.26(d)(2)(i)(A, B, C, E, and F). The Permittees are required to enforce these ordinances and to take enforcement actions against violators (40 CFR 122.26(d)(2)(iv)(B-D)).

The third-term permit required the Permittees to establish the authority and resources to administer either civil or criminal penalties and/or penalties for violations of their local water quality ordinances. Although a few Permittees have imposed monetary penalties for repeated violations of its ordinances, program evaluations conducted during the third-term permit showed that enforcement

activities undertaken by a majority of the Permittees have consisted primarily of Notices of Violation (NOVs) that are mostly to educate the public on the environmental consequences of illegal discharges. In some cases, multiple NOVs and stop work orders were issued to the same facilities for recurring violations without progressive enforcement. In the case of San Bernardino County, additional action has sometimes included recovery of investigative and cleanup costs from the responsible party. In case of egregious or criminal violations, the option exists for referral to the County District Attorney for possible prosecution. The fourth-term permit requires the Permittees to document and implement progressive and decisive enforcement actions, evaluate the effectiveness of their enforcement program and sanctions by tracking compliance and evaluating the amount of time to return to compliance. This Order also requires the Permittees to establish the authority to immediately abate discharges to its MS4s caused by unresponsive dischargers and recover its costs.

Since the 2006 ROWD identified bacteria as the highest priority pollutant for the permitted area, this Order requires the Permittees to promulgate ordinances that would specify control measures for known pathogen or bacterial sources, such as animal wastes, if those types of sources are present within their jurisdiction.

This Order requires the Permittees to include in the Local Implementation Plan (LIP) their legal authority and mechanisms to implement the various program elements required by this Order to properly manage, reduce and mitigate potential pollutant sources within each Permittee's jurisdiction. The LIP shall include citations of appropriate local ordinances, identification of departmental jurisdictions and key personnel in the implementation and enforcement of these ordinances. The LIP shall include procedures, tools and timeframes for progressive enforcement actions and procedures for tracking compliance.

5. ILLEGAL DISCHARGES / ILLICIT CONNECTIONS TO MS4s, LITTER DEBRIS AND TRASH CONTROL

Federal regulation, 40 CFR 122.26(d)(2(iv)(B), requires the Permittees to eliminate illicit discharges to the MS4s. During the second-term permit, the Permittees completed a survey of the MS4 systems and eliminated or permitted all identified illicit connections. The Permittees have also established a program to address illegal discharges and a mechanism to respond to spills and leaks and other incidents of discharges to the MS4s. Program evaluations conducted during the third-term permit showed that this program element is primarily complaint driven or an incidental component of municipal inspections or conveyance system inspections.

This Order requires the Permittees to develop a plan for each jurisdiction to conduct focused, systematic field investigations, outfall reconnaissance survey, indicator monitoring, and track their sources[32]. A proactive illicit discharge

[32] Table 2: Land uses, Generating Sites and Activities that Produce Indirect Discharges from IDDE, A Guidance Manual for Program Development and Technical Assessments, October 2004 CWP.

detection and elimination (IDDE) program shall be integrated with other program elements including: GIS mapping of the Permittees' conveyance systems to track sources, aerial photography, municipal inspection programs for construction, industrial, commercial, storm drain systems, municipal facilities, etc., watershed monitoring, public education and outreach, pollution prevention, stream restoration efforts, and rapid assessment of stream corridors to identify dry weather flows and illegal dumping.

6. SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS, SANITARY SEWER LINE LEAKS, SEPTIC SYSTEM FAILURES AND PORTABLE TOILET DISCHARGES

Federal regulation, 40 CFR 122.26(d)(2)(iv)(B)(4), requires the Permittees to develop procedures to prevent, contain, and respond to spills that may discharge into the MS4s. The Permittees have already developed a program to address various types of spills to the MS4s. This Order requires the Permittees to continue to implement the unified sewer response plans in collaboration with the local sanitation districts. To facilitate swift response actions, the Permittees are required to provide 24-hour access to MS4s to the sanitation districts. The Permittees should also work cooperatively with the local sanitation districts to determine if exfiltration from leaking sanitary sewer lines is causing or contributing to urban storm water pollution problems. In addition, the Permittees are required to control infiltration or seepage from sanitary sewers to the MS4s through routine preventive maintenance of the storm drain system (40 CFR 122.26(d)(2)(iv)(B)(7)). This Order also requires the Permittees to implement control measures and procedures to prevent, respond to, contain and clean up all sewage and other spills from sources such as portable toilets and septic systems.

On May 2, 2006, the State Board issued the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-0003-DWQ (SSO Order) to address proper management and operation of sewer collection systems and to control sanitary sewer overflows. It requires dischargers/enrollees to develop and implement a written Sewer System Management Plan (SSMP) approved by the discharger's governing board and report sewer spills through an on-line reporting system. This Order requires the Permittees to coordinate the review of the unified sewage spill response plan developed during the third-term permit with the local sewering agencies to make it consistent with the requirements of the SSO Order. This Order also requires each Permittee to include in its LIP the interagency or interdepartmental sewer spill response coordination and responsibilities.

The MS4 program audits indicated that a majority of the Permittees with septic systems have inadequate information with regard to the number and location of systems within their jurisdiction. This Order requires the Permittees to develop an inventory of septic systems within its jurisdiction and establish a program to ensure that septic system failure rates are minimized.

7. MUNICIPAL INSPECTION PROGRAM

Federal regulations, 40 CFR 122.26(d)(2)(iv)(A-D), require the Permittees to inventory, prioritize and inspect industrial, construction and commercial facilities. The third-term permit required the Permittees to inventory construction, industrial and commercial facilities within their jurisdiction and to prioritize them for inspection based on threat to water quality. The permit specified the frequency at which high, medium, low priority sites are to be inspected. During the third-term permit, the Permittees proposed to develop a risk-based scoring system to prioritize facilities for inspections. Until approval of this risk-based prioritization system, the Permittees are required to continue the inspection program and prioritize facilities for inspection based on threat to water quality as specified in the third-term permit.

An evaluation of the municipal inspection programs during the third-term permit indicated certain deficiencies in the commercial, industrial and construction programs of some of the Permittees. In many instances, program documentation of progressive enforcement and facilities' return to compliance were not properly documented. This Order requires Permittees to document inspections and enforcement and evaluate the effectiveness of their inspection and enforcement program by tracking the time for facilities to return to compliance. During the third-term permit, most of the Permittees utilized the MS4 Solution Database to document their facility inventory, inspections and enforcement activities. This Order requires the Permittees to update the information in the MS4 Solution Database or use an equivalent web accessible database on a regular basis. The Permittees who do not have an internet accessible database shall initiate quarterly reporting and update of the inventory, inspection and enforcement database for facilities within their jurisdiction.

In order to address discharges to the MS4s from residential sources, the fourth-term permit requires the Permittees to develop and implement a residential program to prevent residential discharges from causing or contributing to a violation of water quality standards in the receiving waters (40 CFR 122.26(d)(2)(iv)(A)).

8. NEW DEVELOPMENT AND SIGNIFICANT REDEVELOPMENT

Federal regulation, 40 CFR 122.26(d)(2)(iv)(A)(2), requires the Permittees to develop a comprehensive master plan to address discharges from new and significant redevelopment projects. During the third-term permit, the Permittees revised their new development guidelines to address water quality and hydromodification impacts resulting from urbanization. A Water Quality Management Plan Guidance and Template was approved by the Regional Board in 2004 and amended in 2005. The Permittees were required to review and approve project-specific Water Quality Management Plans (WQMP) to address post-construction impacts. The WQMP should be designed to address water quality impacts, including hydrologic conditions of concern, from new and significant redevelopment projects through: (1) site design BMPs, including low impact development (LID) techniques; (2) source control BMPs; and (3) treatment control BMPs. This Order recognizes the importance of LID techniques to minimize the impact of urbanization on water quality. The fourth-term permit requires the project

proponents to infiltrate, harvest and reuse, evapotranspirate, or bio-treat the volume of runoff from a 24-hour, 85th percentile storm event where feasible. The Order also provides alternatives and in-lieu programs for project sites where infiltration, harvesting and re-use, evapotranspiration and bio-treatment are not feasible.

Program evaluations conducted during the third-term permit indicated a need for establishing a need for improved integration between the watershed protection principles, including LID techniques into the planning and approval processes of the Permittees. This Order requires the Permittees to review and revise their Development Standards, Zoning Codes, Conditions of Approval, Development Project Guidance, ordinances, and other related documents, where feasible, to identify and eliminate barriers to incorporate watershed protection principles.

The Southern California Monitoring Coalition (SMC), including project lead agency, the San Bernardino County Flood Control District, in collaboration with SMC members, Southern California Coastal Water Research Project (SCCWRP) and the California Storm Water Quality Association (CASQA), is developing a Low Impact Development Manual for Southern California with funding from the State Water Resources Control Board, CASQA and the SMC. This manual will be incorporated into the CASQA BMP Handbooks. The Permittees are encouraged to utilize the manual as a resource for proper LID design and implementation techniques.

Program evaluations have also shown deficiencies in the Permittees' inspection, and tracking of post-construction BMPs. This Order requires the Permittees to revise their close-out procedures to include field verification that site design, source control and treatment control BMPs are operational and consistent with the approved WQMP.

This Order incorporates new project categories and revised thresholds for several categories of new development and redevelopment projects that trigger the requirement for a WQMP. The 2008 National Research Council (NRC) report[33] indicates that roads and parking lots constitute as much as 70% of total impervious cover in ultra-urban landscape, and as much as 80% of the directly connected impervious cover. Roads tend to capture and export more storm water pollutants than other impervious covers. As such, the Permittees are required to develop a standard design and post-development BMP guidance for streets, roads, highways, and freeway improvements that meet the performance standards for site design/LID BMPs, source control, treatment control as well as hydromodification control. The NRC report also indicates that there is a direct relationship between impervious cover and the biological condition of downstream receiving waters. The Permittees are required to address hydrologic conditions of concern from new development and significant redevelopment projects to minimize downstream impacts.

Consistent with a long term holistic approach to address water quality and hydromodification impacts resulting from urbanization, this Order requires Permittees to develop a Watershed Action Plan that integrates, to the extent

[33] National Research Council Report (2008), http://www.nap.edu/catalog.php?record_id=12465

practicable, water quality, stream protection, storm water management and re-use strategies with land use planning policies, ordinances, and plans within each jurisdiction. These plans should address cumulative impacts of development on vulnerable streams, preserve or restore, consistent with the maximum extent practicable standard, the structure and function of streams, and protect surface and groundwater quality. The Order specifies that the Watershed Action Plan include strategies for addressing (303(d) listed waterbodies with adopted TMDLs with or without implementation plans as well as those impaired water bodies without a TMDL. The Permittees are also required to participate in TMDL development and implementation.

9. PUBLIC AND BUSINESS EDUCATION AND OUTREACH PROGRAMS

Federal regulation, 40 CFR 122.26(d)(iv), requires the Permittees to develop a comprehensive storm water management plan with public participation and 40 CFR 122.26(d)(iv)(B)(6) requires the Permittees to engage in outreach activities to facilitate the proper management of pollutants. Public outreach is an important element of the overall urban pollution prevention program. The Permittees have implemented a strategic and comprehensive public education program to preserve and enhance the quality of receiving waters. The Principal Permittee has taken the lead role in the outreach programs and has targeted various groups including businesses, industry, commercial enterprises, developers, utilities, environmental groups, institutions, homeowners, school children, and the general public. The Permittees have developed a number of educational materials, have established a storm water pollution prevention hotline and website, started an advertising and educational campaign, and distribute public education materials at a number of public events. The Permittees are required to continue these efforts and to expand their public participation and education programs by participating in joint outreach programs with other agencies including, but not limited to, the SWQSTF, Caltrans, and other municipal storm water programs.

This Order also requires the Permittees to develop and distribute fact sheets/BMPs to address sources from residential sources such as: (1) auto washing and maintenance activities; (2) use and disposal of pesticides, herbicides, fertilizers and household cleaners; and (3) collection and disposal of pet wastes.

The Permittees are required to review their public education and outreach efforts and revise these activities, if necessary, to address public outreach needs.

Federal regulation, 40 CFR 122.26(d)(v), requires the Permittees to conduct a program assessment to determine the reduction in pollutant loadings due to urban storm water runoff management programs. Each Permittee is required to implement an assessment program, guided by the CASQA Program Effectiveness Guidance manual or equivalent alternative.

10. MUNICIPAL FACILITIES AND ACTIVITIES

Federal regulation, 40 CFR 122.26(d)(iv)(A), requires the Permittees to ensure that public agency activities and facilities do not cause or contribute to violations

of water quality standards in receiving waters. The third-term permit incorporated performance commitments in the ROWD to prevent public agency facilities and activities from causing or contributing to a pollution or nuisance in receiving waters. The Permittees were also required to develop and distribute BMP fact sheets for various public agency activities. The third-term permit also specified minimum requirements for street sweeping and inspection and maintenance of drainage facilities. Permittee as well as contract staff that perform public agency activities were required to be properly trained.

Program evaluations conducted during the third-term permit indicated varying degrees of compliance at public agency facilities and activities. This Order requires each Permittee to inventory and inspect its fixed facilities, field operations and drainage facilities to ensure that public agency facilities do not cause or contribute to a pollution or nuisance in receiving waters.

Fixed public facilities and field operations include, but are not limited to, public streets and roads, parking facilities, fire training facilities, flood management and conveyance systems, POTWs, solid waste transfer facilities, land application sites, corporate yards, maintenance and storage yards, household hazardous waste collection facilities, municipal airfields, recreational facilities, and special event or festival venues. The Permittees are required to include in their local implementation plan procedures and schedules for inspections and maintenance of public agency facilities and activities.

11. MUNICIPAL CONSTRUCTION PROJECTS

The third-term permit authorized the discharge of storm water from construction activities on one acre or more that are under ownership or direct responsibility of the Permittees. The Permittees were required to notify the Executive Officer prior to commencement of construction activities, and to comply with the substantive requirements of the latest Statewide General Construction Activities Storm Water Permit.

Program evaluations conducted during the third-term permit indicated that some of the Permittees were not submitting or were not aware of the requirement to submit a Notice of Construction or Permit Registration Documents (PRDs) and a Notice of Completion for municipal construction projects.

This Order continues the requirement of the third-term permit and builds upon it by requiring Permittees to include post-construction BMP information for municipal projects along with the Notice of Termination submitted to the Executive Officer upon completion of the construction activity. The Notice of Termination must include photographs of the completed project, a location map, structural post-construction BMP location, field verification report and long term operation and maintenance responsibility. The Permittees are required to develop a database of post-construction BMPs for which the Permittees are responsible and shall reference this database in the local implementation plans.

Emergency public work projects required to protect public health and safety are exempted from these requirements, until the emergency ends, at which time they need to comply with the requirements.

12. TRAINING PROGRAM FOR STORM WATER MANAGERS, PLANNERS, INSPECTORS, AND MUNICIPAL CONTRACTORS

Education of municipal planning, inspection, and maintenance staff is critical to ensure that land use decisions, local permit approvals and municipal facilities and activities do not cause or contribute to an exceedance of receiving water quality standards. During the third-term permit, the Permittees developed a web-based training program to provide better access to specific training elements. The Municipal Activities Pollution Prevention Strategy (MAPPS) online-training program addressed BMPs for public agency facilities and activities.

This Order requires the Permittees to define the necessary expertise and competencies for various job functions involved in the implementation of the areawide and local storm water programs and to develop an appropriate curriculum. The Permittees are required to conduct the training program for field operations and municipal inspection staff, for storm water managers, and for those involved in the review and approval of WQMPs and CEQA documents. The training curriculum should address the need for interdepartmental collaboration and communication to address issues related to storm water pollution controls.

13. MONITORING AND REPORTING REQUIREMENTS

Prior monitoring programs conducted by the Permittees consisted of drainage area characterization, BMP evaluation, storm water, and receiving water monitoring. These early programs focused on identifying pollutants, estimating pollutant loads, tracking compliance with water quality objectives, and identifying sources of pollutants. The San Bernardino County monitoring program, as well as other monitoring programs nationwide, has shown that there is a high degree of uncertainty in the quality of storm water runoff and that there are significant variations in the quality of urban runoff spatially and temporally. However, most of the monitoring programs to date have indicated that there are a number of pollutants in urban storm water runoff. A definite link between pollutants in urban runoff and beneficial use impairments has been established at least in a few studies.

To date, wet weather monitoring has shown elevated pollutant concentrations at monitoring Sites 2, 3 and 5. Monitoring Site 2 is located 400 feet south of Freeway 60, west of Archibald Avenue, on the east side of Cucamonga Creek Channel, in the City of Ontario. Land use within this drainage area is primarily commercial and industrial. Site No. 3 is located at Hellman Avenue, between Pine Avenue/Schleisman Road and Chino-Corona Road/Chandler Street, 75 feet east of Hellman Avenue bridge on the south side of Cucamonga Creek Channel

near the City of Chino on the San Bernardino County/Riverside County line. This site is mainly agricultural. Site No. 5 is located in the Hunts Lane access road north of Hospitality Lane, within a manhole located in the asphalt parking lot behind a group of commercial facilities in the City of San Bernardino. This site receives flows from predominantly restaurants and other businesses in the area. Using wet weather monitoring data from 1994-99, the 2000 ROWD identified Site 5 to have the highest average concentration for BOD, copper, zinc, and TSS while Site 3 has the highest average concentrations for nitrate and phosphorus. First flush data from the 1999-2000 monitoring events showed elevated levels consistent with prior years' data for Sites 2, 3, and 5. During the third-term permit, a Pollutant Source Investigation and Control Plan[34] was developed and implemented to investigate elevated pollutant concentrations of coliform bacteria, zinc, copper and lead at Site 5. This Order requires continued implementation of the plan, including annual reporting and BMP effectiveness evaluation for the Site 5 drainage area. This Order also requires the Permittees to continue first flush monitoring at storm drain monitoring Sites 2, and 3 to refine source identification and control techniques. Some of these efforts may be blended into the Watershed Action Plan that is required under the proposed Order.

The Order also requires the Permittees to participate in monitoring programs to support TMDL development and implementation. The Permittees are also participating in several other monitoring-related activities, including Comparative Evaluation of Microbial Source Tracking Techniques, Model Monitoring Program Guidance, Peak Flow Study, and Laboratory Inter-Calibration. Under the auspices of the Storm Water Monitoring Coalition, Southern California Coastal Water Research Project prepared "Model Monitoring Program for Municipal Separate Storm Sewer Systems in Southern California", August 2004 Technical Report No. 419. This report noted, ".the lack of mass emissions stations in the inland counties hampers their ability to estimate the proportional contribution of these inland areas to cumulative loads downstream." The coalition consists of representatives from the Counties of Ventura, Los Angeles, Long Beach, Orange, San Bernardino, Riverside, and San Diego. An integrated Watershed Monitoring Plan should address any shortcomings in the overall monitoring programs and avoid duplicative efforts within the same watershed.

This Order requires the Permittees to continue their participation in these watershed coordination efforts. The third-term permit required the Permittees to initiate bioassessement monitoring. To allow for a holistic approach, this Order requires the Permittees to participate in the Regional Integrated Freshwater Bioassessment Monitoring Program in lieu of a separate bioassessment monitoring program for the permitted area.

This Order requires the Permittees to re-evaluate their Water Quality Monitoring Plan and submit a revised plan for approval. The revised integrated watershed monitoring program should integrate the goals and objectives of the Watershed Action Plan and rectify data gaps from previous monitoring efforts.

[34] 2005-2006, 2006-2007, 2007-2008 Annual Reports

X. WATER QUALITY BENEFITS/COST ANALYSIS/FISCAL ANALYSIS

There are direct and indirect benefits from clean beaches, clean water, and clean environment. It is difficult to assign a dollar value to the benefits the public derives from fishable and swimmable waters. In 1972, at the start of the NPDES program, only 1/3 of the U.S. waters were swimmable and fishable. In 2008, more than 2/3 of the U.S. waters meet these criteria. In the November 1999 "*Money*" magazine survey of the "Best Places to Live," clean water and air ranked as two of the most important factors in choosing a place to live. Thus, environmental quality has a definite link to property values. Clean lakes and beaches and other water recreational facilities also attract tourists.

The true magnitude of the urban runoff problem is still elusive and any cost estimate for cleaning-up urban runoff would be premature short of end-of-pipe treatments. For urban storm water runoff, end-of-pipe treatments are cost prohibitive and are not generally considered as a technologically feasible option. Over the last decade, the Permittees have attempted to define the problem and implemented best management practices to combat the problem. The costs incurred by the Permittees in implementing these programs and policies are included in the annual reports.

The area-wide program is funded by the Permittees. The Principal Permittee prepares an annual budget for the Management Committee. The Principal Permittee allocates 95 percent of the approved budget costs to the co-permittees based on percentage calculated using the cost allocation formula defined in the Implementation Agreement.

The costs incurred by the Permittees in implementing these programs and policies can be divided into two broad categories (the costs indicated below are for the entire San Bernardino County storm water program):

1. Shared costs: These are costs that fund activities performed mostly by the Principal Permittee under the Implementation Agreement. These activities include overall storm water program coordination; intergovernmental agreements; representation at the California Storm Water Quality Association, Regional Board/State Board meetings and other public forums; preparation and submittal of compliance reports and other reports required under the NPDES permits and Water Code Section 13267, budget and other program documentation; coordination of consultant studies, co-permittee meetings; training seminars, water quality monitoring, and Countywide pubic education and outreach. Actual area-wide storm water program expenditures have increased from $571,000 for FY 1995-96 (2nd term) to $1,593,000 in FY 2006-07 (3rd term). During the third-term permit there has been an increase of about 15%/year from 2002-2007 in these program expenses. The Storm Water Program had allocated a budget of $1,735,500 for FY 2007-08 and proposed a budget of $1,765,500 for FY 2008-2009[35]. Below is a breakdown of the expenditure items and the corresponding percentage weight in the total budget.

The permittees identified the following budget for Fiscal Year (2008-2009):

[35] San Bernardino County Storm water Program, Annual Report for Reporting Year (Fiscal Year) July 2007-June 2008, Nov 2008.

EXPENDITURE ITEMS	AMOUNT ($)	PERCENTAGE
Public Education Program	300,000	18.69
Big Bear Lake TMDL	250,000	15.58
Administration	170,000	10.59
Chino Basin TMDL Implementation (Middle Santa Ana River)	160,000	9.97
MS4 Database Development	150,000	9.35
Storm Water Quality Standards Study (SAWPA)-Phase 3	150,000	9.35
Monitoring Program	100,000	6.23
Training	100,000	6.23
Participation in Regional Monitoring Program (SCCWRP)	70,000	4.36
Annual Report Preparation	50,000	3.12
Consultant Costs	30,000	1.87
Participation in Statewide Storm Water Issues (CASQA)	30,000	1.87
HCOC Map and Documentation	25,000	1.56
Permit Renewal Tasks	20,000	1.25
Subtotal	**1,605,000**	
Approved Reserved Fund (2008-09)	160,500	
Total Budget	1,765,500	

2. Individual Costs for ROWD/MSWMP Implementation for the third-term permit: These are costs incurred by each Permittee for implementing programs that complement the NPDES program by reducing the potential for pollutants to enter the storm drain system. Most of these programs existed prior to the MS4 program and these include: (1) street sweeping; (2) hazardous waste collection and recycling; and (3) storm drain and other municipal facilities maintenance. The MSWMP required additional programs and policies to ensure that these activities were not a significant contributor of pollutants to the MS4s and the receiving waters. In 2006/07, the Permittees determined their total Individual Costs for these programs to be $60.138 million.

Funding sources for the Storm Water Program for individual permittees are General Funds, capital funds, storm drain fees, sewer funds, storm water management fees,

development fees, licensing fees, plan check fees, NPDES construction inspection fees, business license fees, gas tax, utility tax, solid waste funds, and others.

XI. ANTIDEGRADATION ANALYSIS

The Regional Board has considered whether a complete antidegradation analysis, pursuant to 40 CFR 131.12 and State Board Resolution No. 68-16, is required for the storm water discharges. The Regional Board finds that the pollutant loading rates to the receiving waters will be reduced with the implementation of the requirements in this Order. As a result, the quality of storm water discharges and receiving waters will be improved, thereby improving protection for the beneficial uses of waters of the United States. Since this Order will not result in a lowering of water quality, a complete antidegradation analysis is not necessary, consistent with the federal and state antidegradation requirements.

XII. ANTI-BACKSLIDING

Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations of 40 CFR 122.44(*l*) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. All effluent limitations in this Order are at least as stringent as the effluent limitations in the previous Order. Therefore this Order conforms with the anti-backsliding requirements of the CWA.

XIII. PUBLIC WORKSHOPS

The Regional Board conducted a public workshop on the first draft of the Order on August 3, 2009 at the Loma Linda City Council Chambers.

XIV. PUBLIC HEARING

The Regional Board will hold a public hearing (scheduled to start at 9:00 a,m,) regarding the proposed waste discharge requirements on January 29, 2010 at the City Council Chambers, City of Loma Linda, 25541 Barton Road, Loma Linda, CA. A Notice of Public Hearing was published in the Legal Notices section of The Sun, a local newspaper, on November 13, 2009. Further information regarding the conduct and nature of the public hearing concerning these waste discharge requirements may be obtained by writing or visiting the Santa Ana Regional Board office, 3737 Main Street, Suite 500, Riverside, CA 92501-3348. This and other information are also available at the website at: www.waterboards.ca.gov/santaana. A Notice of Public Hearing and Hearing Procedure is also posted on the Regional Board's website at:

http://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/san_bernardino_permit.shtml.

XV. INFORMATION AND COPYING

Persons wishing further information may write to the above address or call Maria Macario at (951) 321-4583 or email at mmacario@waterboards.ca.gov. Copies of the application, proposed waste discharge requirements, and other documents (other than those which the Executive Officer maintains as confidential) are available at the Regional Board office for inspection and copying by appointment scheduled between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday (excluding holidays).

XVI. REGISTER OF INTERESTED PERSONS

Any person interested in a particular application or group of applications may leave his/her name, address, and phone number as part of the file for an application. Copies of the final waste discharge requirements will be emailed to all interested parties.

E-mail registration:

http://www.waterboards.ca.gov/resources/email_subscriptions/reg8_subscribe.shtml

In addition to the permittees, comments were solicited from the following agencies and/or persons:

Government Agencies

U. S. Environmental Protection Agency – John Kemmerer/Eugene Bromley (W-5-1)
US Army District, Los Angeles, Corps of Engineers - Permits Section
NOAA, National Marine Fisheries Service
US Fish and Wildlife Service – Carlsbad
U.S. Department of Agriculture - Forest Services, San Bernardino County National Forest
California Department of Transportation (Cal Trans), District 8, Paul Lambert
California Department of Parks and Recreation - Chino Hills State Park
Inland Valley Development Agency, San Bernardino International Trade Center and Airport
State Water Resources Control Board – David Rice, Office of the Chief Counsel
State Water Resources Control Board – Bruce Fujimoto, Division of Water Quality
State Department of Water Resources - Glendale
California Regional Water Quality Control Board, North Coast Region (1) – Executive Officer
California Regional Water Quality Control Board, San Francisco Bay Region (2) - Executive Officer
California Regional Water Quality Control Board, Central Coast Region (3) - Executive Officer
California Regional Water Quality Control Board, Los Angeles Region (4) - Executive Officer
California Regional Water Quality Control Board, Central Valley Region (5S) - Executive Officer
California Regional Water Quality Control Board, Central Valley Region (5R) – Assistant Executive Officer

California Regional Water Quality Control Board, Central Valley Region (5F) – Assistant Executive Officer
California Regional Water Quality Control Board, Lahontan Region (6SLT) - Executive Officer
California Regional Water Quality Control Board, Lahontan Region (6V) – Assistant Executive Officer
California Regional Water Quality Control Board, Colorado River Basin Region (7) - Executive Officer
California Regional Water Quality Control Board, San Diego Region (9) - Executive Officer
California Department of Fish and Game - Ontario
California Department of Public Health – San Bernardino
California Department of Parks and Recreation - Perris
South Coast Air Quality Management District - Diamond Bar
Riverside County Flood Control District – Jason Uhley
Orange County Public Works Department - Chris Crompton/Richard Boone

Interested Parties

AEI/CASC – Jeff Endicott
URS/Greiner - Bob Collacott
Building Industry Association –Mark Grey
Latham & Watkins – Paul Singarella/Shirin Zandipour
Best, Best, and Krieger
Southern California Association of Governments (SCAG), Los Angeles
San Bernardino Associated Governments (SANBAG)
Santa Ana Watershed Project Authority - Celeste Cantu
Inland Empire West Resource Conservation District - General Manager

Universities and Colleges (Chancellor)

California State University - California State University San Bernardino
San Bernardino Community College District - Chaffey College Campus
San Bernardino Community College District - Crafton Hills College Campus
San Bernardino Community College District - San Bernardino Valley College Campus
University of Redlands
Loma Linda University

School Districts (Superintendent)

Alta Loma Elementary School District
Bear Valley Unified School District
Central Elementary School District
Chaffey Joint Union High School District
Chino Valley Unified School District
Colton Joint Unified School District
Cucamonga Elementary School District
Etiwanda Elementary School District

Fontana Unified School District
Mountain View Elementary School District
Mt. Baldy joint Elementary School District
Ontario-Montclair Elementary School District
Rialto Unified School District
Rim of the World Unified School District
Redlands Unified School District
San Bernardino City Unified School District
Upland Unified School District
Yucaipa Joint Unified School District

Hospitals (Administrator)

Bear Valley Community Hospital
Chino Community Hospital
Doctors Hospital
Kaiser Foundation Hospital
Loma Linda Community Hospital
Loma Linda University Medical Center
Mountains Community Hospital
Ontario Community Hospital
Patton State Hospital
Redlands Community Hospital
St. Bernardine Medical Center
San Antonio Community Hospital
San Bernardino Community Hospital
San Bernardino County Hospital

Environmental Organizations

Lawyers for Clean Water – Daniel Cooper
Orange County Coastkeeper – Garry Brown
Inland Empire Waterkeeper - Autumn DeWoody
Defend the Bay – Bob Caustin
Sierra Club, San Gorgonio Chapter
Natural Resources Defense Council (NRDC) – David Beckman/Bart Lounsbury
Cousteau Society
Audubon Sea & Sage Chapter

Newspapers

Press Enterprise
Inland Valley Daily Bulletin
Big Bear Grizzly
Chino-Chino Hills Champion Newspapers
Fontana Herald News
Highland Community News
Redlands Daily Facts
San Bernardino Sun
Los Angeles Times

Orange County Register

Railroads

AT&SF Railway Company
Union Pacific Railroad Company
BNSF Railway Company

Water Districts (General Manager)

Big Bear Municipal Water District
Inland Empire Utilities Agency
Cucamonga Valley Water District
East Valley Water District
Monte Vista Water District
San Bernardino Valley Municipal Water District
West San Bernardino County Water District
Yucaipa Valley Water District Orange County Water District
Metropolitan Water District
Western Municipal Water District
Orange County Water District

ATTACHMENT 7

CALIFORNIA REGIONAL WATER QUALITY CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD – SANTA ANA REGION

NOTICE OF INTENT

TO COMPLY WITH THE TERMS OF THE SAN BERNARDINO COUNTY MUNICIPAL STORMWATER PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES

ORDER No. R8-2010-0036 (NPDES No. CAS618036)

MARK ONLY ONE ITEM 1. ☐ New Construction / Reconstruction 2. ☐ Change of Information for WDID# _____

I. OWNER

Name	Contact Person		
Mailing Address	Title		
City	State	Zip	Phone ( ) – Fax ( ) – Email :

II. CONTRACTOR INFORMATION

Name	Contact Person		
Local Mailing Address	Title		
City	State	Zip	Phone ( ) – Fax ( ) – Email:

III. SITE INFORMATION

A. Project Title	Site Address		
City	State	Zip	Contact Person Phone ( ) –
B. Construction commencement date: (Month / Day / Year)	C. Projected construction completion date: (Month / Day / Year)		

D. Type of Work: ☐ Utility ☐ Flood Control ☐ Transportation ☐ Other (Specify) Description of Work: _____	E. Total size of project/construction site: ____Acres Total size of area to be disturbed: ____Acres.

IV. RECEIVING WATER INFORMATION

A. Does the storm water runoff from the construction site discharge to (Check all that apply):
1. ☐ Indirectly to waters of the U.S.
2. ☐ Storm drain system - Enter owner's name:_____
3. ☐ Directly to waters of U.S. (e.g. , river, lake, creek, stream, or to a pipe/channel that flows without inflow from other sources between site and water body etc.)

V. IMPLEMENTATION OF NPDES PERMIT REQUIREMENTS

A. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) (mark one)
☐ A SWPPP has been prepared for this facility and is available for review
☐ A SWPPP will be prepared and ready for review by (date): ___/___/___

B. Date WQMP approved by local agency: ___/___/___ ☐ Not Applicable.

C. MONITORING PROGRAM (MP) (mark one)
☐ A MP has been prepared for this facility and is available for review
☐ A MP will be prepared and ready for review by (date): ___/___/___

VI. CERTIFICATIONS

"I certify under penalty of law that this document and all attachments were prepared under my direction and 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 or imprisonment. In addition, I certify that the Provisions of Section No. XIV of Order No. R8-2010-0036, including the development and implementation of a WQMP, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program (MP), will be complied with."

Printed Name: _____ **Title:** _____

Signature: _____ **Date:** _____

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD – SANTA ANA REGION

NOTICE OF TERMINATION

OF COVERAGE UNDER THE SAN BERNARDINO COUNTY MUNICIPAL STORMWATER PERMIT
FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY

ORDER No. R8-2010-0036 (NPDES No. CAS618036)

I. WDID No. _____

II. OWNER

Name	Contact Person		
Mailing Address	Title		
City	State	Zip	Phone ( ) – Fax ( ) – Email:

III. SITE INFORMATION

A. Original Project Title	Site Address		
City/Unincorporated Area	State CA	Zip	Site Contact Person
B. Contractor Name	Phone ( ) – Fax ( ) – Email:		Title
Local Mailing Address	City	State	Zip
Qualified SWPPP Practitioner	Phone ( ) – Fax ( ) – Email:		

IV. BASIS OF TERMINATION

__ 1. The construction project is completed and the following conditions have been met.

- ☐ All elements of the Storm Water Pollution Prevention Plan have been completed.
- ☐ Construction materials and waste have been disposed of properly.
- ☐ The site is in compliance with all local storm water management requirements.
- ☐ A post-construction storm water operation and management plan is in place (Attach a description of the post construction BMPs, the location (Latitude /Longitude), and a map of the locations of the PCBMPs).
- ☐ Field Verification Inspection (include a copy of the report) performed on ___/___/___ by Name_____

__ 2. Construction activities have been suspended; either temporarily ____ or indefinitely ___ and the following conditions have been met.

- ☐ All elements of the Storm Water Pollution Prevention Plan have been completed.
- ☐ Construction materials and waste have been disposed of properly.
- ☐ An effective combination of erosion and sediment control is in place for all denuded areas and other areas of potential erosion.
- ☐ The site is in compliance with all local storm water management requirements.

Date of suspension ____ / ____ / ____ Expected start up date ____ / ____ / ____

IV. CERTIFICATION

I certify under penalty of law that all storm water discharges associated with construction activity from the identified site that are authorized by NPDES General Permit No. CAS000002 have been eliminated or that I am no longer the owner of the site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with construction activity under the General Permit, and that discharging pollutants in storm water associated with construction activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an owner of liability for any violation of the General Permit or the Clean Water Act.

Printed Name: _____ **Title:** _____

Signature: _____ **Date:** _____

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION
NOTICE OF INTENT
TO COMPLY WITH THE TERMS AND CONDITIONS OF THE

☐ **Riverside County MS4 Permit**
ORDER NO. R8-2010-0033
NPDES NO. CAS 618033

☐ **San Bernardino County MS4 Permit**
ORDER NO.R8-2010-0036
NPDES NO. CAS618036

GENERAL WASTE DISCHARGE REQUIREMENTS FOR DISCHARGE TO SURFACE WATERS THAT POSE INSIGNIFICANT (DE MINIMUS) THREAT TO WATER QUALITY

I. PERMITTEE (*Person/Agency Responsible for the Discharge*)
Agency/Company
Name:_____
Address/*Street* _____
City _____State _____ZIP_____Contact Person:_____
Phone: (_____)_____; Email: _____

II. FACILITY
Name:_____
Address/Street _____
City _____State _____ZIP_____Contact Person:_____
Phone: (_____)_____; Email: _____

a. Projected Flow Rate (gpd):_____,
b. Receiving Water (identify):_____

III. INDICATE EXISTING PERMIT NUMBER: (*if applicable*)
a. Individual Permit Order No. _____ NPDES No. _____
b. General Permit Order No. R8-2010-003-_____
c. Others (specify) _____

IV. CERTIFICATION:

I certify under penalty of law that I am an authorized representative of the permittee and that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information contained in the application, I believe the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that the permittee will comply with the terms and conditions stipulated in Orders No. R8-2009-0003 and (R8-2010-0033 or R8-2010-0036, as applicable) including the monitoring and reporting program issued by the Executive Officer of the Regional Board.

Name:_____Title:_____
(type or print)

Signature: _____ Date: _____

Email: _____

Remarks: If changes to facility ownership and/or treatment processes were made after the issuance of the existing permit, please provide a description of such changes on another sheet and submit it with this Notice of Intent.

V. OTHER REQUIRED INFORMATION - FOR NEW DISCHARGERS AND FOR NEW DISCHARGES AND LOCATIONS NOT PREVIOUSLY REPORTED BY EXISTING DISCHARGERS.

Please provide a COMPLETE characterization of your discharge. A complete characterization includes, but is not limited to:

a. A list of constituents and the discharge concentration of each constituent;

b. The estimated average and maximum daily flow rates at unit of gallons per day(gpd); the frequency and duration of the discharge and the date(s) when discharge will start;

c. The proposed discharge location(s) as latitude and longitude for each discharge point;

d. A description of the proposed treatment system (if appropriate);

e. The affected receiving water; the receiving water(s) shall be
   1) receiving storm drain/creek, and/or
   2) the ultimate receiving water, such as Santa Ana River, San Jacinto River, Lake Elsinore, Prado Park Lake, etc.;

f. A map showing the path from the point of initial discharge to the ultimate receiving water. Please try to limit your maps to size of 8.5" X 11".

g. A list of known or suspected leaking underground tanks and other facilities or operations that have, or may have impacted the quality of the underlying groundwater within 200 feet of the site property lines for projects with expected discharge flow rates of less than 100,000 gallons per day and within 500 feet of the site property lines for projects with expected discharge flow rates of greater than 100,000 gallons per day.

h. Any other information deemed necessary by the Executive Officer.

VI. OTHER

Attach additional sheets to explain any responses which need clarification. List attachments with titles and dates below:

You will be notified by a representative of the RWQCB within 30 days of receipt of your application. The notice will state if your application is complete or if there is additional information you must submit to complete your application, pursuant to Division 7, Section 13260 of the California Water Code.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On November 29, 2018, I served the:

- **Notice of Complete Test Claim, Schedule for Comments, Request for Administrative Record, and Notice of Tentative Hearing Date issued November 29, 2018**
- **Test Claim filed by the City of Rialto on June 1, 2018**

  Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Rialto, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017,
  17-TC-28
  City of Rialto, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 29, 2018 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/27/18

Claim Number: 17-TC-28

Matter: Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Rialto, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017

Claimant: City of Rialto

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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